

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.1798 OF 2010

Ajim s/o Shaikh Rasul Mujawar
Age 44 years, Occ. Nil,
R/o Chausala, Taluka and
District Beed

... APPELLANT

VERSUS

1. Associated Road Carriers Ltd.,
through K. Mittal,
Plot No.3, Block No.34, Road No.1,
Ranga Reddy (Andhra Pradesh)
2. National Insurance Co. Ltd.,
373 and 375 A, Ceno Trade Centre,
Park Lane, Secundarabad, Hyderabad
Andhra Pradesh – 500 005
summons to be served through
Branch Manager, Hazari Chambers,
Station Road, Aurangabad
3. Jalil s/o Rasul Mujawar,
Age major, Occ. Business,
R/o Chausala, Taluka and
District Beed.
4. The New India Assurance Co. Ltd,
through its Divisional Manager,
Mahesh Auto Compound,
Adalat Road, Aurangabad

... RESPONDENTS

.....
Shri S.S. Dargad, Advocate holding for
Shri S.G. Chapalgaonkar, Advocate for appellant
Shri V.N. Upadhye, Advocate for respondent No.2.
Shri M.M. Ambhore, Advocate for respondent No.4

.....

WITH

FIRST APPEAL NO.1799 OF 2010

1. Jakiya w/o Khalik Mujawar,
Age 37 years, Occ. Household,
R/o Chausala, Taluka and
District Beed.
 2. Khalil s/o Mohmad Mujawar,
Age 42 years, Occu. Business,
R/o as above.
- ... APPELLANTS

VERSUS

1. Associated Road Carriers Ltd.,
through K. Mittal,
Plot No.3, Block No.34, Road No.1,
Ranga Reddy (Andhra Pradesh)
 2. National Insurance Co. Ltd.,
373 and 375 A, Cneno Trade Centre,
Park Lane, Secundarabad, Hyderabad
Andhra Pradesh – 500 005
summons to be served through
Branch Manager, Hazari Chambers,
Station Road, Aurangabad
 3. Jalil s/o Rasul Mujawar,
Age major, Occ. Business,
R/o Chausala, Taluka and
District Beed.
 4. The New India Assurance Co. Ltd,
through its Divisional Manager,
Mahesh Auto Compound,
Adalat Road, Aurangabad
- ... RESPONDENTS

.....

Shri S.S. Dargad, Advocate holding for
Shri S.G. Chapalgaonkar, Advocate for appellants
Shri V.N. Upadhye, Advocate for respondent No.2.
Shri M.M. Ambhore, Advocate for respondent No.4

.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 7th September, 2021

Date of pronouncing judgment : 20th October, 2021

J U D G M E N T :

Both these appeals are being decided by this common judgment since the appeals are interconnected.

2. The challenge in both the appeals is to the common judgment and award dated 7/7/2010, passed by Motor Accident Claims Tribunal (MACT), Beed in Motor Accident Claim Petitions (MACP) No.189/2008 and 191/2008. The appellants herein were the claimants in the MACPs before the Tribunal.

FACTS :-

3. The jeep bearing registration No.MH-16/C-1944 met with the accident on 11/4/2008. Deceased Mohseen and deceased Mudassar along with others were traveling in the ill-fated jeep. As a result of the accident, both the deceased and others in the jeep suffered multiple injuries. Both the deceased and one more inmate in the jeep died as a result of the injuries suffered in the said accident. The legal

representatives of all the three deceased, therefore, preferred three separate claim petitions for compensation. The MACT allowed those petitions. Two of the judgments and awards passed by the Tribunal in those three claim petitions are under challenge in these appeals.

4. Heard. Shri Dargad, learned counsel holding for Shri Chapalgaonkar, learned counsel for the appellants would submit that, in case of First Appeal I No.1798/2010 deceased Mohseen was a professional driver. His driving licence in the 'transport' category was tendered in evidence. The Tribunal, therefore, ought to have considered his monthly income at Rs.4500/-. The Tribunal has not awarded compensation for future prospects. A multiplier has been applied on the age of the claimant.

5. In case of First Appeal No.1799/2010, the learned counsel would submit that, the deceased was a businessman, earning Rs.7000/- per month. The Tribunal, however, considered his notional income at Rs.3000/-. Nothing has been awarded towards future prospects. Wrong multiplier has been applied. He, therefore, urged for allowing the appeals.

6. Shri Upadhye, learned counsel for the respondent Insurance Company would submit that, the accident took place on the bridge. It was head-on collision. The F.I.R. has been lodged by the relative of the deceased. 50% of the contributory negligence is attributable to the jeep driver. The learned counsel would submit that, for challenging the findings on the issues, the Insurance Company is not required to prefer any appeal or cross-objection. He relied on the judgment of the Apex Court in the case of **Shri Saurav Jain & anr. Vs. M/s A.B.P. Design & anr. [2021 STPL 7106 SC]**. The learned counsel, therefore, first urged for dismissal of the appeals and in the alternative, submitted that the deceased driver of the jeep be held equally responsible and accordingly liability may be apportioned.

