

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

FIRST APPEAL NO.263 OF 2000

Lalitabai W/o. Manmathappa Patwari,
Age 52 years, Occ. Household,
R/o. Jalkot, Tq. Udgir,
Dist. Latur

...Appellant

Versus

1. Ramprasad S/o. Yamabrahama,
Age Major, Occ. Business,
R/o. High School Road Paramaja,
Vijayawada, A.P.
 2. Manikrao S/o. Narsingrao Dhongade,
Age Major, Occ. Business,
R/o C/o. Udgir General Stores Main road,
Udgir, Tq. Udgir, Dist : Latur.
 3. The Branch Manager,
United India Insurance Co.
Hanuman Chowk, Latur,
Tq. & Dist. Latur.
 4. A. Prabhakarrrao S/o. Nallaiah,
Age Major, Occ. Truck Owner,
R/o. Potnur, West Godavari,
Dendur-Ellor Mandal, (A.P).
 5. The Branch Manager,
National Insurance Co. Ltd,
27-33-31, Godavari Vani Street,
Post Box No.425, Vijayawada, A.P
- ...Respondents

**WITH
FIRST APPEAL NO.238 OF 2000**

1. Shamsundar S/o. Manmathappa Patwari,
Age 30 years, Occ. Service,
R/o. Jalkot, Tq. Udgir,
Dist. Latur.

(2)

2. Smt. Lalitabai w/o Manmathappa Patwari,
Age 52 years, Occ. Household,
R/o. As above.
3. Someshwar S/o. Manmathappa Patwari,
Age 25 years, Occ. Student,
R/o. As above.
4. Warsha d/o. Manmathappa Patwari,
Age 24 years, Occ. Student,
R/o. As above.

...Appellants

Versus

1. Ramprasad S/o. Yamabrahama,
Age Major, Occ. Business,
R/o. High School Road Paramaja,
Vijayawada, A.P
2. Manikrao S/o. Narsingrao Dhongade,
Age Major, Occ. Business,
R/o C/o. Udgir General Stores Main road,
Udgir, Tq. Udgir, Dist : Latur.
3. The Branch Manager,
United India Insurance Co.
Hanuman Chowk, Latur,
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4. A. Prabhakar Rao S/o. Nallaiah,
Age Major, Occ. Truck Owner,
R/o. Potnur, West Godavari,
Dendur-Ellor Mandal, (A.P).
5. The Branch Manager,
National Insurance Co. Ltd,
27-33-31, Godavari Vani Street,
Post Box No.425, Vijayawada, A.P

...Respondents

...

Mr. N.D. Kendre h/f Mr. U.L. Momale, Advocate for the appellants.
Mr. Swapnil S. Dargad h/f Mr. S.G. Chapalgaonkar, Advocate for
respondent no.3.

...

CORAM : S.G. MEHARE, J.

RESERVED ON : 07th JUNE, 2022

PRONOUNCED ON : 07th JULY, 2022

JUDGMENT :-

1. The legal representatives of the deceased and the injured have impugned the common award passed by the learned Member, Motor Accident Claims Tribunal at Aurangabad in M.A.C.P Nos. 107/1991 and 108/1991 dated 22.11.1999.

2. The facts, in brief, are that the claimants in M.A.C.P No. 107/1991, are the wife, sons and daughter of the deceased. In M.A.C.P No. 108, the claimant is the injured and the wife of the deceased Manmath. A bajaj make Tempo bearing registration No. MH-24/16 and a truck bearing registration No. AIW 4797 were involved in the accident. The non-applicant no.1 and 4 were the owners of a Tempo and the truck, respectively. The Tempo was insured with non-applicant no.3, and the truck was insured with non-applicant no.5 at the time of the accident.

