

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1650 OF 2004

Madhukar s/o Anna Aaher
Age 23 years, Occu: Agril,
R/o At Tongaon, Post Kumberfal,
Taluka and District : Aurangabad

...Appellant
(Original Claimant)

Versus

1. Shaikh Shamshoddin s/o Shaikh Vajeer, Age 40 years, Occu: Driver, R/o Islampura, Beed.
2. Shaikh Yakub s/o Shaikh Ahmad, Age major, Occu: Business, Owner, R/o Azimpura, Beed, District Beed.
3. National Insurance Company Ltd., Jalna Through its Regional Office, Aurangabad.
4. Harichandra alias Chandrabhan s/o Bhausahab Choudhary, Age 25 years, Occu: Driver, R/o Tongaon, Taluka & District Aurangabad.
5. Bhagchand s/o Bhausahab Choudhary, Age 30 years, Occu: Business, R/o as above i.e. (No.4)
6. Oriental Insurance Company Ltd., Regional Office, Aurangabad. ...Respondents.

WITH
FIRST APPEAL NO.1684 OF 2004

1. Baburao s/o Patilba Kolge
Age 60 years, Occu: Agril,
R/o At Tongaon, Post Kumberfal,
Tq. & District : Aurangabad

2. Kamalbai w/o Baburao Kolge
Age 50 years, Occu: Household,
R/o as above.
- ...Appellants
(Original Claimants)

Versus

1. Shaikh Shamshoddin s/o Shaikh
Vajeer, Age 40 years, Occu: Driver,
R/o Islampura, Beed.
2. Shaikh Yakub s/o Shaikh Ahmad,
Age major, Occu: Business, Owner,
R/o Azimpura, Beed, District Beed.
3. National Insurance Company Ltd.,
Jalna Through its Regional Office,
Aurangabad.
4. Harichandra alias Chandrabhan
s/o Bhausahab Choudhary, Age 25 years,
Occu: Driver, R/o Tongaon, Taluka &
District Aurangabad.
5. Bhagchand s/o Bhausahab Choudhary,
Age 30 years, Occu: Business,
R/o as above i.e. (No.4)
6. Oriental Insurance Company Ltd.,
Regional Office, Aurangabad.
- ...Respondents.

WITH
FIRST APPEAL NO. 1652 OF 2004

1. Bhimrao s/o Rambhau Kokane,
Aged 50 years, Occu: Labour,
R/o At Tongaon, Post Kumberfal,
Tq. & District : Aurangabad
- (Died. The legal heirs are already on
record. The appellants No. 2 to 4 are
the legal heirs on record)
2. Vimalbai w/o Bhimrao Kokane,
Age 40 years, Occu: Labour,
R/o as above

3. Ku. Dwarka d/o Bhimrao Kokane,
Age minor, under the guardianship of
her parents, R/o as above

4. Ku. Panchshila d/o Bhimrao Kokane,
minor under the guardianship of
her parents R/o as above

...Appellants
(Original Claimants)

Versus

1. Shaikh Shamshoddin s/o Shaikh
Vajeer, Age 40 years, Occu: Driver,
R/o Islampura, Beed.

2. Shaikh Yakub s/o Shaikh Ahmad,
Age major, Occu: Business, Owner,
R/o Azimpura, Beed, District Beed.

3. National Insurance Company Ltd.,
Jalna Through its Regional Office,
Aurangabad.

4. Harichandra alias Chandrabhan
s/o Bhausaheb Choudhary, Age 25 years,
Occu: Driver, R/o Tongaon, Taluka &
District Aurangabad.

5. Bhagchand s/o Bhausaheb choudhary,
Age 30 years, Occu: Business,
R/o as above i.e. (No.4)

6. Oriental Insurance Company Ltd.,
Regional Office, Aurangabad.

...Respondents.

WITH
FIRST APPEAL NO. 1651 OF 2004

1. Sumanbai w/o Janardhan Sangle,
Aged 50 years, Occu: Labour,
R/o At Tongaon, Post Kumberfal,
Tq. & District : Aurangabad

2. Ku. Durga d/o Janardhan Sangle,
Age 15 years, Occu: Education,
Minor U/g. Sumanbai J. Sangle,
R/o as above.

...Appellants
(Original Claimants)

Versus

1. Shaikh Shamshoddin s/o Shaikh Vajeer, Age 40 years, Occu: Driver, R/o Islampura, Beed.
2. Shaikh Yakub s/o Shaikh Ahmad, Age major, Occu: Business, Owner, R/o Azimpura, Beed, District Beed.
3. National Insurance Company Ltd., Jalna Through its Regional Office, Aurangabad.
4. Harichandra alias Chandrabhan s/o Bhausahab Choudhary, Age 25 years, Occu: Driver, R/o Tongaon, Taluka & District Aurangabad.
5. Bhagchand s/o Bhausahab choudhary, Age 30 years, Occu: Business, R/o as above i.e. (No.4)
6. Oriental Insurance Company Ltd., Regional Office, Aurangabad. ...Respondents.

