

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

FIRST APPEAL NO. 2528 OF 2009

1. Namdeo Bhagwan Marewar
(Died) through his Legal heirs
 1. Sudhabai w/o Namdeo Marewar,
Age: 58 years, Occu: Household,
 2. Balaji s/o Namdeo Marewar
Age: 39 years, Occu. Business,
 3. Suresh s/o Namdeo Marewar,
Age: 37 years, Occu. Business,
 4. Manoj S/o Namdeo Marewar
Age: 35 years, Occu: Business,
- No. 1 to 4 R/o Hawagiswami Math,
Udgir, Tq. Udgir, Dist. Latur
5. Sow. Anjali W/o Ashokrao Nalawad,
Age: 32 years, Occu: Household,
Nanded, Tq. & Dist. Nanded

... Appellants
(Orig. Claimants)

Versus

1. Shivraj Dhondiram Ibitwar
Age: 42 years, Occu: Business (Auto owner)
R/o Halli, Tq. Udgir, Dist. Latur
2. Balaji Sangram Shivane
Age: 38 years, Occu: Driver
R/o Shekapur, Tq. Udgir, Dist. Latur
3. Vithal S/o Baburao Sonwane
Age: 32 years, Occu: Business,
(Jeep Owner), R/o Wagholi,
Tq. Chakur, Dist. Latur

4. Shivraj S/o Manikrao Kendre
Age: 28 years, Occu: Driver,
R/o Wadgaon (Halli), Tq. Udgir,
Dist. Latur

5. The New India Assurance Co. Ltd.,
Through its Branch Office,
Latur

... **Respondents**
(Orig. Respondents)

....

Mr. R. K. Ashtekar, Advocate for appellants

Mr. V. P. Golewar, Advocate for respondent No.1

Mr. V. D. Gunale, Advocate for respondent No.2

Mr. A. R. Shirsat Advocate h/f Mr. J. M. Murkute, Advocate for
respondent No.4

Mr. M. M. Ambhore, Advocate for respondent No.5

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 20th DECEMBER, 2021

PRONOUNCED ON : 22nd FEBRUARY, 2022

J U D G M E N T :-

. This is an appeal for enhancement of compensation granted on account of injuries and permanent disability suffered in an accident involving motor vehicles. The Motor Accident Claims Tribunal, Udgir (Tribunal), vide his judgment and award dated 25.07.2005, passed in Motor Accident Claim Petition (Petition) No.8/2003 (Old No.101/2001), has granted a sum of Rs.1,00,000/- (inclusive of N.F.L. amount) with 6% p.a. interest thereon.

2. Feeling aggrieved and dissatisfied with the quantum of compensation, the legal representatives of the injured (since deceased) have preferred this appeal for enhancement.

3. The facts giving rise to the present appeal are as follows:

The injured (deceased) - Namdeo was proceeding on his Luna (moped). It was about 7.00 p.m. on 15.02.2000, he took a turn to Jai Jawan Chowk at Udgir. A Bajaj Minidor (vehicle) MH-24-A-9416 knocked him down. A Jeep MH-24-C-0965, passing therefrom, hit the injured. As such, it was an accident involving two offending vehicles. On due investigation, the drivers of both the vehicles were proceeded against. The Tribunal has saddled the owners of both the vehicles and their insurance companies with the liability to pay compensation. The same is not under challenge.

4. Heard learned Advocates for the parties. Gone through the evidence relied on. Perused the impugned judgment and award. The accident took place on 15.02.2000. The disability certificate Exh.38 indicates the injured to have had suffered head injury. Permanent brain damage resulted right side paralysis of body. The disability was assessed at 50%.

5. In proof of the nature of injuries and the disability, no Medical Officer was examined. It appears that disability certificate was admitted in evidence as it is. Be that as it may.

6. The petition for compensation was filed by the injured himself in February 2001. The injured claimant died in 2005. His legal representatives therefore came on record to pursue the claim petition. The son (Suresh) of the injured (deceased) gave his evidence on oath. He has unequivocally admitted that his father (injured) did not die due to the injuries sustained in the accident.

7. The medical bills amounting to Rs.85,023/- were placed on record. Some receipts worth Rs.4046/- were placed on record to suggest expenditure for special diet. One receipt of Rs.931/- was produced in evidence towards hire charges of the vehicle used for travelling to and fro the hospital. The Tribunal granted Rs.90,000/- towards all these expenditure and simply awarded a sum of Rs.10,000/- for pain and agony.

8. According to the learned Advocate for the appellant, the deceased was in service with the Municipal Council. As a result of the injuries and disablement suffered in the accident, his family

suffered financially. According to him, even though the injured passed away, his legal representatives are entitled for compensation on account of loss of estate. The learned Advocate has placed on reliance on the recent judgment of the Apex Court in the case of ***The Oriental Insurance Company Limited Vs. Kahlon @ Jasmail Singh Kahlon (deceased) through his Legal Representative Narinder Kahlon Gosakan and another - Civil Appeal No.4800 of 2021.*** The learned Advocate ultimately urged for grant of substantial enhancement in the amount of compensation.

9. The learned Advocate for the respondent - Insurance Company would, on the other hand, submit that the Tribunal has granted just and reasonable compensation. The facts of the case relied on, are quite different. He, therefore, urged for dismissal of the appeal.