3. On 04.01.1991, the deceased Manmath and his injured wife Lalitabai were travelling in a Bajaj make Tempo along with other passengers. At about 7.30 a.m., the Tempo reached near village Ajantha. That time the truck came from the opposite, driven by its driver without proper care, in a rash and negligent manner, gave dash to the Tempo. The dash was so severe that it separated the rooftop of

the Tempo and damaged the engine completely. The passengers in the Tempo sustained serious injuries. Deceased Manmath had succumbed to the injuries sustained in the said motor vehicular accident. The claimant Lalitabai sustained injuries to her both legs and wrist. The injuries caused her permanent disablement. The deceased Manmath was a teacher and the L.I.C. agent. His injured wife is a housewife, and two children were minor at the time of the accident. The applicants were dependent on the income of the deceased. Based on the income of the deceased and their dependency, the applicants have claimed Compensation of Rs. 6 lacs. Besides the death claim, the injured Lalitabai claimed the compensation of Rs.50,000/.

4. The truck owner proceeded to ex-parte. The non-applicant no.3 and 5 have contested the claim by submitting their written statements. They have not denied the insurance of the respective vehicles on the date of the accident. Non-applicant no.3 has come with a defence that the passengers in the Tempo were travelling on fare. It is a breach of insurance policy conditions. It is denied that the Tempo driver was driving the Tempo rashly and negligently. Therefore, the insurer/non-applicant no.3 is not liable to pay the compensation.

5. The non-applicant no.5 has come with a defence that there was a head-on collision between both vehicles. The driver of

the truck alone is not responsible for causing the accident, and it is a case of contributory negligence. The claim against it is not maintainable. The truck driver had no valid driving licence during the accident. The injured Lalitabai had suffered no permanent disablement due to the injuries she sustained in the accident; hence her claim is not tenable.

6. Heard the learned counsel for the petitioners/appellants and learned counsel Shri Chapalgaonkar for respondent/non-applicant no.3.

7. The following points arise for the determination of this Court, and the findings thereon are recorded for the reasons to follow.

(In both appeals)

Points	Findings
1) Do the appellants prove that the M.A.C.T., has not awarded just compensation?	Affirmative
2) Do the appellants prove that the latest multiplier should be applied?	Affirmative
3) Do the applicants prove that they are entitled to the interest from the date of application?	Affirmative
4) What Order?	As per final Order.

Points Nos. 1 and 2:

8. Both these points are intermingled; hence, they are taken up for discussion together.

9. The learned counsel for the appellants would argue that the deceased was a teacher and also a L.I.C. agent. He had a salary of Rs. 3,038/- p.m. and his last commission from the L.I.C. agency was Rs.62,185/-. The applicants have established the income of the deceased. However, without assigning reasons, the learned Tribunal considered the average income of the deceased and committed an error of law in awarding the compensation. The deceased was 50 years old at the time of the accident. However, the Tribunal did not compensate the compensation under conventional heads. The multiplier is also not correctly applied. The learned Tribunal did not assign reasons for not granting the interest on the award from the date of the accident. Therefore, the impugned award is erroneous.

10. Per contra, learned counsel for respondent no.3 has vehemently argued that the applicants did not examine the employer to prove the income of the deceased. There is no scope to enhance the income. The learned Tribunal has correctly deducted 1/3rd of the amount towards the personal and living expenses of the deceased. Applicant no.1 was a major and in employment at the time of the accident. Hence, he would not be entitled to compensation.

11. Applicant Lalitabai deposed before the Tribunal that her

deceased husband was a L.I.C. agent and a teacher. He was in Zilla Parishad and getting a monthly salary of Rs.3,080/-. Besides the salary, he was getting Rs.70,000/- to Rs. 80,000/- as commission from the L.I.C. agency. She had filed the original salary certificate below Exhibit-48. She also filed the L.I.C. commission certificate of Rs.62,185/- from 01.01.1989 to 31.12.1989. Both the certificates were marked at Exhibit-48 and 49, respectively. She also deposed that the deceased was only the breadwinner of their family, and he was maintaining all the applicants. Her children were very young. Her elder son was studying in college, and her daughter was in school. Her husband was 45 years old at the time of the accident. She filed inquest panchnama Exhibit-50 and provisional post-mortem report Exhibit-51 and copy of the F.I.R. at Exhibit-52.