Mr R.B. Dhakane, Advocate for appellants
Mr M.N. Shaikh holding for Mr S.S. Kazi, advocate
for Respondent Nos. 1 and 2
Mr R.C. Bora holding for Mr P.P. Bafna, Advocate
for Respondent No. 3
Mr S.K. Barlot, Advocate for Respondent Nos. 4 and 5
Mr V.N. Upadhye, Advocate for Respondent No. 6

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 03.03.2022

PRONOUNCED ON : 06.05.2022

JUDGMENT :

1. This group of appeals can be disposed of by common Judgment.

2. The facts giving rise to these appeals in brief are as under :-

3. On the night of 29.11.1999, Madhukar Anna Aaher (injured), Krishna Bhimrao Kokane (deceased), Arjun Baburao Kolge (since deceased) and Gajanan Janardhan Sangle (another deceased) with friends were travelling in a tempo bearing Registration No. MH-20-A-2725 owned by Bhagchand S/o Bhausahab Choudhari and driven by Harischandra @ Chandrabhan S/o Bhausahab Choudhary. They were proceeding from Shekata at about 4.00 a.m. in the above said tempo. The tempo was driven in a normal and moderate speed. The truck bearing registration No. MH-21-5640 came from opposite direction driven in a rash and negligent manner and gave dash to the tempo and caused the accident. In the said accident, three persons died on the spot stated above and others got injured. The accident was reported to Karmad Police Station and on that basis, the Police registered a crime against truck driver/respondent No.1. The truck was owned by Shikh Yaqub S/o Shaikh Ahmad at the time of accident.

4. The legal representatives of the deceased and the injured had filed the respective claim petitions before the MACT at Aurangabad vide MACP No. 67/2000, 60/2000, 27/2000 and 28/2000 and sought compensation by taking aid of Section 166 of the Motor Vehicles Act, 1988.

5. The Member, MACT, Aurangabad in MACP No. 67/2000 (injury claim) was pleased to partly allow the claim and determined the compensation at Rs.75,000/- (including NFL amount) fastening liability on

owner, driver and insurer of the truck to pay jointly and severally with interest @ 6% per annum from the date of claim.

6. In MACP No. 60/2000 (death claim), the Tribunal was pleased to award the compensation of Rs. 50,000/- fastening the liability on the above said parties to pay it with interest at the same rate from the date of claim petition.

7. In MACP No. 27/2000 (death claim), the Tribunal was pleased to award compensation of Rs. 50,000/- with interest @ 6% per annum from the date of claim petition by fastening the liability on the above said parties.

8. In MACP No. 28/2000 (death claim), the Tribunal was pleased to determine the compensation at Rs. 50,000/- with interest @ 6% per annum from the date of claim petition by fastening the liability on the above said parties.

9. Feeling aggrieved by the impugned Judgment and award passed by the Member, MACT, Aurangabad in respective claim petitions, the original claimants have preferred these appeals, mainly on the ground of quantum of compensation.

10. Heard Mr Rajendra Dakhane, learned counsel for the appellants/claimants, Mr M.N. Shaikh holding for Mr S.S. Kazi, learned counsel for respondent Nos. 1 and 2, Mr R.C. Bora holding for Mr P.P. Bafna, learned counsel for respondent No. 3, Mr S.K. Barlota, learned counsel for respondent Nos. 4 and 5 and Mr V.N. Upadhye, learned counsel for respondent No. 6.

11. Perused the impugned Judgment and award passed by the Tribunal in respective claim petitions in the light of the arguments advanced by the learned counsel for the respective sides.

12. First I shall deal with the First Appeal No.1650/2004 arising out of MACP No. 67/2000 which is a injury claim.

13. On going through the evidence of claimant Madhukar Anna Aaher, it is evident that he has sustained fracture injuries and other injuries in the accident. He has taken treatment in Savaji Hospital where he was operated and treated from 01.12.1999 to 08.12.1999. He has sustained 45% permanent disability. He has also examined Dr Sachin Savaji vide Exh. 52 in support of his claim for compensation. The claimant Madhukar Anna Aaher has also produced permanent disability certificate vide Exh. 63 in order to prove that he is unable to do the job of labour which has resulted in his 100% loss of earning capacity.