7. Learned counsel would submit that, the decision of the Constitution Bench of the Hon'ble Supreme Court in case of **National Insurance Company Limited Vs. Pranay Sethi & ors. [(2017) 16 SCC 680]** will have precedence over the judgment in the case of **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram & ors., [(2018) 18 SCC 130]**.

8. Considered the rival submissions. Perused the impugned judgment and awards. Gone through the relevant evidence. True, the accident took place on the bridge. The Tribunal has, however, after having appreciated the scene of accident panchanama, held it to be a case of exclusive negligence on the part of the truck driver. On due investigation, the police has charged the truck driver for being responsible to the accident. Furthermore, in another claim petition arising out of the same accident, the Tribunal has given same finding, holding the truck driver to be exclusively negligent. The respondent Insurance Company has not challenged the said judgment and award. As such, the said judgment has attained finality inter-se the owner, driver and the Insurance Company of both the vehicles involved in the said accident. Learned counsel for the Insurance Company, therefore, could not be heard in these appeals to say that the driver of the jeep be held contributory negligent.

QUANTUM OF COMPENSATION :-

9. The Tribunal, while working out the quantum of compensation, has not granted anything towards future prospects. Multiplier has been applied considering the age of the claimants. In case of deceased Mohseen (First Appeal

No.1798/2010), he was a professional driver. His driving licence for transport category was placed on record. His notional income, therefore, ought to have been considered at Rs.4500/-. So far as regards other claim is concerned (First Appeal No.1799/2010), for want of concrete evidence, the Tribunal has rightly considered his notional income at Rs.3000/- per month. Instead of scrutinising the reasons given by the Tribunal, suffice it to say that, the appellants deserve enhancement in the amount of compensation. The same needs to be worked out in the light of the Constitution Bench judgment of the Hon'ble Supreme Court in case of Pranay Sethi (supra).

10. In First Appeal No.1798/2010, the notional income of the deceased is considered at Rs.4500/-. As such, his annual income comes to Rs.54,000/-. After adding 40% towards future prospects, the annual income comes to Rs.75,600/-. Since the father is the only dependent of the deceased, 50% of the income is deducted towards personal and living expenses of the deceased. In the light of judgment in case of Sarla Varma, the multiplier of 18 is applied. Total amount of compensation on account of loss of dependency comes to Rs.6,80,400/-. Towards loss of love and affection, a

sum of Rs.40,000/- is awarded besides Rs.30,000/- towards loss of estate and funeral expenses. Thus, the total comes to Rs.7,50,400/-. The claimant- appellant, however, shall not be entitled to component of interest on the amount of Rs.70,000/- granted towards loss of love and affection and loss of estate and funeral expenses.

11. In First Appeal No.1799/2010, the notional income of the deceased is Rs.3000/-. As such, his annual income comes to Rs.36,000/-. After adding 40% towards future prospects, the annual income comes to Rs.50,400/-. 50% of the income is deducted towards personal and living expenses of the deceased. As such, the annual income comes to Rs.25,200/-. in the light of judgment in case of **Sarla Verma (Smt.) & ors. Vs. Delhi Transport Corporation & anr. [(2009) 6 SCC 121]**, the multiplier of 18 is applied, the total amount of compensation comes to Rs.4,53,600/-.

For loss of love and affection, a sum of Rs.40,000/- is granted to each of the claimants. While Rs.30,000/- is awarded on account of loss of estate and funeral expenses. Thus, the total comes to Rs.5,63,600/-. The claimants- appellants, however, shall not be entitled to

component of interest on the amount of Rs.1,10,000/- granted towards loss of love and affection and loss of estate and funeral expenses.

12. In view of the above, the appeals partly succeed in terms of the following order :

ORDER

(i) Both the Appeals are partly allowed.

(ii) The award passed in Motor Accident Claim Petition No.189/2008 is modified, enhancing the amount of compensation from Rs.2,74,500/- to Rs.7,50,400/-. The claimant- appellant, however, shall not be entitled to component of interest on the amount of Rs.70,000/- granted towards loss of love and affection and loss of estate and funeral expenses.

(iii) The award passed in Motor Accident Claim Petition No.191/2008 is modified, enhancing the amount of compensation from Rs.2,02,500/- to Rs.5,63,600/-. The claimants- appellants, however, shall not be entitled to

component of interest on the amount of Rs.1,10,000/-
granted towards loss of love and affection and loss of estate
and funeral expenses.

Rate of interest awarded by the tribunal to remain
unchanged.

**(R. G. AVACHAT)
JUDGE**

fmp/-