

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

FIRST APPEAL NO.749 OF 2011

1. Suman w/o. Arjunsingh Thakur,
2. Onkarsingh s/o. Arjunsingh Thakur,
3. Ishwarsingh s/o. Arjunsingh Thakur ..Appellants

Vs.

1. Arun s/o. Madhukar Sattarke,
2. United India Insurance Co. Ltd. ..Respondents

Mr. Sachin Deshmukh, Advocate for appellants
Mr. Swapnil Rathi, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
DATE : OCTOBER 20, 2021**

JUDGMENT :-

This appeal is for enhancement of compensation granted by learned Member, Motor Accident Claims Tribunal, Parbhani ("the Tribunal", for short) in Motor Accident Claim Petition No.115 of 2003, whereunder a sum of Rs.1,30,000/- inclusive of no fault liability claim and medical expenditure, has been awarded on account of death occurred due to a vehicular accident. On finding the amount of compensation to be grossly inadequate, the original claimants have preferred present appeal.

FACTS:-

2. Deceased-Arjunsingh was serving with Maharashtra State Electricity Distribution Company Ltd. (MSEDCL). The deceased along with his son was on way home on their feet. A motorcycle (registration no.MH-30-K-4292) knocked Arjunsingh down. He suffered multiple injuries. He was rushed to a private hospital at Hingoli and then, shifted to hospital at Nanded for better treatment. He, however, died about 6 months after the accident. As such, the fact that the deceased Arjunsingh died in vehicular accident is not in dispute before this Court, more so, when the respondent-insurance company has not challenged the impugned award.

3. Mr.Sachin Deshmukh, learned counsel for the appellants/claimants, would submit that the deceased was serving with M.S.E.D.C.L. on a monthly pay of not less than Rs.7,000/-. The impugned award is perverse one. He, therefore, urged for grant of compensation in view of the direction in Constitution Bench judgment of the Apex Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and ors., (2017)16 SCC 680** and the judgment in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and ors., (2018)18 SCC 130.**

4. Mr.Swapnil Rathi, learned counsel for the respondent-insurance company, would, on the other hand, submit that there was no concrete evidence as to the deceased having been in service with M.S.E.D.C.L. and his salary as well. Learned counsel invited this Court's attention to the submissions made by learned counsel for the claimants before the Tribunal. It has been observed by the Tribunal that the compensation of Rs.60,000/- to Rs.70,000/- was urged for on behalf of the appellants/claimants. According to learned counsel, the amount of compensation granted by the Tribunal is, therefore, just and reasonable.

5. Since this Court found that the deceased was in service with M.S.E.D.C.L and the amount of compensation awarded to be grossly inadequate, learned counsel for the appellants/claimants was asked to place on record the salary certificate of the deceased. Accordingly, the same was placed on record. Since there was question of proof of the salary certificate, learned counsel for the insurance company had, initially, urged for remanding the matter to the Tribunal for recording evidence in proof thereof, after setting aside the impugned judgment and award. Since the original claim dates back to the year 2003, this Court found it to be impracticable

to concede to the submission made by learned counsel for the respondent-insurance company. A Court Commissioner was, therefore, appointed to record evidence of a witness to be examined in proof of the salary certificate. Accordingly, the Court Commissioner has placed on record the evidence recorded by him. Learned counsel for the insurance company took this Court to the cross-examination of the witnesses examined in proof of the salary certificate. The witness has categorically admitted that his affidavit of evidence had already been prepared. The contents of his affidavit of examination-in-chief were not narrated by him. As such, the answers given by him to the questions put to him during cross-examination lead this Court to observe that the witness could not prove the salary certificate. This Court, therefore, proposes to ignore his evidence.

6. There is on record original service book of the deceased. As per the last entry in the service book, the last pay of the deceased was Rs.7,305/-. No details thereof are available. The deduction in the nature of profession tax needs to be ignored. The appellants/claimants have already pleaded in their claim petition that the deceased would draw salary of Rs.7,000/- per month. The entry

in the service book reinforces their claim. For grant of just and reasonable compensation, the monthly salary of the deceased is, therefore, considered at Rs.7,000/-.

7. Before adverting to workout the amount of compensation payable to the appellants, a reference to the reasons given by the Tribunal in justification of the impugned award, needs to be adverted to. Paragraphs 10 to 13 of the impugned award read thus:-

"10. So far as compensation is concerned, it is submitted by learned advocate for petitioners that at least amount of Rs. 60,000/- to Rs. 70,000/- be granted. As against this, it is submitted by learned advocate for respondent no. 2 that towards compensation the petitioners are entitled to Rs. 30,000/- or Rs. 40,000/- since there is no iota of evidence on record about the income and age of the deceased.

11. On considering the arguments submitted by both the learned advocates across the bar and as admitted by learned advocate for respondent no. 2, the petitioners are entitled to claim Rs. 80,000/- which was incurred towards medical treatment.

12. So far as compensation is concerned, normally Rs. 50,000/- is to be granted towards NFL. In the facts of the present case it is an undisputed position that no NFL was granted. On considering the submissions of both the

learned advocates, in my opinion, it will be just and reasonable to grant Rs. 50,000/- towards compensation.

13. In the circumstances, in my opinion, it will meet the ends of justice if the petitioners are awarded Rs. 1,30,000/- towards compensation."

The aforesaid reasons given by the Tribunal do indicate the Tribunal's non application of mind.

8. The Apex Court's judgment in **Pranay Sethi** (supra) and **Magma** (supra) were not in the field when the impugned award was passed. Since the appeal is continuation of the original claim, the same would be governed by the observations of the Apex Court in these two judgments.

9. The annual income of the deceased is considered at Rs.84,000/- (salary of Rs.7,000/- p.m. x 12 months). The service book indicates that the date of birth of the deceased was 3rd March, 1956. He is said to have been in permanent job since his service book indicates his continuous service for years together and availment of Earned Leave. Therefore, since the deceased was forty plus and had a permanent job, 30% of his annual income needs to be added thereto for grant of compensation on account of future prospects.

10. In view of the above, the amount of compensation payable to the appellants/claimants is, therefore, reworked out as under:-

Particulars		Figures in Rupees
Income of deceased per annum (Rs.7,000/- per month x 12 months)		84,000
Addition of 30% towards future prospects since the deceased had a permanent job	+ (plus)	25,200
	:-	1,09,200
Since the claimants were three in number, 1/3 rd amount is deducted towards personal and living expenses of the deceased.	- (minus)	36,400
	:-	72,800
Since the deceased was in the age group of 46-50, applying multiplier of 13, amount of compensation on account of loss of dependency is (Rs.72,800 x 13)	:-	9,46,400
Addition of amount towards loss of consortium, love and affection, funeral expenses and loss of estate	+ (plus)	1,50,000
Amount of compensation	Rs.	10,96,400/-

Thus, the total amount of compensation payable to the appellants/claimants comes to Rs.10,96,400/-. Interest shall not

be awarded *pendente lite* on the amount of compensation of Rs.1,50,000/- on account of loss of love and affection, funeral expenses and loss of estate i.e. .

11. In the result, the appeal succeeds in terms of the following order:-

- (i) The appeal is allowed.
- (ii) The amount of compensation is enhanced from Rs.1,30,000 to Rs.10,96,400/-.
- (iii) No *pendente lite* and future interest is awarded on the sum of Rs.1,50,000/-.
- (iv) Clause (3) of the impugned award is withdrawn.
- (v) Rest of the terms of the impugned award to stand unaltered.
- (vi) Fifty percent of the amount be paid to the widow of the deceased. Remaining amount be paid to the children equally.

[R.G. AVACHAT, J.]