12. The learned counsel for respondent no.3 has brought in her cross-examination that she is getting a pension of Rs. 1,500/- p.m. The claimant no.1 Shamsundar was in service as an extension officer. Second son Someshwar was B.Ed and claimant no.4 her daughter was married. They own 10 acres of agricultural land, and her son looks after the agricultural land. They produced 10 to 15 quintals of Jawar in the field.

13. The learned Counsel for non-applicant no.5 brought in her cross-examination that the deceased was a L.I.C. agent for 7 to 8 years before the accident. However, she does not know whether her

husband was paying income tax or not. She has not filed the record of L.I.C. prior to 1991. The suggestion as regards the income of her husband was denied. She has also stated in her cross-examination that the driver of the Tempo was driving the Tempo throughout the night. Hence, he could not control his vehicle and could not see the vehicle coming from the opposite. Therefore, the accident happened. She has denied the suggestions given to her in cross-examination.

14. The insurer did not object to exhibiting the documents produced by the applicants before the learned Tribunal. For the first time, the learned counsel for the insurer has advanced the argument that the employers have not been examined; hence the documents of income proof cannot be received in evidence. The applicants have not proved the income of the deceased.

15. The law is settled that the objection exhibiting the documents should be raised at the earliest opportunity. Once the document is admitted in evidence and exhibited, the objection to the admissibility of such document cannot be raised at any stage subsequent to marking the document as an exhibit. Therefore, no such objection can be considered at this stage. The documents can be received in evidence to assess the income of the deceased.

16. The title clause of the application shows that the applicant no.1/son was major at the time of the accident. Only the dependent legal representatives of the deceased are entitled to

compensation. The major children are entitled to share in the compensation under the head of loss of estate.

17. The learned counsel for the appellants would argue that the learned Tribunal has committed an error in considering the average income of the deceased at the rate of Rs.40,000/- p.a. from L.I.C. as against the proved income of Rs.62,185/- p.a. As against this, the learned counsel for the insurer would argue that the learned Tribunal has correctly drawn the average income from the L.I.C. and correctly assigned the reason that the income from the commission would always be fluctuating depending upon the business.

18. The Hon'ble Apex Court in the case of National Insurance Company Limited vs. Pranay Sethi and others, (2017) 16 SCC 680 while dealing with the issue of multiplicand/multiplier has observed in para no.44 that at this stage, we must immediately say that in so far as the aforesaid multiplicand/multiplier is concerned, it has to be accepted on the basis of income established by legal representatives of the deceased. The Hon'ble Apex Court has also observed in para no.57 that, similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with the same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude, which always intends to live dynamism and move the change with time.

19. The law laid down by the Hon'ble Apex Court in the *Pranay Sethi* case (cited supra) indicates that even the income of self-employed cannot remain static. The income of self-employed may also enhance since he is bound to garner his sources and raise their charges/fees to maintain their standard of living compared to the inflation. It has also been observed in the said case that the price rise thus affects the self-employed person; that apart there is always an incessant effort to enhance one's income of sustenance. The established income means the income minus tax component. The law is settled that the income of the deceased at the time of the accident is the sole criteria for the assessment of the loss of dependency of the family.

20. Considering the law laid down by the Hon'ble Apex Court in *Pranay Sethi* (cited supra), the future prospects should also be given to the self-employed. The concept of compensation has been developed over time. The Hon'ble Apex Court in *Pranay Sethi* (cited supra) has laid down the law that the determination of income while computing compensation has to include future prospects. If the theory laid down by the Hon'ble Apex court in the said case that there is always an incessant effort to enhance one's income for sustenance is considered, considering the average income of self-employed would be unjustified. Therefore, the learned Tribunal appears to have committed an error in considering an average income of Rs.40,000/-

per year from L.I.C.