14. Mr Dhakane, learned counsel for the appellant/claimant invited my attention to the impugned Judgment delivered in MACP No. 67/2000, more particularly, para No. 11. He pointed out that the Tribunal has observed that the claimant has lost his one leg. He is suffering from 45% disability. He may face difficulty in discharging his day to day work throughout the life. It has also affected permanently on his earning capacity, even then, the Tribunal was pleased to award the compensation of Rs.75,000/- including NFL which is inadequate.

15. On the other hand, Mr M.N. Shaikh and Mr R.C.Bora, learned

counsel for respective respondents supported the findings recorded by the Tribunal. Both of them submitted that the compensation determined by the Tribunal in above said claim is adequate.

16. I found merit in the submissions of Mr Dhakane, learned counsel for the appellant/claimant. As pointed out earlier, the Member, MACT though held that claimant has lost his one leg and suffered 45% permanent disability which has affected on his earning capacity, has awarded total compensation of Rs.75,000/- including NFL which is certainly inadequate having regard to the facts of the case and evidence on record. As such, the compensation needs to be reassessed in this claim.

17. So far as the income of the claimant/injured is concerned, he was stated to be a labour and earning Rs. 60/- to Rs. 80/- per day (Rs.2000/- per month) and Rs. 150/- to Rs.200/- per day by way of milk business. It is admitted position that the claimant has failed to prove such source of income for want of evidence. The Tribunal has also observed to that effect. The accident took place in the year 1999. By taking into consideration the per day wages in the year 1999, it approximately comes to Rs. 100/- per day. After deducting four holidays/weekly off, it comes to Rs. 2000/- to Rs. 2500/- per month.

18. In the present case, the claimant has lost his leg because of injuries caused to him in the motor vehicle accident. It is not a routine injury claim. It has caused bad impact on the earning capacity of the claimant. The claimant has sustained 45% disability, and as such, he is

unable to discharge his work as a labour and amounts to 100% loss of income and on that line, it is necessary to calculate loss of income apart from the medical expenses for treatment etc. The compensation is reassessed as under in the light of citation in case of ***Reliance General Insurance Company Vs. Manju (2021) 6 ALL MR 171, Jitendra Vs United India Assurance Company Ltd. (2022) ALL MR 458 and Shri Channapa Nagappa Muchalagoda Vs. Divisional Manager, New India Insurance Company Limited reported in AIR (2000) SC 166***

19. There cannot be any dispute that compensation must be just and reasonable and proportionate to the damages in the real sense. It should not neither be a bonanza nor a source of profit nor a pittance as held in case of ***State of Haryana and Anr. Vs. Jasbir Kaur and Anr. (2003) 7 SCC 484.***

20. Having regard to the above stock of citations, it is very much clear that the compensation awarded by the Tribunal in this injury claim to the claimant Madhukar is certainly inadequate.

21. In First Appeal No.1650/2004 (Madhukar Vs. Shaikh Shamshoddin and others) the compensation is reassessed as under in view of citation in case of ***Rajkumar Vs. Ajay Kumar and Anr. AIR Online 2010 SC. 125*** in a injury claim.

Head	Compensation awarded
i) Monthly net Income	Rs. 2,500/-
ii) Future prospectus (40 % of income) Rs. 2,500/- + Rs. 1,000/-	Rs. 1,000/-

iii) Net monthly income	Rs. 3,500/-
iv) Multiplier	17
v) Loss of income Rs. 3,500 p.m.X12 = Rs.42,000/- per year X 17 = Rs. 7,14,000/-	Rs. 7,14,000/-
vi) Pains and sufferings	Rs. 50,000/-
vii) Medical and hospital expenses	Rs. 13,500/-
viii) Transportation, nourishing, food and diet	Rs. 10,000/-
ix) Total Compensation	Rs. 7,87,500/-
x) Less amount of compensation determined by M.A.C.T. Rs. 75,000/- (Rs. 7,87,500/- - Rs. 75,000/-	Rs. 7,12,500/-
Enhanced amount of compensation payable	Rs. 7,12,500/-

22. The claimant Madhukar, who is injured entitled to get above determined compensation of Rs. 7,12,500/-. Respondent Nos. 1 to 3 are jointly and severally liable to pay the above said amount of compensation with interest @ 6% per annum from the date of claim petition till its realization. To that extent, the award passed by the MACT, Aurangabad in MACP No. 67/2000 needs to be modified.

