

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 1027 OF 2022

The Branch Manager,
Cholamandalam M.S. General Insurance Co. Ltd.
Shop No.04, Plot No. 33, Rokadhanuman Colony,
Opp. LMS. Jewellers, near Cosmos Bank,
Jalna Road, Aurangabad. **...APPELLANT**
(Orig. Respondent No.02)

VERSUS

01. Khajabi W/o Ishaq Sayyed,
Age : 56 Years, Occ. Household,
02. Fara D/o Ishaq Sayyed,
Age : 29 Years, Occ. Household
03. Nasima D/o Ishaq Sayyed,
Age : 39 Years, Occ. Household,
04. Sultana D/o Ishaq Sayyed (W/o Sk. Hasan)
Age : 39 Years, Occ. Household
05. Hasan S/o Ishaq Sayyed,
Age : 42 Years, Occ. Auto Driver,
06. Rahman S/o Ishaq Sayyed,
Age : 38 Years, Occ. Labourer,
07. Rahim S/o Ishaq Sayyed,
Age : 38 Years, Occu. Labourer,

R. Nos. 01 to 03 & 05 to 07
R/o. Kabadhi Galli, Khadapura, Jalna

R. No.04 R/o. Ramnastpura,
Aurangabad.
08. Karbhari S/o Shivraj Akolkar,
Age : 47 Years, Occ. Driver and Owner,
R/o. At post Karanji, Tq.Pathardi,
Dist. Ahmednagar.

09. Sayyad Asad S/o Sattar
Age : 59 Years, Occu. Business,
R/o. Mahavir Chowk, Jalna
10. The Branch Manager,
National Insurance Company Ltd
Branch Office, Jalna

(Respdt. Nos. 1 to 7- Org. Claimants
Respdt. Nos. 08 TO 10- Orig. Respdt. No.01,03
& 04)

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Advocate for the appellant : Mr. S.G. Chapalgaonkar
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CORAM : S. G. DIGE, J.
DATE : 10.08.2022

JUDGMENT :-

1. Being aggrieved and dissatisfied by the Judgment and award passed by the Member, Motor Accident Claim Tribunal, Jalna, the appellant (original respondent No.2) i.e. Insurance Company has preferred this appeal.

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

On 5th May, 2016 deceased Sayyed Imran was proceeding on Jalna to Ambad road on motor-cycle bearing registration No. MH-21-AA-2887 as a pillion rider. It is alleged that at about 5.00 p.m. the motor cycle was dashed by the truck bearing registration No. MH-17-AG-8406, on account of

said accident, deceased had suffered fatal injuries. Crime was registered against truck driver for rash and negligent driving and under other sections of Indian Penal Code.

3. The respondents/ original claimants had filed claim petition before Member Motor Accident Claim Tribunal, Jalna(for short'' The Tribunal'') for getting compensation. Considering the evidence on record and after hearing the parties the Tribunal has awarded compensation said Judgment and order is under challenge.

4. It is contention of the learned counsel for the appellant that the deceased was bachelor, so there should be 1/2 deduction towards personal expenses but the Tribunal has deducted 1/3rd deduction. Learned counsel further submits that future prospects of the deceased is considered by the learned Tribunal 50%, but it should be 40%, hence requested to allow the appeal.

5. It is contention of the learned counsel for the respondents that considering evidence led before Tribunal, the Tribunal has awarded compensation by considering all the factors.

6. I have heard both the learned counsel. Perused judgment and order passed by the Tribunal. The issue involved in the present appeal is the amount considered by the Tribunal in respect of future prospects and deduction of the amount for personal expenses.

(i) Future prospects

The tribunal has considered notional income of deceased Rs. 6000/- per month i.e. Rs. 72,000/- per annum. On this amount the tribunal has considered 50% amount in addition as future prospects. The tribunal has relied on the Judgment of Hon'ble Apex Court in *National Insurance Co Versus Pranay Sethi and others* dated 31.10.2017. In my my view, the Tribunal has not proper gone through this judgment and done wrong calculations about future prospect. In the above judgment Hon'ble Apex court has held that if deceased is in permanent service then 50% additional future prospects be added. In present case, deceased was not in permanent service hence his notional income deceased was below 40 years of age. As per view taken by the Hon'ble Apex Court in the case of *National Insurance Co Versus Pranay Sethi and others* dated 31.10.2017 claimants are entitled for 40% addition to established income of

the deceased as future prospects. In the case of *Kirti and another ETC Vs. Oriental Insurance Company Ltd*, Civil Application 1920 of 2021, date of judgment 05.01.2021, the Hon'ble Apex Court has held that the future prospects can be granted in case of notional income. Accordingly I am considering 40% additional income as future prospects.

7. In respect of 1/3rd personal expenses. The tribunal has considered personal expenses of the deceased as 1/3rd. Admittedly deceased was 26 years old. He was bachlor. From the evidence of claimant Smt. Khaza Bee Issaq (Exh.29), it has come on record that deceased and claimant No.6 and 7 were the only source of income of their family. It shows that deceased was not only earning member of the family, deceased was bachlor, his brothers were also earning member hence his personal expenses should 1/2 and not 1/3. Hence I am considering personal expenses 1/2.

8. The Tribunal has granted consortium of Rs. 40,000/-. The Hon'ble Apex Court in the case of *Magma General Insurance* (2018) has held that sister of deceased is entitled for consortium amount under loss of filial consortium.

9. There are two younger sisters to the deceased, so they are entitled for consortium amount of Rs. 40,000/- each.

Considering above calculations appellants are entitled for following compensation amount.

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|----|--|---|
| 1. | Annual Income | 72,000/- |
| | Addition of 40% future prospects | 72,000+28,800
= Rs. 1,00,800/- |
| 2. | 1/2 deduction towards personal expenses | 100800-50400
= Rs. 50,400/- |
| 3. | Multiplier (Age : 27 years) | 50400x17= Rs.8,56,800/- |
| 4. | Non-pecuniary damages as granted by tribunal | 8,56,800+70000+15000/-
Rs. 9,41,800/- consortium charges |

The Tribunal has awarded Rs. 12,94,000/-

The compensation amount
as calculated by this Court - 9,41,000

excess amount Rs. 3,53,000/-

The excess amount of
Rs. 3,63,000/- is granted
by the Tribunal

In view of above I pass following order :-

ORDER

- (i) Appeal is partly allowed.
- (ii) Respondents shall refund Rs. 3,53,000/- (Rupees Three Lakh, Fifty Three thousand) to the appellant if they have withdrawn entire award amount.
- (iii) No order as to costs.

**(S.G. DIGE,)
JUDGE**