

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

FIRST APPEAL NO. 788 OF 2022

Bajaj Allianz General Insurance Company Ltd.,
Reg. Office – G.E. Plaza,
Airport Road, Yerwada,
Pune.

Notice to be served on
Branch Manager,
2nd Floor, Saraswati Bhawan,
Chandani Chowk,
Back to the Booth Hospital,
Ahmednagar, Dist. Ahmednagar

Through its Branch Manager,
Branch at ABC Complex, 3rd Floor,
Near Prozone Mall, MIDC Chikalthana,
Tq. & Dist. Aurangabad.

..APPELLANTS

(Original Respondent No.2)

VERSUS

1. Baban @ Mahadeo Nivrutti Wagh
Age : 51 years, Occ : Agriculture,

2. Mangal Baban @ Mahadeo Wagh
Age : 46 years, Occ : Household,

Both R/o Shiradhon,
Tq. Nagar, Dist. Ahmednagar

3. Sukhdeo Vitthal Fulari
Age : 51 years, Occ : Agriculture,
R/o House No.513, Shiradhon,
Tq. Nagar, Dist. Ahmednagar.

..RESPONDENTS

(Respt. Nos.1 and 2 – orig. claimants
& Respt. No.3 – orig. Respt. No.1)

...
Advocate for Appellant : Mr.S.S. Dargad h/f Mr.S.G.
Chapalgoankar
Advocate for Respondent Nos.1 & 2 : Mr. Amol S. Gandhi
Advocate for respondent no.3 : Mr.D.R. Markad

...
CORAM : S.G.DIGE, J.

DATE : 19.09.2022

ORAL JUDGMENT :

This appeal is preferred by the appellant – insurance company (original respondent no.2) being aggrieved and dissatisfied with the amount of compensation awarded by the Member, Motor Accident Claims Tribunal, Ahmednagar (For short, “the Tribunal”) vide judgment and order dated 18th November, 2021.

2. Brief facts of the case are as under :-

Respondent no.1 – original claimant is father and respondent no.2 is the mother of deceased Amol. At the time of accident, Amol along with his friend Sagar were proceeding on motorcycle via Solapur-Nagar Highway. The deceased was pillion rider. Respondent no.3 – original

respondent no.1 came from back side on his motorcycle in rash and negligent manner and gave dash to the motorcycle of the deceased. Due to the said accidental injuries, the deceased died in the hospital while taking treatment. Respondents filed claim petition for getting compensation, which is allowed by the Tribunal. Against the said judgment and order, this appeal.

3. It is the contention of the learned counsel for the appellant that the deceased was the student of final year Engineering, but the Tribunal has considered his monthly income at Rs.20,000/-, which is on higher side. Yet the deceased had not completed his Engineering, inspite of that his income is considered on higher side. The law is laid down by the Hon'ble Apex Court in that regard. The learned counsel for the appellant relied on the judgments in the cases of *Radhakrishna and another Vs. Gokul and others* reported in *2013 ACJ 2860 SC* and *Arvind Kumar Mishra Vs. New India Assurance Co. Ltd., and another* reported in *2010(10) SCC 254*.

4. It is the contention of learned counsel for respondent nos.1 and 2 that the deceased was the only son of respondent nos.1 and 2. His untimely death is a great shock to respondent nos.1 and 2. He was brilliant student. He would have been pillar for remaining life of respondent nos.1 and 2, but his untimely death destroys their dreams. Considering all the aspects, the Tribunal has rightly considered the monthly income of Rs.20,000/- of the deceased as he was engineering final student of stream Automobile. He was studying in Government Engineering College. It shows that he is brilliant and he got admission on his own merit. Hence the order passed by the Tribunal is legal and valid.

5. The learned counsel for respondent nos.1 and 2 relied on the judgments in the cases of *National Insurance Company Limited Vs. Satish Kumar Verma and another* reported in *2019(8) SCC 660* and *Sandhya Gopalrao Talokar and another Vs. Balaji Keshao Pawar and others*

reported in ***2017 (6) Bom.C.R. 51.***

6. I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal.

7. The issue involved in this appeal is income of the deceased.

8. The Tribunal has considered the income of deceased at Rs.20,000/- per month. In the judgment of the Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs Satish Kumar Verma and another (supra)*** has held that the deceased Amol Verma was having M.Tech Degree and was working in one of the most prestigious engineering institutes in the country, hence the annual income of the deceased was considered at Rs.3,00,000/- p.a. by giving benefit of future prospectus. In the present case, the deceased was pursuing the engineering degree course from the Government College of Engineering, Ausari, Pune. After completing the engineering, he must have

secured job. His stream was Automobile. He has not completed the degree. Hence, I am considering his monthly income as Rs.17,000/- per month.

9. In view of the above, the respondent nos.1 and 2 are entitle to receive the following compensation amount :-

Sr. No.	Head	Compensation awarded
1.	Notional monthly income of the deceased	Rs.17,000/-
2.	Annual Income (Rs.17,000 x 12)	Rs.2,04,000/-
3.	Addition of 40% amount towards future prospects (Rs.2,04,000 + Rs.81,600/-)	Rs.2,85,600/-
4.	1/2 deduction towards personal expenses (Rs.2,85,600/- – Rs.1,42,800/-)	Rs.1,42,800/-
5.	Multiplier of 18 (Rs.1,42,800/- x 18)	Rs.25,70,400/-
6.	Medical Expenses as granted by the Tribunal	Rs.40,000/-
7.	Funeral Expenses	Rs.15,000/-
8.	Loss of Estate	Rs.15,000/-
9.	Consortium of Rs.40,000/- each (Rs.40,000/- x 2)	Rs.80,000/-
10.	Total compensation	Rs.27,20,400/-
11.	Compensation awarded by the Tribunal	Rs.32,00,000/-
Difference amount (which would be refunded to Insurance Company) Rs.32,00,000/- - Rs.27,20,400/-		Rs.4,79,600/-

10. The learned counsel for the appellant submits that the entire amount of Rs.32,00,000/- along with interest is deposited before this Court and respondent nos.1 and 2 have not withdrawn it. The respondent no.1 and 2 are entitled to withdraw the amount of Rs.27,20,400/-. The appellants are entitled to withdraw amount of Rs.4,79,600/-.

11. In view of the above, I pass the following order :-

ORDER

- (i) The appeal is partly allowed.
- (ii) The appellants are permitted to withdraw the amount of Rs.4,79,600/- along with accrued interest thereon.
- (iii) Respondent nos.1 and 2 are permitted to withdraw the amount of Rs.27,20,400/- along with accrued interest thereon.
- (iv) The appeal is disposed of accordingly.
- (v) The civil application, if any, the same stands disposed of.

(S.G.DIGE, J)

SGA/-