

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

FIRST APPEAL NO. 1659 OF 2020

Cholamandalam M. S. General Insurance
Company Limited
Through : It's Manager,
3rd Floor, Oberoy Tower, Civil Lines,
Jalna Road, Opp. Amarpreet Hotel,
Aurangabad.

... APPELLANT
(Orig. Respondent No.2)

VERSUS

1. Sadiya W/o Afzal Khan,
Age : 33 Years, Occ. Household,
 2. Abdul Rahaman Khan S/o Afzal Khan
Age : 12 Months, Occu. Minor
 3. Zoha Fatema D/o Afzal Khan,
Age : 15 Years, Occ. Education
 4. Pathan Tuba Fatema D/o Afzal Khan,
Age : 13 Years, Occ. Education
 5. Umme Kulsum D/o Afzal Khan,
Age : 07 Years, Occ. Education
- (Respondent Nos. 2 to 05 being minor
u/g of their mother i.e. Respondent No.1)
6. Shahin Begaum W/o Najer Khan
Age : 62 Years, Occ. Nil

All resident Near Kankalehswar Mandir,
Daudpura, Beed.

7. Feroj Khan Jabbar Khan Pathan,
Age : Major, Occ. Driver and Business,
R/o. 103, Near Water Tank Barkatpura,
Ardhapur Tq. Ardhapur Dist. Nanded
- RESPONDENTS**
(Respdt. Nos. 1 to 6 – Org. Claimants
Respdt No.7- Org. Res. No.1)

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Advocate for the appellant : Mr. S. G. Chapalgaonkar
Advocate for respondent Nos. 1 to 6 : Mr. P. C. Mayure
Advocate for respondent No.7 : Mr. P. D. Suryawanashi
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CORAM : S. G. DIGE, J.
Reserved on 15.09.2022
Pronounced on : 29.09.2022

JUDGMENT :-

Being aggrieved and dissatisfied with the judgment and Award passed by the learned Member, Motor Accident Claims Tribunal, Beed in Motor Accident Claim Petition No. 268 of 2018, the appellant (original respondent No.2) i.e. Insurance Company has preferred this appeal.

Brief facts of the case are as under :-

2. On 28th July 2018, deceased AfzalKhan was proceeding from Ahmednagar towards Georai on his motorcycle along with pillion rider Mohasin Ali and reached at Deepali Hospital, Pathardi. He stopped the motorcycle for passing the urine. Thereafter, when he came near the motorcycle, a Tempo bearing Registration No. MH-38-D-0789 came from backside and gave dash to the deceased. He suffered injuries on account of said accident and died when he was shifted to District Hospital Pathardi.

3. Respondent No.1 to 5 filed claim petition before Member, Motor Accident Claims Tribunal, Beed (for short "the Tribunal") for getting compensation. The Tribunal has awarded the compensation of Rs. 30,94,000/- including amount of no fault liability. The said judgment and order is under challenge.

4. It is contention of the learned counsel for the appellant that, the Tribunal has considered notional income of the appellant on higher side. There was contributory negligence of the deceased in the said accident, but this fact was not considered by the Tribunal. The Tribunal has applied wrong multiplier while calculating the compensation. Hence requested to allow the appeal.

5. It is the contention of the learned counsel for the respondent that deceased was motor mechanic as well as driver. He was getting salary of Rs. 15,000/- per month. He was also working as driver and earning Rs. 10,000/- per month. Hence the salary of deceased at Rs. 15,000/- considered by the Tribunal is proper. The Tribunal has considered all the aspects while passing the judgment and award. No evidence is produced on record to show that there was contributory negligence of the deceased. The order passed by the Tribunal is

legal and valid.

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

7. The grounds raised in this appeal are, income of the deceased considered on higher side, contributory negligence of deceased and wrong multiplier is applied.

7. Firstly, I deal with the issue of income of the deceased. (P.W. No.1 Sadiya), wife of Afzal Khan at Exh. 16 has stated that, deceased was working as motor mechanic in the workshop of Riyazuddin and was also working as driver and earning Rs. 20,000/- per month. To prove the income of the deceased, the claimant examined P.W. No.3 Mohammad Riyajoddin S/o Mohd. Jalaloddin, owner of the workshop Riyaz Motors. In his evidence, he has stated that, deceased Afzal Khan was working as mechanic in his workshop since last 20 years and earning Rs. 15,000/- per month. He was also working as driver and earning Rs. 10,000/- per month. He produced salary certificate, which is at Exh.28. During the course of cross-examination, this witness admitted that he has maintained salary account of all his

employees, but it was not produced before the Court. He further admitted that, Afzal Khan had not completed the course of motor mechanic. He further admitted that, Afzal Khan was his relative. On the basis of evidence of these two witnesses, the Tribunal has considered the salary of deceased at Rs. 15,000/- per month. In my view, deceased was working as motor mechanic and in addition to that he was working as a driver, it shows that to get more compensation, earning of deceased was shown more. No evidence is led before the Tribunal to prove that deceased was working as a driver. No witness is examined in that regard. Though P.W. No.2 Mohsin Khan has stated that he was giving salary of Rs. 15,000/- per month to the deceased, but no account is maintained in that regard. Moreover, this witness admitted in cross examination that deceased was his relative. It shows that, to help the family of the deceased this witness has stated about more income of deceased i.e. Rs. 25,000/- per month. As deceased was motor mechanic, hence I am considering his monthly income at Rs 10,000/- per month.

6. The second issue is in respect of the contributory negligence of the deceased raised by the learned counsel for the appellant. I do not see any merit in this issue as no

evidence is produced on record in support of contention of theory of contributory negligence by the appellant before the Tribunal. Mere plea of contributory negligence would not be sufficient to cast the doubt in respect of occurred accident. It has come on record that, at the time of death, deceased was aged 35 years. In view of the observations of Hon'ble Apex Court in the case of **Smt. Sarla Verma Vs. Delhi Transport Corporation reported in 2009 (5) Mah. L. J. S.C.775** multiplier of 15 is applicable. The Tribunal has wrongly applied multiplier as 16.

7. Considering above calculations the claimants are entitled for following compensation.

1.	Monthly income of deceased	Rs. 10,000/-
2.	Annual income	Rs. 1,20,000 p.a.
3.	40% future prospects (Rs. 48000/-)	Rs. 1,20,000.- + 48,000/- = 1,68,000
4.	1/4 deduction (Rs. 42,000)	1,26,000/-
5.	Multiplier 15	1,26,000 x 15 = Rs. 18,90,000/-
6.	6 dependent Rs. 40,000/-each	2,40,000/-
7.	Rs. 30,000/- funeral and loss of estate	30,000/-
8.	Total compensation	21,60,000/- with 7.5% as per impugned award

8. The tribunal has awarded Rs. 30,94,000/-, if it deducts

from the above calculations of Rs. 21,60,000/-, it comes to Rs. 9,34,000/-. The appellant is entitle for this amount.

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

ORDER

The appeal is allowed.

(ii) The judgment and order of learned Tribunal is modified as under :-

Respondent Nos. 1 to 6 are entitle for compensation of Rs. 21,60,000/- (Twenty One Lakh, Sixty Thousand) @ 7.5% per annum from the date of filing application till its realization.

(iii) Appellant is permitted to withdraw amount of Rs. 9,34,000/- along with accrued interest thereon if deposited by them.

(iii) Appeal is disposed of in above terms.

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