21. In this case, the deceased had two sources of income. One from salary and the other from L.I.C. agency. He was drawing Rs.3,038/- per month from his salary as a teacher. The applicants have proved that for the last year, from 01.01.1989 to 31.12.1989, the deceased had earned the commission of Rs.62,185.96. Therefore, the last salary drawn and income received by the deceased of Rs.3,038/- per month and the income from L.I.C. for Rs.62,185/- would be the income for assessing the dependency of the applicants. The Hon'ble Apex Court in *Pranay Sethi* (cited supra) has discussed the anomaly in applying the multiplier for the compensation. In paragraph no.59.6 of the said pronouncement, it has been held that the selection of multiplier shall be applied as indicated in the Table in *Sarla Verma* read with para 42 of that judgement. Therefore, the multiplier selection as set out by the Hon'ble Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 S.C.C. 121* has been applied. As per the record, the deceased was 50 years old at the time of the accident. Therefore, the multiplier would be 13. It has been established that at the time of the death of the deceased, his wife and minor son and daughter were the dependents. Therefore, 1/3rd of his income shall be deducted towards the personal and living expenses of the deceased.

22. The applicants would also be entitled to future prospects.

However, The Hon'ble Apex Court, in the case of *Pranay Sethi*, has determined different criteria for future prospects for the salaried person and self-employed. As discussed above that the last income of the deceased at the time of the accident is the sole criteria to determine the compensation is considered, then the compensation should be assessed considering two separate incomes of the deceased, applying respective rates of future prospects as directed in the case of *Pranay Sethi*. Thus, the income of the deceased for assessing the compensation from salary would be as follows :

Income from salary Rs.3038 x 12 = Rs. 36,456 p.a.,
deducting 1/3rd of the said amount towards the personal and living expenses of the deceased, the multiplicand comes to Rs.24,425/- p.a, applying the multiplier, the total comes to Rs.317,525/-p.a. Adding 30% towards the future prospects, the total dependency comes to Rs.4,12,782/-.

23. The dependency on the income of the deceased from the commission would be as follows :

Rs.62,185 p.a.deducting 1/3rd from it towards personal and living expenses, the multiplicand comes to Rs.41,663/- (Rs. 41,660 round of). By applying the multiplier of 13, the dependency comes to Rs.5,41,580/-. After adding 25% towards the future prospects, the total dependency comes to Rs.6,76,975/-p.a. The total dependency of the deceased under two heads comes to

Rs.10,89,757/- round of Rs. 10,90,000/-.

24. The learned counsel for the appellants has argued that the learned Tribunal did not grant the just compensation under non-pecuniary heads and also did not grant the pecuniary losses. In the case of death, the dependents are entitled to the loss of estate, loss of consortium and funeral expenses under the conventional head. The learned counsel for the applicants has rightly relied on the case of Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130. In the said case, the Hon'ble Apex Court has discussed the term consortium that, it is a compendious term which encompasses 'spousal consortium, parental consortium and filial consortium'. The spousal consortium is generally defined as rights pertaining to the relationship of husband-wife, the parental consortium is granted to the child upon the premature death of the parent, and the filial consortium is a right of the parent to compensation in case of accidental death of the child. In the said case, the consortium was granted to each respondent, i.e. mother and father. The Hon'ble Apex Court, in the case of *Pranay Sethi*, has recognized only three conventional heads under which the compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. The Hon'ble Apex Court, in the case of United India Insurance Co. Ltd vs. Satinder Kaur, 2020 S.C.C. Online SC 410 decided on 30.06.2020, has held that there is no justification to

award loss of love and affection as a separate head and directed the Tribunal and the High Courts to award compensation for the loss of consortium, which is a legitimate conventional case.

