

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

FIRST APPEAL NO. 863 OF 2018

1. Smt. Jyoti wd/o Ishwarda Sawarkar,
age 36 years, Occ. Household.
2. Ku. Unnati d/o Ishwardas Sawarkar,
age Major, Occ. Education.
3. Ku. Priya d/o Ishwardas Sawarkar,
age Major, Occ. Education.
4. Smt. Umabai wd/o Devidas Sawarkar,
age 70 years, Occ. Household.

All are R/o Shrinagar, City Borda, Warora,
Tah. Warora, District Chandrapur.

...APPELLANTS

Versus

1. Ramesh s/o Harichandra Khedkar,
aged about major, Occupation Business,
R/o Plot No.4, First Bus Stop of Gopal Nagar,
Nagpur, Tah. & District Nagpur.
2. The New India Assurance Co. Ltd.
Through its Branch Manager,
New India Assurance Co. Ltd.
Kasturba Road, Chandrapur,
Tahsil and District Chandrapur.

...RESPONDENTS

Ms. Niharika Chandak, Advocate h/f Shri Rohit Joshi, Advocate for
the appellants.

Shri S.N. Dongre, Advocate for respondent No.1.

Shri A.W. Paunikar, Advocate for respondent No.2.

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CORAM : PUSHPA V. GANEDIWALA, J.
DATED : AUGUST 21, 2021.

ORAL JUDGMENT :

This is the claimants' appeal against the judgment and award dated 21/09/2017 passed by the Member, Motor Accident Claims Tribunal, Chandrapur in Motor Accident Claim Petition No. 99/2011.

2. The issue involved in this Appeal is only with regard to enhancement of compensation in accordance with the parameters laid down by the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi And Others, (2017) 16 SCC 680**, so also in the case of **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram And Others, (2018) 18 SCC 130**. Appellant No.1 is the widow, appellant Nos.2 and 3 are the daughters and appellant No.4 is the mother of the deceased Ishwardas Devidas Sawarkar, who, at the relevant time, was aged around 46 years.

3. The short point arises for consideration of this Court is whether the appellants/ claimants are entitled for

enhancement in compensation ?

4. Shortly stated, on 04/05/2011, the deceased was coming by auto-rickshaw along with other passengers on Warora Nagpur highway. At the same time, i.e., around 11:00 am, the offending pickup van bearing No.MH-31-CB-6955 was coming from Nagpur towards Warora on the same road behind the auto-rickshaw.

5. It is alleged that the driver of the offending vehicle was driving the vehicle in a rash and negligent manner and gave a violent dash to the auto-rickshaw as a result of which the deceased along with the other passengers were thrown out of the auto-rickshaw and received fatal injuries. That thereafter, the deceased was admitted to the Rural Hospital, where he died. The aforesaid offending vehicle was owned by respondent No.1 and was insured by respondent No.2. The legal representatives of the deceased filed Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (“**MV Act**”) thereby claimed Rs.19,79,173/- towards compensation. It is stated that

the deceased was a permanent employee of Videocon company at Warora and was earning Rs.13,883/- per month at the relevant time.

6. In response, respondent No.2 – Insurance Company, in its written statement (Exh.17) denied the contents in the petition and raised statutory defences as available to it under Section 149(2) of the MV Act. Respondent No.1 – owner of the vehicle, in his separate written statement, also denied the contents in the petition and his liability to pay compensation.

7. The Tribunal framed necessary issues and recorded evidence as adduced by the parties. The claimants examined claimant No.1 Smt. Jyoti Sawarkar and one Bandu Katore – an employee of the Videocon company, on the point of the income of the deceased. While respondent No.2 – Insurance Company examined the driver of pickup van below Exh.62 and one Bharat – Assistant Manager of the Insurance Company below Wxh.65.

