IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.647/2009

1. Smt. Sahana Khatoon wd/o
   Mohd. Israel Ansari, aged 30 years,
   Occ. Household.

2. Master Saddam s/o Mohd. Israel Ansari
   aged 11 years, Occ. Education.

3. Master Imamul s/o Mohd. Israel Ansari
   aged 9 years, Occ. Education.

4. Shama Parveen s/o Mohd. Israel Ansari
   aged 8 years, Occ. Education.

5. Rajina Khatoon d/o Mohd. Israel Ansari
   aged 7 years, Occ. Education.

6. Master Gulam Mustafa s/o
   Mohd. Israel Ansari, aged 6 years,
   Occ. Education.

7. Reshma d/o Mohd. Israel Ansari,
   aged 5 years, Occ. Education.

   All r/o Chinchala, P.O.M.I.D.C.
   Chandrapur.
   Appellant nos. 2 to 7 being minors,
   are represented by their mother and
   natural guardian, appellant no.1.

   All r/o Chandni Nagar, Ghuggus,
   Tahsil and District Chandrapur. .....**APPELLANTS**

...V E R S U S...

1. The New India Assurance Co. Ltd.
   Through its Branch Manager, on R.A.

The New India Assurance Co. Ltd.,
Gupta Building, Kasturba Road,
Chandrapur.

2. Chetan s/o Suresh Chunarkar,
aged major, Occ. Service,
r/o WCL Ghuggus, B-Type,
Tahsil and District Chandrapur.

3. Chandrakant s/o Manohar Khandekar,
aged 23 years, Occ. Driver,
r/o Indira Nagar Colliery No.2,
Ghuggus, Tq. Dist. Chandrapur. **...RESPONDENTS**

Ms Mitisha Kotecha, Advocate for appellants.
Mr. M. B. Joshi, Advocate for respondent no.1.
None for respondent nos. 2 and 3, though served.

CORAM:- V. M. DESHPANDE, J.
DATED :- 28.10.2021.

ORAL JUDGMENT

1. This appeal is filed by claimants for enhancement of compensation. Heard Ms. Mitisha Kotecha, learned counsel for appellants and Mr. M. B. Joshi, learned counsel for respondent no.1. Respondent nos. 2 and 3, though served way back in the year 2009, chose not to remain appear in this appeal and thus nobody is appearing on their behalf.

2. Facts giving rise to the present appeal, are in short compass, which are as under:

Appellant nos. 1 to 7 are widow, sons and daughters of Mohd. Israel Ansari (hereinafter referred to as the 'deceased' for the sake of brevity). Deceased on 20.07.2003, when proceeding to his house on foot after closing his shop. That time, offending vehicle i.e. Tata Sumo bearing no. MH-17/E-206 came from behind in high speed and crushed him to death. Needless to mention, the offence was registered against the driver of the offending vehicle vide Crime No.57/2003 with police station, Chandrapur.

The appellants approached to the Motor Accident Claims Tribunal by filing petition under Section 166 of the Motor Vehicles Act. The said was registered as Motor Accident Claims Petition No. 25/2004. In the claim petition, it was averred by the claimants that when the deceased met untimely death, he was 40 years old and he was self employed person and was running a shop of repairing tyre, tubes of various vehicles. The claimants stated in their petition that monthly income of the deceased was Rs.10,000/-. The aggregate compensation that was claimed by the claimants in the claim petition was Rs.5,00,000/- along with interest at 12% per annum from the date of accident i.e. 20.07.2003 till its realization.

On being served, respondent no.1-The New India Insurance Company Ltd. filed written statement. However, the driver and owner of the offending vehicle chose not to file written statement before the tribunal. The available defences were raised by the insurance company. On behalf of the claimants, the widow entered into the witness box. In her examination-in-chief, she proved two electricity bills. Those are at Exh.-36. According to the widow, her husband was earning Rs.10,000/- to Rs.15,000/- per month. She was cross-examined by the counsel for the insurance company. No officer entered into the witness box for and on behalf of the insurance company.

After appreciating pleadings, documents and evidence as brought on record, the learned Member of the MACT passed the judgment and award holding that the claimants are entitled for total compensation of Rs.1,89,500/- inclusive of no fault liability amount of Rs.50,000/- along with interest at the rate of 7.5% per annum from the date of filing of petition i.e. 09.02.2004 till its realization with proportionate costs. It would be useful to narrate in this judgment as to how the learned Judge has arrived to the conclusion to award the compensation in tabular form as under:

Sr. No.	Particulars	Amount (Rs)
1	Monthly notional income of deceased at the time of death	1500=00
2.	Yearly Income (Rs.1500x12)	18000=00
3.	Additional income towards future prospects	-Nil-
4.	Amount after addition of future prospects	18000=00
5.	(x) 15 Multiplier (Rs.18000 X 15)	270000=00
6.	(-) 1/3rd deduction	90000=00
7.	Amount after deduction	180000=00
8.	Loss of Consortium: (+) Loss of estate (+) Funeral expenses	9500=00
10	Total compensation granted by the Tribunal	189500 + 7.5% interest
11	No fault liability in Rs. 1,89,000/-	50000=00

The claimants were dissatisfied with the amount of compensation that was awarded to them. Therefore, they filed the present appeal.

3. According to the learned counsel for the appellant, the Tribunal committed error in determining monthly income of the deceased as Rs.1500/-. She submitted that in any case, income of the deceased was not less than Rs.10,000/- per month. She also submitted that the judgment of tribunal cannot stand to the scrutiny of law inasmuch as nothing is granted in favour of the

claimants under the head of future prospects. Also, Tribunal has wrongly deducted 1/3rd amount towards personal expenses. She, therefore, submitted that the appeal be allowed.