25. Considering the pecuniary and conventional heads of compensation, the appellants/applicants are entitled to the compensation as follows :

Loss of income including future prospects (as calculated above)	Rs.10,90,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Loss of spousal consortium (to applicant no.1 wife)	Rs.40,000/-
Loss of parental consortium (40 x 2)	Rs.80,000/-
Total Compensation	Rs.12,40,000/-

26. The appellant nos.2, 3 and 4 would be entitled to equal compensation under the head of loss of income and funeral expenses. However, they would be entitled individually to the compensation under consortium. Applicant no.1 was major at the time of the accident of the deceased and would be entitled to 1/4th share in the compensation under the head of loss of estate and funeral expenses with the other applicants.

First Appeal No.263-2000 MACP 108/1991

As to point no.1

27. The applicant Lalitabai, was travelling in a tempo. She has claimed total compensation of Rs.50,000/- under Section 166 of the Motor Vehicles Act. She led the common evidence in the compensation case of her husband. She deposed that she had sustained injuries to her both legs and hands in the accident. Her legs and hands were fractured. She was operated on in Ghati Hospital Aurangabad. She filed a discharge card below Exh.53. She travelled to her village first and then shifted to Hajgude Accident Hospital at Latur; for her shifting, she had hired a jeep. She was again operated on at Latur, and plaster was applied to her legs and hands. She was hospitalized as an indoor patient for more than a month. Her son was there to take her care. He was staying in the lodge. She has engaged a maidservant Shyamala. She was paid Rs.250/- per month. She was unable to do the household work. She has produced the certificate issued by Dr. Hajgude below Exh.54. She was required to visit Dr. Hajgude. She spent Rs.15,000/- on her operation. In her cross-examination, the learned counsel Shri S.V. Kulkarni for respondent no.3 brought that she was receiving a pension of Rs.1,500/- per month. She had agricultural land, and they used to produce 10 to 15 quintals of jawar in their field. Except for this, her evidence as regards her injuries, surgeries, the money spent on travel,

maidservant's charges and surgery expenses have gone unchallenged.

28. The respondent did not object to the certificate issued by Dr. Gitkumar A. Hajgude. He has assessed 37% disability of part of the body. He also certified that the disability is permanent due to multiple bone / joint injuries.

29. The learned Tribunal, considering the evidence and in the absence of the income to the petitioner Lalitabai, has granted Rs.5,000/- towards medical expenses and Rs.20,000/- towards the pain and suffering.

30. The learned counsel for the appellants would submit that the learned Tribunal did not consider the certificate issued by Dr. Hajgude, who has assessed 37% permanent disability, though the said certificate has been received in evidence.

31. Per contra, the learned counsel for respondent no.3 has argued that there were only two fractures. The learned Tribunal has correctly recorded the finding that the claimant had sustained a fracture to the collar bone and tibia, and fibula of the right leg. The applicant did not prove her permanent disability by examining Dr. Hajgude. She did not prove her income. Therefore, the compensation awarded by the Tribunal is just compensation.

32. Section 166 of the Motor Vehicles Act provides that an application for compensation arising out of the accident may be made by the person who has sustained the injury or by the owner of the

property, or by the legal representatives of the deceased or by any agent duly authorized by the person injured or by the legal representatives of the deceased. The term permanent disablement has been defined in Section 142 of the Motor Vehicles Act that injury or injuries involving permanent privation of the sight of either eye or the hearing of either ear or privation of any member or joint or destruction or permanent impairing of the powers of any member or joint, or permanent disfiguration of the head or face.

33. We also have a total or partial disablement concept. Section 2G of the Workmen's Compensation Act has defined that "partial disablement" means where the disablement is of temporary nature, such disablement as reduces the earning capacity of the workmen in any employment in which he was engaged at the time of the accident in the disablement and where the disablement is of permanent nature such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time. Section 2(I) of the said Act defines that "total disablement" means such disablement, whether of temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement ; Provided that permanent total disablement shall be deemed to result from every injury specified in part I of Schedule I or from any combination of injuries specified in part II thereof, where the

aggregate percentage of the loss of earning capacity as specified in Part II against those injuries amounts to 100% or more.