8. The Tribunal, on the basis of oral and documentary evidence on record, partly allowed the claim of the claimants, thereby granted compensation of Rs.15,46,000/- with interest @ 6% per annum from the date of petition, i.e., 29/06/2011 and directed the respondents to pay the said amount jointly and severally to the claimants within a period of 60 days from the date of passing of that order. The said compensation was bifurcated by the Tribunal as under :

Sr. No.	Particulars	Amount
1	Monthly income of the deceased	13,000/- (13,000/- X 12 = 1,56,000/-) (Yearly income)
2	1/4 th deduction towards personal expenses	39,000/-
		1,56,000/- - 39,000/- = 1,17,000/-
3	Multiplier of 13	1,17,000/- X 13 = 15,21,000/-
4	Funeral expenses	25,000/-
5	Love and affection	50,000/-
		15,21,000/- + 25,000/- + 50,000/- = 15,96,000/-
	Claimants have already received Rs.50,000/- towards no fault liability	15,96,000/- - 50,000/- = 15,46,000/-
	Total	15,46,000/-

This judgment is impugned in this Appeal.

9. Ms. Chandak, learned counsel h/f Shri Joshi, learned counsel for the appellants/ claimants, relied on the judgments of the Hon'ble Supreme Court in the case of **Pranay Sethi** (*supra*) so also in the case of **Magma General Insurance Company Limited Vs. Nanu Ram** (*supra*) and submits that the appellants are entitled to receive enhanced compensation towards love and affection, funeral expenses and loss of estate.

10. The constitution Bench of the Hon'ble Supreme Court in the case of **Pranay Sethi** (*supra*) concluded that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was between the age of 40 to 50 years. It is further held that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively.

11. With regard to compensation towards loss of consortium, the Hon'ble Supreme Court in the case of **Magma**

General Insurance Company Limited Vs. Nanu Ram (*supra*) in para 21, 22 and 23 has held as under :

“21. A constitution Bench of this Court in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, “consortium” is a compendious term which encompasses “spousal consortium”, “parental consortium”, and “filial consortium”. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse : Rajesh v. Rajbir Singh, (2013) 9 SCC 54.

21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, cooperation, affection, and aid of the other in every conjugal relation”. Black’s Law Dictionary (5th Edn., 1979).

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society,

discipline, guidance and training”.

21.3. *Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*

22. *Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child’s consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.*

23. *The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled*

to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. XXXX”

The Hon’ble Supreme Court in this case has granted Rs.40,000/- each to the father and sister of the deceased towards loss of filial consortium.

12. Considering the judgments cited as above, which are holding the field, the appellants/ claimants would be entitled to compensation in accordance with the ratio laid down in the said judgments.

13. In this view of the matter, the Appeal is partly allowed. The impugned judgment and award dated 21/09/2017 passed by the Member, Motor Accident Claims Tribunal, Chandrapur in Motor Accident Claim Petition No. 99/2011 stands modified as under :

Sr. No.	Particulars	Amount
1	Monthly income of the deceased	13,000/- (13,000/- X 12 = 1,56,000/-) (Yearly income)
2	25% towards future prospects	39,000/-
		(1,56,000/- + 39,000/- = 1,95,000/-)
3	1/4 th deduction towards personal expenses	48,750/-
		1,95,000/- - 48,750/- = 1,46,250/-
4	Multiplier of 13	1,46,250/- X 13 = 19,01,250/-
5	Funeral expenses	15,000/-
6	Loss of consortium	1,60,000/-
7	Loss of estate	15,000/-
		19,01,250/- + 15,000/- + 1,60,000/- + 15,000/- = 20,91,250/-
	Total compensation entitled	20,91,250/-
	Total compensation awarded	15,46,000/-
	Enhancement claimed	20,91,250/- - 15,46,000/- = 5,45,250/-
	Total	5,45,250/-

14. The respondents are directed to deposit the enhanced amount of compensation, i.e., Rs.5,45,250/- with interest @ 6% per annum from the date of application till its realisation with the Registry of this Court within a period of 60 days. Thereafter, the appellants/ claimants shall be entitled to withdraw the same.

15. The Appeal stands disposed of.

JUDGE

Sumit