23. Now, coming to First Appeal No.1684/2004 arising from MACP No. 60/2000. In this claim, deceased Arjun, who happens to be son of claimant Nos. 1 and 2, aged 20 years was a driver on the tractor and earning monthly income of Rs.2000/- to Rs.2,500/-. The Tribunal has assessed the total compensation of Rs. 1,00,000/-. The Tribunal has granted lumpsum compensation in a death claim which is improper and incorrect. In a death claim, the compensation needs to be reassessed by

way of multiplier method which is well recognized by various decisions of the Apex Court. According to the landmark decision in case of ***National Insurance Company Limited Vs. Pranay Sethi and Ors.*** reported in **(2017) 16 SCC 680**, the compensation needs to be reassessed in this case as under.

Head	Compensation awarded
i) Monthly Income	Rs. 2,500/-
ii) Future prospectus (40 % of income) Rs. 2,500/- + Rs. 1,000/-	Rs. 1,000/-
iii) Net monthly income	Rs. 3,500/-
iv) Multiplier	17
v) Loss of income Rs. 3,500 p.m.X 12 = Rs.42,000/- per year X 17 = Rs. 7,14,000/-	Rs. 7,14,000/-
vi) Medical and hospital expenses	Rs. 13,500/-
vii) Transportation	Rs. 10,000/-
viii) Funeral expenses	Rs. 15,000/-
ix) Loss of estate	Rs. 15,000/-
x) Consortium Rs.1,00,000/- to each claimant Rs.1,00,000/- X2 = Rs.2,00,000/-	Rs. 2,00,000/-
Total compensation	Rs.9,67,500/-
xi) Less amount of compensation determined by M.A.C.T. Rs.1,00,000/- (Rs. 9,67,500- Rs.1,00,000 = Rs. 8,67,500	Rs.8,67,500/-
Enhanced amount of compensation payable	Rs. 8,67,500/-

24. The claimants/appellants are entitled to get enhanced compensation at Rs.8,67,500/- with interest @ 6% per annum from the date of claim petition till its realization from respondent Nos. 1 to 3. To that extent, the award passed by the Tribunal in MACP No. 60/2000 needs to be modified.

25. Now, coming to FA No. 1652/2004 arising out of MACP No. 27/2000. The appellant Nos. 1 and 2 are the parents of the deceased Krishna, who met with death in motor vehicle accident occurred on 29.11.1999 in the same accident referred above. The Tribunal has awarded compensation of Rs. 1,00,000/- including NFL which is certainly inadequate in a death claim. In this claim, the deceased was working as a daily wager and earning Rs. 2000/- per month.

Head	Compensation awarded
i) Monthly Income	Rs.2,000/-
ii) Future prospectus (40 % of income) Rs.2,000/- + Rs.800/-	Rs.800/-
iii) Net monthly income	Rs.2800/-
iv) Multiplier	17
v) Loss of income Rs. 2800 X 12 = Rs.33,600 per year X 17 = Rs.5,71,200/-	Rs. 5,71,200/-
vi) Medical and hospital expenses	Rs. 13,500/-
vii) Transportation	Rs. 10,000/-
viii) Funeral expenses	Rs. 15,000/-
ix) Loss of estate	Rs. 15,000/-
x) Consortium Rs.1,00,000/- to each claimant Rs.1,00,000/- X 3 = Rs.3,00,000/-	Rs. 3,00,000/-
Total compensation	Rs.9,24,700/-
xi) Less amount of compensation determined by M.A.C.T. Rs.1,00,000/- (Rs. 9,24,700 – Rs.1,00,000/-	Rs.8,24,700/-
Enhanced amount of compensation payable	Rs. 8,24,700/-

26. The claimants/appellants are entitled to get enhanced compensation at Rs.8,24,700/- with interest @ 6% per annum from the date of claim petition till its realization from respondent Nos. 1 to 3. To that extent, the award passed by the Tribunal in MACP No. 27/2000 needs to be modified.

27. Now, coming to First Appeal No. 1651/2004 arising out of MACP No. 28/2000. It was a death claim. Gajanan s/o claimant No. 1/appellant No.1 and brother of appellant/claimant No.2 met with death in the same motor vehicle accident on 29.11.1999. The Tribunal has determined the compensation at Rs. 1,00,000/- including NFL amount which is certainly inadequate. The deceased was carpenter and thereby earning Rs.3,000/- per month. The deceased was stated to be 22 years old at the time of accident.