34. The applicant has a case that she has got permanent disablement due to the injuries sustained to her in a motor vehicle accident.

35. The total disablement has to be assessed in relation to the work performed at the time of the accident. The applicant deposed that she was the housewife at the time of the accident. However, she cannot do even the household work. The certificate issued by Dr. Hajgude Exh.54 does not reveal that he operated on the applicant and how long she was an indoor patient in his hospital. He has issued the certificate Exh.54 examining the applicant Lalitabai on 01.01.1991 i.e., around after about one year of the incident. He has specifically mentioned that only the plaster was done, and she needs no help from others while walking. Her own evidence destroyed her case that due to the accident, she was unable to do the work due to the injuries that she was doing at the time of the accident. She also did not produce the medical bills issued by Dr. Hajgude nor the bill of the jeep she travelled to the Hospital of Dr. Hajgude nor examined the maidservant. Besides that, she even did not produce the acknowledgment of the money paid to the maid servant. The burden was on the applicant to prove what she had claimed. The discharge card issued by the Government Hospital Exh.53 shows that she has

suffered a fracture to the tibia fibula with a fracture on the collar bone on the left side. She was discharged the very next day of her d to joint the bone after applying the plaster. Admittedly, the injured was a housewife, and she had no individual income. But she suffered fractures and could not render multifarious services to her family. In such a case, her notional income is considered. The standard of living would be one factor for the same. The Hon'ble Apex Court, in the case of Lata Wadhwa Vs. State of Bihar, (2001) 8 SCC 197., after considering the multifarious services rendered by the housewife to her family, the Hon'ble Supreme Court has assessed a notional income of the housewife at the rate of Rs.3,000/- per month where the housewife was between 34 to 59 years old. The same principle would be applied here to calculate the loss of the applicant's multifarious services to her family. Considering the injuries suffered by her, she must have pain and suffering. Normally the plaster is kept for four months. Hence, she may be unable to do her daily routine at least for four months. She must be suffering pain. In view of the facts, the reasonable amount for pain and suffering would not be less than Rs.40,000/-. As far as her claim of permanent disability is concerned, the evidence produced by her (Exh.54) does not prove that she has suffered permanent disablement to the extent of 37%. That apart, she has not produced the evidence to believe that she has suffered a functional disability nor she had a permanent disability that deprived

her of her position on the day of the accident. Hence, she is not entitled to compensation for the loss of income due to permanent disablement. However, she would be entitled to the compensation under the following heads :

Pains and sufferings	Rs.40,000/-
Loss of services to her family 3000 x 4	Rs.12,000/-
Medical Expenses	Rs.3,000/-
Total Compensation	Rs.55,000/-

36. In view of the above discussion, both points are answered in the affirmative.

Point No.3

37. The learned counsel for the applicants has vehemently argued that the learned Tribunal has erred in not granting the interest from the date of the accident.

38. Section 171 of the Motor Vehicles Act speaks for the award of interest where any claim is allowed. It has been provided therein that where the Tribunal allows the claim for compensation, such Tribunal may direct in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making a claim as it may specify in its behalf.

39 The operative part of the impugned order reveals that in Petition No.107 of 1991, the Tribunal awarded the interest from

