

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2879 OF 2018

- 1] Smt. Indrakumari w/o Amar Thapa
Age : 31 years, Occ. : Household,
- 2] Kum. Sanjina d/o Amar Thapa,
Age : 12 years, Occ. : Education,
- 3] Kum. Sushmita d/o amar Thapa,
Age : 10 years, Occ. : Education,
- 4] Kum. Prince s/o Amar Thapa,
Age : 08 years, Occ. : Education,

Appellant Nos.2 to 4 are under Guardianship of their natural mother, Appellant No.1 - Indrakumari w/o. Amar Thapa

All R/o. : Quarter No. 398/4, MIRC Ahmednagar, Dist. Ahmednagar.

VERSUS

- 1] Mr. Rangasamy R. s/o Rangamanaicker
Age : 52 years, Occ. : Business,
R/o. : 5/337, Beemanaicknur Pudukottai Post,
Namakkal Valayapatti Salem (TN) 637020
(owner of Truck of No. TN-67-AF-2804)
- 2] The Manager,
New India Assurance Company Ltd.,
Abbott Building, near hotel Ashoka, Ahmednagar,
(Insurer of Truck No. TN-67-AF-2904)

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Advocate for Appellants : Mr. D.R. Markad
Advocate for Respondent No.2 : Mr. A.S. Usmanpurkar

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CORAM : S.G. DIGE, J.
DATE : 2nd August, 2022

ORAL JUDGMENT :

. Heard learned Counsel for Appellants and learned Counsel for respondent No.2.

2. Challenge in this appeal is to the judgment and award passed by the Member, Motor Accident Claims Tribunal, Ahmednagar (for short '*the Tribunal*') in M.A.C.P. No. 4 of 2016 to the extent of enhancement of compensation amount.

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

On 16th September, 2015 at about 01:00 p.m. deceased Amar Bahadur Thapa was driving Honda Pleasure Scooter bearing registration No. MH-12-DN-5526 from Solapur side towards Ahmednagar side by Ahmednagar-Solapur Highway. When he reached in front

of Surya computer near Wakodi Phata, one truck bearing registration No. TN-67-AF-2804 (for short '*offending truck*') came from backside and gave forceful dash to the scooter of deceased by which deceased fell down on road and sustained serious injuries and died on the spot. The crime against driver of offending truck was registered vide C.R.No. I-125 of 2015 under Section 304-A, 279, 337 and 338 of Indian Penal Code (for short '*IPC*') and Section 184, 134(A)(B)/177 of the Motor Vehicles Act (for short '*M.V. Act*'). Appellants filed Claim Petition before the Tribunal for getting compensation.

4. Considering the evidence of both the parties, the Tribunal awarded the compensation of amount of Rs.40,72,500/- along-with interest @9% p.a. from the date of filing of petition till payment of entire amount. The said judgment and order is under challenge in this appeal.

5. The learned Counsel for the appellants submits that, the Tribunal while granting compensation has not considered future prospect amount, hence requested to

allow the appeal.

6. Learned Counsel for respondent No.2 submitted that, there is no pleading in the Claim Petition about granting future prospects. Considering the evidence led before the Tribunal by the appellants, the Tribunal has granted just and proper compensation hence, no interference is required and requested to dismiss the appeal.

7. I have heard both the learned Counsel. Perused judgment and order passed by the Tribunal.

8. The issue involved in this appeal is granting of future prospects. After perusal of the judgment of the Tribunal. It appears that, Tribunal has calculated monthly income of the deceased as Rs.28,500/- and at the time of accident deceased was 37 years old, therefore multiplier of 15 is applied. However, from the calculation chart, it appears that, no future prospects are awarded.

9. It is the contention of learned Counsel for

respondent No.2 that, there was no pleading in the Claim Petition in respect of future prospects. It appears from the Claim Petition filed before the Tribunal that, appellants have mentioned about 50% future prospects i.e. of Rs.22,48,089/-.

10. It is contention of the learned Counsel for the appellants that, loss of consortium granted by the Tribunal is Rs.1,00,000/- which should be Rs.1,60,000/- as there are four appellants i.e. amount of Rs. 40,000/- each.

11. Admittedly, the future prospects are not granted by the Tribunal. As per view taken by the Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Others in Special Leave Petition (Civil) No.25590 of 2014 decided on 31st October, 2017.*** Appellants are entitle for 50% future prospects, as deceased was in permanent employment and below 40 years of age. The Hon'ble Apex Court in the case of ***Magma General Insurance Company Ltd. Vs. Nanu Ram in Civil Appeal No. 9581 of 2018 decided***

on 18 September, 2018 reported in 2018 SCC Online SC 1546, has held that 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. 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, co-operation, affection, and aid of the other in every conjugal relation.” 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.” Appellants are entitled for consortium amount of Rs.40,000/- each. If it calculates the amount of future prospects and consortium amount the appellants are entitled to receive the following compensation :-

Sr.	Head	Compensation
1.	Monthly income of deceased	Rs.28,500/-
2.	50% future prospects (Rs.28500/2) Total Rs.28500/- + Rs.14250 = Rs.42750/-	Rs.14250/-
3.	1/4 deductions as 4 claimants : (Rs.42750/- - Rs. 10687.5/-)	Rs.32,063/-
4.	Annual income Rs.32063/- X 12	Rs.384756/-
5.	Multiplier 15 Rs. 38,4756/- X 15	Rs.57,71,340/-
6.	Loss of consortium Rs.40,000/- each (4 claimants)	Rs.1,60,000/-
7.	Funeral expenses	Rs.15,000/-
8.	Total (Rs.57,71,340/- + Rs.1,60,000/- + Rs.25,000/-)	Rs.59,46,340/-
Tribunal has awarded : Rs.40,72,500/- This Court calculated compensation amount : Rs.59,46,340/- Thus the appellants are entitle to receive enhanced amount i.e. Rs.59,46,340/- - Rs.40,72,500/- = Rs.18,73,840/-		

12. The Tribunal has granted rate of interest @ 9% p.a. The Hon'ble Apex court in the case of ***Kurvan Ansari @ Kurvan Ali and Anr. Vs. Shyam Kishore Murmu and Anr. SCC 2021 (4) T.A.C. 673 (S.C.) in Civil Appeal No.6902 of 2021 decided on 16th November, 2021*** has held that, the rate of interest should be @6% p.a.

hence, appellants are entitle for the rate of interest @6%

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

ORDER

- i. The appeal is partly allowed.
- ii. The amount of compensation is enhanced from amount Rs.40,72,500/- to Rs.59,56,340/-. Appellants are entitled to enhanced amount of Rs.18,73,840/- @ 6% from the date of filing claim petition till realization of amount.
- iii. Appellants are permitted to withdraw enhanced amount after deposited by respondent No.2.
- iv. Appeal is disposed of, accordingly.

[S.G. DIGE, J.]