

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

FIRST APPEAL NO.1883 OF 2021

1. Priya wd/o Motilal Pawar,
Age; 29 years, Occ; Household,
2. Samarth s/o Motilal Pawar,
Age; 11 years, Minor, Occ; Education,
3. Sai s/o Motilal Pawar,
Age 08 years, Minor,
Occ; Education,

No. 2 & 3 are Minors and U/g of
their real mother and guardian
Appellant No. 1 – Priya wd/o Motilal Pawar

4. Anjanabai w/o Subhash Pawar,
Age; 60 years, Occ; Household,
5. Subhash s/o Tukaram Pawar,
Age; 65 years, Occ; Agriculture,

All R/o; Nilanga, Tq. Nilanga
District; Latur.

... APPELLANTS
(Original Claimants)

VERSUS

1. Gafar s/o Muktar Patel,
Age; 31 years, Occ; Driver,
R/o; Aalwai, Tq. Bhalki,
District Bidar (Karnataka)
2. Mahadev s/o Shankar Chavan,
Age; Major, Occ; Business,
R/o; Sr. No. 136/C, Lande Vasti,
Near Panchami Hotel, Bhosari,
Pune, District; Pune.
3. The United India Insurance Company,
Ltd. Through its Branch Manager,
Near Shantai Hotel, Ambejogai Road,

Latur, District; Latur.

...RESPONDENTS
(Original Respondents)

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Advocate for Appellants : Mr.Gastgar Santosh B.
Advocate for Respondent No. 1 : Mr. Kokad Amol Ashok
Advocate for Respondent No. 2 : Mr. R.F.Totla h/f Mr.Bhandari
Anand P.
Advocate for Respondent No. 3 : Mr.Ganachari Shrinivas M.

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CORAM : VINAY JOSHI, J.

DATE : 17th FEBRUARY, 2022.

ORAL JUDGMENT : (PER : VINAY JOSHI, J.)

1. In this appeal the insurance company is challenging the judgment and award dated 14.12.2020 passed by the Motor Accident Claims Tribunal, Nilanga, District Latur, in MACP No. 33 of 2016.

2. Facts in brief are that the deceased Motilal Pawar was travelling as passenger by a bus bearing registration No. MH-12-KQ-3006 from Pune to Nilanga. In the morning, around 6.30 a.m., when the bus reached near Cincholi road, the bus driver lost the control over the bus, as a result of which the bus turned turtle. In the said accident the deceased Motilal sustained severe bodily injuries, to which he died on 28.07.2016, while under treatment. The legal representatives of the deceased Motilal have approached to the

Tribunal in terms of Section 166 of the Motor Vehicles Act.

3. The parties led their evidence before the Tribunal. After considering the oral and documentary evidence, the Tribunal has held that due to sole rash and negligence driving of the bus driver an accident occurred. The Tribunal has assessed the compensation to the tune of Rs. 11,38,000/- and directed to the respondents to pay it jointly and severally along with interest @ 7.5% p.a.

4. Feeling aggrieved by the quantum of compensation, this appeal is preferred by the original claimants. In appeal, it is canvassed that the Tribunal has erred in holding the notional income of the deceased @ 6,000/- per month. Secondly, it is contended that the Tribunal has erred in refusing future prospects. Besides that the claimants are entitled for 10% hike in view of the decision of Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi - 2017 (II) ILR-CUT-998 (SC)**.

5. It reveals that the deceased was traveling by bus, which turn turtle. The police have registered an offence against the bus driver. The facts speaks for itself, obviously there was total negligence on the part of bus driver, which was duly insured with respondent No. 3 Insurance Company. So far as, the death of Motilal Pawar is

concerned, undisputedly he succumbed to bodily injuries sustained in said accident. Therefore, this point does not require any further consideration.

6. The appellant's learned counsel would submit that the deceased aged 27 years was operating a Bear Bar Shop, of which the license was in the name of his mother. In support of said contention, the income tax returns of his mother are produced to show that she has substantial income to the tune of Rs. 3,03,146/- p.a. According to the appellant, though the license was in the name of his mother the deceased was solely operating the Bear Bar business. The Tribunal has considered the said aspect in paragraph No 11 of the judgment and rightly rejected said contention. It is common knowledge that the license stands in the name of family members particularly when in the name of female of the family the business is being run by male members. However, absolutely there is no evidence regarding the income. Therefore, the view taken by the Tribunal about holding the notional income of the deceased to the extent of Rs. 6,000/- p.m., cannot be faulted with.

7. So far as, the future prospects are concerned, the Tribunal has declined to grant the same by stating that the deceased had no fixed source of income. I totally disagree with the said

reasoning, since the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra) has specifically considered the said aspect and held that if the deceased was self employed on or a fixed salary, then 40% has to be added towards loss of future prospects. Apparently, the deceased was self employed and therefore in view of above settled position of law, Claimants are entitled for addition on account of future prospects to the extent of 40%.

8. Considering the notional income of the deceased of Rs. 6,000/- p.m. i.e. Rs. 72,000/- p.a. and on addition of 40% towards future prospects, it comes to the tune of Rs. 1,04,000/- p.a.

9. Since there were five dependents on the deceased, 1/4th of the amount has to be deducted i.e. Rs. 25,100/- on account of living and personal expenses, which comes to the tune of Rs. 75,300/-. The deceased was 27 years of age. In view of the settled position of law, the multiplier of '17' is to be applied and thus the total loss of dependency would be of Rs. 12,80,100/-. The claimants have produced the medical bills to the tune of Rs. 1,50,000/- which cannot be disputed, hence the claimants are entitled for the same.

10. Under non pecuniary heads, the Tribunal has awarded Rs. 40,000/- towards the loss of consortium, Rs. 15,000/- towards

the loss of estate and Rs. 15,000/- towards funeral expenses. The claim petition was decided in the year 2020, i.e. after three years from the decision in the case of **Pranay Sethi** (supra), therefore, as per Clause VIII of the paragraph No. 61 of the said judgment, the amount figured under conventional head has to be enhanced @ 10%. In view of that, further amount of Rs. 7,000/- is to be added under the said head. Thus total entitlement would as follows :

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1.	Loss of dependency	Rs. 12,80,100/-
2.	Medical expenses	Rs. 1,50,000/-
3.	Loss of consortium	Rs. 40,000/-
4.	Loss of estate	Rs. 15,000/-
5.	Funeral expenses	Rs. 15,000/-
6.	10% addition on conventional heads	Rs. 7,000/-
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Total =		Rs.15,07,100/-
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11. It is settled law that the Tribunal shall award just compensation in motor accident claims. For the forgoing discussion just compensation would be Rs. 15,07,100/-- for which the claimants are entitled. In view of that following order is passed :

ORDER

- a. Appeal stands partly allowed.

b. The impugned judgment is set-aside and modified to the extent by holding that the appellants/claimants are entitled for total compensation of Rs. 15,07,100/- (Fifteen Lakhs, Seven Thousand and One Hundred). The rest of the order passed by the Tribunal is maintained as it stands.

c. Appeal stands disposed of in above terms.

(VINAY JOSHI, J.)