

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

FIRST APPEAL NO. 1082 OF 2022

1. Goroba S/o Bapurao Kamble
Age : 58 years, Occ : Nil,
R/o village Mahalangra,
Tq. Chakur, Dist. Latur.
2. Sushilabai W/o Goroba Kamble
Died through her L.Rs.
- 2a) Surekha W/o Pitanbar Naikwade
Age : 45 years, Occ : Housewife,
R/o village Ujlamb, Tq. Latur,
Dist. Latur.
- 2b) Sitabai W/o Vittal Gaikwad
Age : 43 years, Occ : Housewife,
R/o village digras, Tq. Latur,
Dist. Latur.
- 2c) Satish S/o Goroba Kamble
Age : 43 years, Occ : Agri.,
R/o village Mahalangra,
Tq. Chakur, Dist. Latur.

..APPELLANTS

(Original claimants)

VERSUS

1. Avinash S/o Nivrattirao Gurmullwad
Age : 38 years, Occ : Business,
R/o Flat No.7, Purva Apartment,
Next to Patel Tiles, Shivaji Nagar,
Pune – 411 028
2. The New India Assurance Company Ltd.,
Through its Branch Manager,

Branch Office at Main Road,
Latur, Dist. Latur.

3. Yashoda Nagnath Kamle
Age : 25 years, Occ : Household,
R/o village Mahalangra,
Tq. Chakur, Dist. Latur
At present R/o village Umbarga (Thorla),
Tq. Udgir, Dist. Latur.

..RESPONDENTS
(Orig. Respondents)

...
Advocate for Appellants : Mr. P.K. Lakhotiya
Advocate for Respondent No.2 : Mr. A.G. Kanade

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

RESERVED ON : 23.08.2022
PRONOUNCED ON : 19.09.2022

JUDGMENT :

Being aggrieved and dissatisfied with the judgment and award passed by the Adhoc District Judge-4 and Ex.Officio Member of Motor Accident Claims Tribunal, Latur, the appellants – original claimants have preferred this appeal.

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

On 29th October, 2006 at about 10.00 p.m.

while deceased Nagnath S/o Goroba Kamble proceeding towards his village Mahalangra from Latur, by sitting as a pillion rider on the motor cycle bearing registration no. MVE-2147 belonging to Avinash Mane, resident of village Mahalangra, at that time, the driver of the Car bearing registration No.MH-12 BP-2546, who was driving the said Car in rash and negligent manner, gave dash to the motorcycle and caused accident. Due to the said accident, deceased Nagnath sustained fractures and severe injuries over head, chest, legs, spine, eyes, waist and other parts of the body. The rider of the motorcycle Avinash Mane also suffered severe and multiple injuries. While taking treatment, deceased Nagnath died due to accidental injuries.

3. The appellants filed claim petition for getting compensation before the Adhoc District Judge-4, Latur (For short, "the Tribunal"). Considering the evidence on record and after hearing the parties, the Tribunal has awarded compensation. Against the said judgment and order this

appeal for enhancement of compensation.

4. It is the contention of the learned counsel for the appellants that the Tribunal has erroneously held that the said accident has occurred due to contributory negligence of rider of the bike, when there is no specific plea raised by respondent nos.1 and 2 about the contributory negligence of rider of bike. Learned counsel further submits that the accident has occurred only because of rash and negligent driving of the driver of the Car belonging to respondent no.1. The Tribunal has considered the monthly income of the deceased on lower side. He was driver. In claim petition filed by the heirs and legal representatives of deceased Shri Avinash Mane, his monthly income is considered at Rs.6000/- by this Court and enhanced the compensation amount, he was mechanic, hence requested to allow the appeal.

5. It is the contention of the learned counsel for respondent no.2 that the Tribunal has considered all the

aspects while passing the judgment and order. The deceased was driver. On that basis, his monthly income was considered by the Tribunal, which is proper. The Tribunal has calculated the compensation properly. Hence no interference is required. The judgment and order passed by the Tribunal is legal and valid.

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 of contributory negligence and income of the deceased considered on lower side.

8. The Tribunal has considered the contributory negligence of rider of the motorcycle and on that basis the compensation amount granted to the appellant is deducted. First Appeal No.2800/2009 was filed by heirs and legal representatives of deceased Avinash Mane, who was riding the motorcycle along with deceased Nagnath for

enhancement of compensation. This Court (Coram : Sunil K. Kotwal, J) had set aside the contributory negligence theory of the insurance company. The deceased was pillion rider on the motorcycle. Hence the Tribunal has erred in showing the contributory negligence of the deceased.

9. In respect of the income of the deceased Nagnath, the Tribunal has considered Rs.2,500/- per month as notional income. It has come on record in the evidence of PW-1 that the deceased was driver and he was getting Rs.5,000/- to Rs.6,000/- per month as salary. It is also stated that he was doing agricultural business and was getting Rs.1,50,000/- p.a. In my view, the Tribunal has considered the monthly income of the deceased of Rs.2,500/- on lower side, when it has come on record that he was driver and he was getting annual income of Rs.1,50,000/- from agricultural land. Hence I am considering Rs.5,000/- as monthly notional income of the deceased.

10. Considering the above, the appellants are entitle for the following compensation :-

Sr. No.	Head	Compensation awarded
1.	Notional Monthly income	Rs.5,000/- per month
2.	Annual income	Rs.60,000/-
3.	40% future prospects	Rs. 24,000/-
4.	1/3rd deduction (Rs.28,000/-)	Rs.56,000/-
5.	Multiplier 17 (Rs.56,000 X 17)	Rs.9,52,000/-
6.	Total Compensation	Rs.9,52,000/-

11. 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 Rs.1,90,400/- to Rs.9,52,000/-.

(iii) The appellants are entitle to enhanced amount of Rs.7,61,600/- @ 6% from the date of filing claim petition till realization of amount.

(iv) The respondent nos.1 and 2 with join and several liability shall pay enhanced amount of Rs.7,61,600/- @ 6% per annum within six weeks from the receipt of the order.

- (v) The appellants are permitted to withdraw the amount deposited by respondent nos.1 and 2.
- (vi) Appeal is disposed of in above terms.

[S.G.DIGE]
JUDGE

SGA/-