

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

FIRST APPEAL NO. 1898 OF 2018

The National Insurance Company Ltd.
A subsidiary of General Insurance Co.
of India Ltd. Having one of its
Divisional Office at Station Road,
Aurangabad
Through its Authorized Signatory.

.. APPELLANT
[Org.R.No.2]

VERSUS

- 1] Sulubai @ Sulochana w/o. Motiram Karale,
Age 25 yrs. Occ. Household,
r/o. Parwa, Tk.Palam, Dist. Parbhani.
- 2] Seema d/o. Motiram Karale,
Age 5 yrs. U/g. No.1
- 3] Ganesh Motiram Karale,
Age 3 yrs. U/g. R.No.1
- 4] Govindrao Nandaji Karale,
Age 65 Yrs. Occ. Nil
r/o. As above.
- 5] Gangubai Govindrao Karale,
Age 60 yrs., Occ.Nil
r/o. As above.
- 6] Jogindersing Guljarsing Khora,
Age major, Occ. Business,
r/o. Dashmeshnagar, Nanded. **.. RESPONDENTS**

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Mr.Ajit B. Kadethankar, Advocate for the appellant.
Mr.Mahesh P. Kale, Advocate for respondent nos.1 to 5.

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CORAM : S.G.DIGE, J.

DATE : 28.09.2022

ORAL JUDGMENT :

1] Being aggrieved by the judgment and award passed by the Motor Accident Claims Tribunal, Gangakhed, appellant – respondent no.2 preferred this appeal on the ground that the income of the deceased is considered on higher side and the compensation granted under pecuniary head on higher side.

2] It is the contention of the learned counsel for the appellant that deceased Motiram Karale, a Pedestrian was knocked down by a truck bearing No. MH-26-AD-2715 on 10.08.2013 at Palam. The accident claimed life of Motiram. The claimants – respondent nos.1 to 5 i.e. dependents of the deceased Motiram filed claim petition under Section 166 of Motor Vehicles Act, 1988 [for short 'M.V.Act'] for getting compensation. The Tribunal has considered the notional monthly income of the deceased at Rs.6,000/- per month on higher side. 50% of the income

was added towards future prospects, which is also on higher side. The compensation of Rs.5,00,000/- is awarded towards non pecuniary damages, which is improper, hence, requested to allow the appeal.

3] It is the contention of the learned counsel for respondent nos.1 to 5 that the deceased was driver by profession. He used to get Rs.15,000/- per month salary. There are five dependents of the deceased. Considering all aspects, the Tribunal has awarded the compensation. The impugned judgment and order passed by the Tribunal is legal and valid.

4] I have heard both learned counsel. Perused the judgment and order passed by the Tribunal. The issues involved in this appeal are the income of the deceased considered on higher side, 50% future prospects are given, which is on higher side and the compensation awarded under non pecuniary head.

5] In respect of issue of income of the deceased, it has come on record that the deceased was a driver by profession and working with Dhanaji Dige, Resident of Bhoregaon, Taluka Loha and drawing salary of Rs.15,000/- per month, but the employer is not examined to prove the income of the deceased. In the First Information Report Exh.23 it has been mentioned that two months prior to the accident the deceased was jobless. It has come on record that the deceased was holding driving license in respect of LMV Transport goods. On that basis, the Tribunal has considered the monthly income of Rs.6,000/- of the deceased. In my view, though the deceased was holding driving license but he was not doing job when the accident was occurred but he was maintaining his family of 7 persons, hence, the notional income of Rs.5,000/- per month is proper. Hence, I am considering Rs.5,000/- per month as notional income of the deceased.

6] In respect of the issue of 50% future prospects, in view of the judgment of the Hon'ble Apex Court in the

case of **National Insurance Company Limited Vs. Pranay Sethi & others**, reported in **[2017] 16 SCC 680** has held that the person who is below the age of 40 years and self-employed, he is entitled for 40% additional income. In the present case, the deceased was 28 years old at the time of accident and he was self-employed. Hence, I am considering 40% income as additional income. The Tribunal has erred in considering 50% of the additional income.

7] The Tribunal has awarded Rs.1,00,000/- for loss of consortium to respondent no.1 and loss of love and affection of Rs.1,00,000/- each to respondent nos.2 to 5. The Tribunal has awarded funeral expenses Rs.25,000/-. In my view, as per the view taken by the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram** reported in **2018 SCC OnLine SC 1546**, each dependent is entitled for Rs.40,000/- as consortium amount, for funeral expenses Rs.15,000/- and for loss of estate Rs.15,000/-.

8] Considering the above calculations, the

respondent nos.1 to 5 are entitled for the following compensation :

Monthly salary Rs.5,000/- x 12 = Rs.60,000/-	Rs.60,000/-
Deduction personal expenses	Rs.15,000/-
Annual income – deduction of personal expenses = Rs.60,000 – Rs.15,000/- = Rs.45,000/-	Rs.45,000/-
Multiplier 16 Rs.45000 x 16 = Rs.7,20,000/-	Rs.7,20,000/-
40% future prospects	Rs.2,88,000/-
Loss of dependency and non pecuniary damages	Rs.2,00,000/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Total compensation	Rs.12,38,000/-
The Tribunal has awarded	Rs.18,21,000/-
Compensation amount as - calculated by this Court	Rs.12,38,000/- ----- Rs.5,38,000/-
Excess amount	Rs.5,38,000/-

9] In view of the above, I pass the following order :-

ORDER

- i] The appeal is partly allowed.
- ii] Respondent nos.1 to 5 are entitled for compensation of Rs.12,38,000/- along with interest @ 7% per annum from the date of filing of the petition till its realization.
- iii] Respondent nos. 1 to 5 shall refund Rs.5,38,000/- [Rs. Five Lakhs Thirty Eight Thousand only] to the appellant if they have withdrawn the entire amount.
- iv] Respondent nos.1 to 5 are permitted to withdraw deposited amount, if not withdrawn.
- v] Appeal is disposed of in above terms. No order as to costs.
- vi] Deficit court fees be paid, if any.

[S.G.DIGE]
JUDGE

DDC