28. Having regard to the facts of the case and evidence on record, the compensation in this claim is reassessed as under :-

Head	Compensation awarded
i) Monthly Income	Rs.3,000/-
ii) Future prospectus (40 % of income) Rs.3,000/- + Rs. 1,200/-	Rs.1,200/-
iii) Net monthly income	Rs.4,200/-
iv) Multiplier	17
v) Loss of income Rs. 4,200 p.m.X 12 = Rs.50,400/- per year X 17 = Rs. 8,56,800/-	Rs.8,56,800/-
vi) Medical and hospital expenses	Rs. 13,500/-
vii) Transportation	Rs. 10,000/-

viii) Funeral expenses	Rs. 15,000/-
ix) Loss of estate	Rs. 15,000/-
x) Consortium Rs.1,00,000/- to each claimant Rs.1,00,000/- X2 = Rs.2,00,000/-	Rs. 2,00,000/-
Total compensation	Rs.11,10,300/-
xi) Less amount of compensation determined by M.A.C.T. Rs.1,00,000/- (Rs. 11,10,300 – Rs.1,00,000/-	Rs.10,10,300/-
Enhanced amount of compensation payable	Rs. 10,10,300/-

29. The claimants/appellants are entitled to get enhanced compensation at Rs.10,10,300/- with interest @ 6% per annum from the date of claim petition till its realization from respondent Nos. 1 to 3. To that extent, the award passed by the Tribunal in MACP No. 28/2000 needs to be modified.

30. Having regard to the above reasons and discussion, the appeals preferred by the respective claimants/appellants need to be partly allowed as under :-

ORDER IN FIRST APPEAL NO. 1650/2004

- (I) First Appeal No.1650/2004 filed by the appellants/claimants is hereby partly allowed as under :-
- (a) Respondent Nos. 1 to 3 shall pay enhanced amount of compensation of Rs.7,12,500/- (Rupees Seven Lakhs Twelve Thousand and Five Hundred Only) to the claimants with interest @ 6% per annum from the date of claim petition till its realization within three months from today.

- (b) The impugned Judgment and award passed by the Member, MACT, Aurangabad in MACP No. 67/2000 stands modified in the above term.
- (c) The rest of the award stands confirmed.
- (d) No order as to costs.
- (e) Record and proceedings be sent to the MACT, Aurangabad.

ORDER IN FIRST APPEAL NO. 1684/2004

- (I) First Appeal No.1684/2004 filed by the appellants/claimants is hereby partly allowed as under :-
 - (a) Respondent Nos. 1 to 3 shall pay enhanced amount of compensation of Rs.8,67,500/- (Rupees Eight Lakhs Sixty Seven Thousand and Five Hundred Only) to the claimants with interest @ 6% per annum from the date of claim petition till its realization within three months from today.
 - (b) The impugned Judgment and award passed by the Member, MACT, Aurangabad in MACP No. 60/2000 stands modified in the above term.
 - (c) The rest of the award stands confirmed.
 - (d) No order as to costs.
 - (e) Record and proceedings be sent to the MACT, Aurangabad.

ORDER IN FIRST APPEAL NO. 1652/2004

- (I) First Appeal No.1652/2004 filed by the appellants/claimants is hereby partly allowed as under :-
 - (a) Respondent Nos. 1 to 3 shall pay enhanced amount of compensation of Rs.8,24,700/- (Rupees Eight Lakhs Twenty

Four Thousand and Seven Hundred Only) to the claimants with interest @ 6% per annum from the date of claim petition till its realization within three months from today.

- (b) The impugned Judgment and award passed by the Member, MACT, Aurangabad in MACP No. 27/2000 stands modified in the above term.
- (c) The rest of the award stands confirmed.
- (d) No order as to costs.
- (e) Record and proceedings be sent to the MACT, Aurangabad.

ORDER IN FIRST APPEAL NO. 1651/2004

- (I) First Appeal No.1651/2004 filed by the appellants/claimants is hereby partly allowed as under :-
 - (a) Respondent Nos. 1 to 3 shall pay enhanced amount of compensation of Rs.10,10,300/- (Rupees Ten Lakhs Ten Thousand and Three Hundred Only) to the claimants with interest @ 6% per annum from the date of claim petition till its realization within three months from today.
 - (b) The impugned Judgment and award passed by the Member, MACT, Aurangabad in MACP No.28/2000 stands modified in the above term.
 - (c) The rest of the award stands confirmed.
 - (d) No order as to costs.
 - (e) Record and proceedings be sent to the MACT, Aurangabad.

- (II) The amount of compensation deposited by Respondent No.3/National Insurance Company, if any and lying with the Registry as per award passed by the Tribunal, it be paid to the respective claimants in all appeals.
- (III) Respondent Nos. 1 to 3 shall pay enhanced amount of compensation as determined above in respective appeals to the appellants/claimants along with interest at the rate of 6% per annum within three months failing which the appellants/claimants are at liberty to recover the amount by filing execution proceeding before the MACT, Aurangabad.

[SHRIKANT D. KULKARNI, J.]

mta