4. Per contra, Mr. Joshi, learned counsel for the insurance company has supported the judgment of the tribunal and prays for dismissal of the appeal.

5. Worth to mention here that the tribunal found that the accident occurred due to rash and negligent driving of motor vehicle i.e. Tata Sumo having registration no. MH-17/E-206 by its driver. The insurance company's claim that there was a contributory negligence on the part of deceased and also the driver was not having license, was not accepted. Rather, it was rejected by the tribunal. Leave apart, separate appeal challenging the finding recorded against the insurance company was neither filed nor the insurance company filed even cross-appeal in this appeal filed by the claimants. Resultantly, the finding recorded by the Tribunal that the deceased was not at all responsible for accident, has attained finality.

6. In view of rival submissions on the point of quantum of compensation following is the points fall for consideration of this Court.

Sr.No	Points	Answer
1	Whether the learned Member of the MACT has granted just and adequate compensation to the claimants?	In the negative.
2	What order?	As per final order.

7. Though the claimants in their claim petition averred that at the time of death, the deceased was 40 years old. No documentary evidence was produced on record to prove that the age was 40 years. In my view, learned Member of the Tribunal has rightly reached to the conclusion that at the time of death, the age of the deceased was 45 years. The learned Judge has arrived to that conclsuion, in view of the age mentioned in the post mortem note (Exh.-31). Further, the said aspect has not at all been challenged by the learned counsel for the claimants before this Court. Therefore, this Court can conveniently reach to the conclusion that at the time of death, deceased was 45 years of age.

8. The learned Tribunal has determined monthly income of the deceased by recording a finding that the deceased must have been earning Rs.50/- per day. No doubt, there is no documentary evidence available on record, which could throw light on daily income of the deceased. Rather, looking to the nature of his work i.e. repairing tubes and tyres, nobody can expect documentary evidence. However, from the evidence of widow, it is clear that he was engaged in repairing tubes and tyres of various vehicles and not the bicycles. In that view of the matter, the learned Judge has determined the daily income of the deceased on very lower side.

9. Once it is established that the deceased was not unemployed and he was engaged in the business of vulcanization, without there being any documentary proof about his income, his monthly income will have to be determined as notional income.

10. From the witness box, the widow has stated that monthly income of her husband was between Rs.10,000/- to Rs.15,000/-. It appears from her cross-examination that the said evidence was not very seriously challenged though a suggestion

was given to her that he was not earning income between Rs.10,000/- to Rs.15,000/-, which obviously was denied by the widow. Be that as it may, in absence of any documentary evidence and keeping aside the exaggeration in respect of earning per month income of the deceased, looking to the nature of self employment of the deceased, the Court can safely reach to the conclusion that monthly income of deceased was Rs.5,000/-.

11. The Tribunal did not award any amount on account of future prospects which the claimants are entitled in the light of the Apex Court decision in ***National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*** Reported in ***(2017) 16 SCC 680***. Looking to the age, they are entitled to 25% towards future prospects.

12. The learned Judge, in my view, committed an error in deducting 1/3rd income. Seven persons were dependent on the deceased. Therefore, in my view, proper deduction will be 1/5th. The learned Member has applied multiplier of 15. The claimants are satisfied with the same.

13. Perusal of the impugned judgment would show that inadequate amount was granted in favour of the claimants on account of loss of consortium for which they are entitled at the rate of Rs.44,000/- per dependent in view of the law laid down in *Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram*, reported in *(2018) 18 SCC 130*. Similarly, less compensation was granted to the claimants in respect of the loss of estate and future expenses which appellants will be entitled. Therefore, in my view, the claimants are surely entitled to enhancement as under:

Quantum of Compensation

Sr. No.	Particulars	Amount (Rs.)
1	Monthly notional income of deceased at the time of death	5000=00
2	Yearly notional income of deceased at the time of death (5000 X 12)	60000=00
3	(+) 25% addition towards future prospects	15000=00
4	Total yearly notional income	75000=00
5	(-) 1/5th deduction	15000=00
6	Salary for multiplier	60000=00
7	(x) "15" multiplier	900000=00
8	Loss of consortium: (+) Rs.44,000/- for each claimant (Rs.44000/- x 7)	308000=00
9	(+) Loss of estate	16500=00

10	(+) Funeral expenses	16500=00
11	Total Compensation	1241000=00
12	(-)Total compensation granted by Tribunal	189500=00
	Total compensation payable	1051500=00

14. The conspectus of the aforesaid discussion allows me to record a finding that the learned Member of the MACT has not properly determined just and proper compensation.

ORDER

(i) The appeal is partly allowed.

(ii) Judgment and award dated 02.12.2008 passed by Motor Accident Claims Tribunal, Chandrapur in Motor Accident Claim Petition No.25/2004, awarding compensation at only Rs.1,89,500/- is hereby set aside. Instead, it is held and declared that the claimants/appellants are entitled to total compensation of Rs.12,41,000/- (-) Rs.1,89,500/- already granted by the Tribunal along with interest at the rate of 7.5% p.a. on total amount of Rs.12,41,000/- from the date of filing of the petition i.e. from 09.02.2004 till its actual realization.

(iii) Statement of learned counsel of the insurance company is accepted that the insurance company will

deposit the amount as granted in this judgment before the tribunal within a period of 2 ½ months from today.

After the amount is deposited, the claimants would be entitled to withdraw the same.

(iv) Decree be drawn up accordingly.

JUDGE

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