10. Considered the submissions advanced. Perused the evidence relied on.

It is reiterated that the injured (deceased) had suffered 50% disability. He was 57 years of age when met with the accident. He had been in service with the Municipal Council. It was a

permanent job. He died after little over four years of the accident, necessarily post superannuation. The cause of death is not related to the injuries suffered in the accident. The Tribunal therefore granted compensation to the extent of medical expenditure incurred and other expenses, besides a sum of Rs.10,000/- towards pain and sufferings. The question is whether due to the death of the injured, his legal representatives have really suffered loss of estate on account of injuries suffered in the accident. The facts of the case before the Apex Court in the case of **Kahlon** (supra), the claimant therein had met with the accident on 02.05.1999. He (claimant) passed away in November 2015 i.e. about 16 years after he met with the accident. The death was not attributable to the injuries suffered in the accident. The original claimant herein had suffered 100% of disability. He had suffered spinal shock. The Apex Court in the case of **Kahlon** (supra) has observed thus:

“6.The claimant was taken to the Government Hospital, Trivandrum but the severity of the injuries required him to be shifted to the Apollo Hospital, Chennai the next day for professionalized management where he remained under treatment till 24.11.1999. He suffered spinal shock, with cervical cord injury and quadriplegia with respiratory failure. He was resuscitated and put on ventilator support for skull traction. His right ankle needed surgery. He required further treatment for anterior decompression, disc excision and bone grafting. His physical activity was by way of wheel chair

mobilisation. The disability certificate dated 16.06.2000 issued to him by the Government Headquarter Hospital, Cuddalore opined 100 per cent permanent motor system disability with operative scar on the rightside neck, right ankle, healed scar on the left side forehead frontal region and parietal region and that he was unable to lift all four limbs which were vested with sensory loss present in certain places classified as quadriplegic orthopedically.

9. *The Act is a beneficial and welfare legislation. Section 166(1) (a) of the Act provides for a statutory claim for compensation arising out of an accident by the person who has sustained the injury. Under Clause (b), compensation is payable to the owner of the property. In case of death, the legal representatives of the deceased can pursue the claim. Property, under the Act, will have a much wider connotation than the conventional definition. If the legal heirs can pursue claims in case of death, we see no reason why the legal representatives cannot pursue claims for loss of property akin to estate of the injured if he is deceased subsequently for reasons other than attributable to the accident or injuries under Clause 1(c) of Section 166. Such a claim would be completely distinct from personal injuries to the claimant and which may not be the cause of death. Such claims of personal injuries would undoubtedly abate with the death of the injured. What would the loss of estate mean and what items would be covered by it are issues which has to engage our attention. The appellant has a statutory obligation to pay compensation in motor accident claim cases. This obligation cannot be evaded behind the defence that it was available only for personal injuries and abates on his death irrespective of the loss caused to the estate of the deceased because of the injuries.*

10. *In Umed Chand (supra), giving a broad liberal interpretation to the provisions of the Act so that legal representatives do not suffer injustice, it was observed that the claim for personal injuries will not survive on death of the injured unrelated to the accident but the legal representatives*

could pursue the claim for enhancement of the claim for loss of the estate which would include expenditure on medical expenses, travelling, attendant, diet, doctor's fee and reasonable monthly annual accretion to the estate for a certain period. It is trite that the income which a person derives compositely forms part of the expenditure on himself, his family and the savings go to the estate. The unforeseen expenses as aforesaid naturally have to be met from the estate causing pecuniary loss to the estate.

20. We see no reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor's fee, etc. including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased."

11. The question is whether the appellant herein could make out the case for enhancement of compensation in the light of the Apex Court judgment in ***Kahlon's*** case (*supra*).

12. The fact of the case in hand would undoubtedly indicate that the injured (deceased) was 57 years of age when he met with the accident. He died five years thereafter. He superannuated from service. His job was permanent in nature. There is nothing to indicate that as a result of the injuries suffered in the accident, there was reduction in his salaried income or retiral benefits. On the contrary, the facts in the case of ***Kehlon*** (*supra*) would indicate that

the injured therein had suffered 100% disability. He has to resign his job. He died about 15 years after the accident. He was confined to wheel chair. A lot had been spent over the treatment. As such, there was depletion of his property, loss of professional income as well, due to 100% of disability and loss of earning capacity of equal percentage.

13. In the case in hand, by granting compensation, entire medical expenditure has been reimbursed. Towards pain and sufferings, to which the appellant herein would not be entitled, Rs.10,000/- had already been granted to them under the impugned award itself.

14. True, the amount of compensation awarded on account of nutritious diet, attendance, transportation, is meager one. The injured (claimant) must have been forced to avail leave for a longer period. As such, there is loss of leave, which he could have en-cashed on retirement.

15. In view of this Court, considering all these facts, grant of a lump-sum amount of Rs.60,000/- more, would meet the ends of justice.

16. In the result, the appeal partly succeeds.
17. The amount of compensation granted by the Tribunal is enhanced by Rs.60,000/-.
18. Rest of the terms of the impugned award to stand unaltered.

[R. G. AVACHAT, J.]

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