13.07.1999. As against this in M.A.C.P. 108 of 1991 (injured case), the Tribunal has awarded the interest against respondents nos.1, 4 and 5 from 13.07.1999 and from the date of application against respondents nos.2 and 3. The learned Tribunal did not assign reasons why the interest was awarded from 13.07.1999. No doubt, granting interest is the discretion of the Tribunal. The legislative intent in awarding the interest is clear. The disposal of the claim may take years and years. Therefore, granting interest on compensation to the claimants during the pendency of the claim petition is a sound policy. The Tribunal has to assign the reasons for refusing the interest from the date of the claim, particularly when the delay was not attributable to claimants. It is a rule that the Court/Tribunal should exercise discretion judiciously according to the recognized principles. The Delhi High Court, in the case of *Ladodevi Vs. Satvir Sharma, 1998 (2) ACC 603* has observed that where no reason has been assigned by the Tribunal for refusing interest from the date of claim, more so when the delay was not attributable to the claimants, interest to appeal was made payable from the date of claim till payment. The exception may be the deliberate delay in getting the claim disposed of by the claimant. Both the petitions were filed on 23.07.1990.

40. The accident happened on 04.01.1990. There is nothing on record to believe that the delay was attributable to the appellants/claimants. In the absence of any reason, granting an award from

13.07.1999 appears inconsistent with the recognized principles. Awarding an interest from the date of the accident is a normal rule. The learned Tribunal did not assign the reason for granting interest to the petitioners from 13.07.1999. The Tribunal awarded interest to Lalitabai from 13.07.1999, against respondents nos.1, 4 and 5 and from the date of application against respondents nos.2 and 3. No such discrimination can be made when the driver of both vehicles has been held equally responsible. Therefore, the order granting interest from 13.07.1999 is liable to be set aside. Considering the recognized principles of granting interest, this Court is of the opinion the applicants/appellants are entitled to the interest on the award from the date of the claim, i.e. from 23.07.1991, till the realization of the amount. The learned Tribunal granted interest @ 12% p.a. This Court believes that considering the moderate interest rate on fixed deposit, the interest @ 9% p.a. would be reasonable.

41. In view of the discussion on facts and law, point no. 3 is answered in the affirmative.

42. Appreciating the evidence the applicants led, this Court concludes that both the appeals deserve to be allowed. Hence, the following order :

ORDER

- I) Both appeals are allowed with proportionate costs.
- II) The impugned award dated 22.11.1999 passed by the learned Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No.107 of 1991 and M.A.C.P. No.108 of 1991 is quashed and set aside.
- III) The applicant in Petition No.107 of 1991 are entitled to the compensation of Rs.12,40,000/-(minus compensation under no-fault liability if paid and the award amount paid as per the impugned award) with interest from 23.07.1990 till realization.
- IV) Applicants Nos.2, 3 and 4 shall be entitled to an equal share in Rs. 10,90,000/-(minus compensation under no-fault liability and the compensation paid as per the impugned award) and get Rs. 40,000 (forty thousand) each under consortium in M.A.C.P. No.107 of 1991 with proportionate interest and costs.
- V) Applicants in M.A.C.P. no. 107/1991 shall be entitled to an equal share in the compensation under the heads of loss of estate and funeral expenses, i.e., Rs 30,000 (thirty thousand) with proportionate interest and costs.
- VI) In M.A.C.P. No.108 of 1991, Lalitabai is entitled to Rs.55,000/- (minus compensation under no-fault liability and the compensation paid as per the impugned award) with interest from 23.07.1990 till realization.
- VII) The non-applicants-respondents 1, 3, 4 and 5 are jointly and

severally liable to pay the compensation to the applicants. The insurer respondent no.3 and 5 shall indemnify respondents nos.2 and 4 and do pay the compensation to the applicants equally with proportionate cost and interest @ 9% p.a. on the enhanced compensation.

VIII) The respondent nos.3 and 5 do pay the compensation amount within four months from the date of this order with interest @ 9% p.a.

IX) The applicants shall pay the deficit court fee on the enhanced compensation before the learned Motor Accident Claims Tribunal at Aurangabad within three months from the date of this order.

X) Awards be drawn up accordingly.

XI) Record and proceedings be returned to the learned Tribunal.

XII) The interest awarded by the Tribunal shall not be paid for the period of 3789 days as per the order of this Court dated 09.07.2021.

(S.G. MEHARE, J.)