

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

FIRST APPEAL NO. 3584 OF 2018

1. Chandabai Ramchandra Ubade
Age : 41 years, Occ : Household,
R/o Mulanmath, Near Watertank,
Rahuri, Tq. Rahuri, Dist. Ahmednagar.
2. Ashok Ramchandra Ubade
Age : 20 years, Occ : Nil,
R/o Mulanmath, Near Watertank,
Rahuri, Tq. Rahuri, Dist. Ahmednagar.
3. Sanjay Ramchandra Ubade
Age : 17 years, Occ : Nil,
R/o Mulanmath, Near Watertank,
Rahuri, Tq. Rahuri, Dist. Ahmednagar.
4. Suresh Ramchandra Ubade
Age : 16 years, Occ : Nil,
R/o Mulanmath, Near Watertank,
Rahuri, Tq. Rahuri, Dist. Ahmednagar.
(Appellant nos.3 and 4 Minors under
guardian of Appellant No.1)
5. Ratnabai Shankar Ubade
Age : 73 years, Occ : Nil,
R/o Mulanmath, Near Watertank,
Rahuri, Tq. Rahuri, Dist. Ahmednagar. **APPELLANTS**
(Original Claimants)

VERSUS

1. Shaikh Mustafa Babu
Age : 43 years, Occ : Business,
R/o Sakuri, Tq. Rahata,
Dist. Aurangabad
(Owner & Driver of Maximo Van
MH-17-AJ-7098)

2. The Manager,
New India Assurance Company Ltd.,
Shrirampur Branch (151802)
Prag Plaza, Dr. Chatuphale Marg,
Shivaji Cross road, Shrirampur.

RESPONDENTS
(Original Respondents)

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Advocate for Appellants : Mr. Abhijit C. Darandale
Advocate for Respondent No. 2 : Mr. Mohit R. Deshmukh

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CORAM : S.G.DIGE, J.

RESERVED ON : 20/07/2022
PRONOUNCED ON : 23/08/2022

JUDGMENT :

The present appeal is preferred by the appellants (original claimants) for enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Ahmednagar (Hereinafter referred to as “the Tribunal”) vide award dated 19.12.2016 on account of death of Shri Ramchandra Ubade.

2. The factual matrix of the present case, briefly stated, are as under :-

On 19.04.2014, the deceased was riding his

motorcycle (registration no. MH-17-L-6315) towards Rahuri (Kh) by Nagar-Manmad road. At that time, one Maximo Van bearing registration no. MH-17-AJ-7098 came in rash and negligent manner and gave dash to motorcycle of the deceased from rear side. As a result of the accident, the deceased fell and sustained head injury and fractures to right leg. He was taken to Rural Medical Hospital, Rahuri, then shifted to P.M.T. Hospital, Loni for further treatment, then he was shifted to City Care Hospital, Ahmednagar. During the treatment, on 24th April, 2014, Ramchandra succumbed to the injuries. Crime was registered against the driver of van.

3. The appellants (original claimants) filed Claim Petition for getting compensation before the Tribunal, Ahmednagar. The learned Tribunal allowed claim petition of the appellants and granted Rs.10,35,000/- as the compensation. The said order is under challenge.

4. The learned counsel for the appellants has mainly raised the following grounds, in the appeal :-

(a) The compensation awarded by the Tribunal is inadequate, which is not just and equitable compensation.

(b) The Tribunal has not granted compensation towards medical expenses and transportation, which was claimed.

(c) The Tribunal has not granted compensation for future prospects and consortium.

(d) The Tribunal has not awarded the just and reasonable compensation.

5. It is the contention of the learned counsel for respondent no.2 that the Tribunal has considered all aspects while granting compensation and has awarded just and proper compensation as per entitlement. There was no evidence before the Tribunal to consider the facts raised in the appeal. The order passed by the Tribunal is legal and valid, hence no interference is required.

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

Tribunal awarded compensation of Rs.10,35,000/- to the appellants.

7. The Tribunal has not awarded the compensation in respect of future prospects, loss of estate and consortium. The Tribunal has considered the evidence of appellant no.1 and on the basis of the evidence, the Tribunal has held that the deceased was earning Rs.6000/- per month. Accordingly, the Tribunal has calculated the amount by deducting 1/4th amount for personal expenses. The Tribunal has not considered the future prospects. The Hon'ble Apex Court in the case of *National Insurance Co. Ltd. Vs. Pranay Sethi* reported in (2017) 16 SCC 680 has held that in case the deceased was self-employed or on a fixed salary, and was below 40 years of age, an addition of 40% of the established income should be granted towards future prospects. The future prospects is to be awarded on the basis of (i) the nature of the deceased's employment and (ii) the age of the deceased.

8. In the present case, it has come in the evidence of appellant no.2 that the deceased was mason and earning around Rs.400/- per day. As there was no evidence in support of earning of Rs.400/- per day by the deceased, the Tribunal has considered notional daily income of the deceased of Rs.200/- per day i.e. Rs.6,000/- per month. In the evidence of PW-1 Smt. Chandabai Ubade, it has come on record that the age of the deceased at the time of death was 38 years 10 months, but there was no documentary evidence on record in support of her evidence, hence the Tribunal has considered the age of the deceased to be 40 years as mentioned in the postmortem report. The age of the deceased is considered as 40 years, hence the future prospects ought to have been awarded at 40% of the actual income of the deceased.

9. It is contention of the learned counsel for the appellant that the Tribunal has not considered the compensation for loss of estate and consortium. The Tribunal has considered the cost of consortium as

Rs.1,00,000/- and funeral expenses Rs.25,000/-, loss of love and affection Rs.1,00,000/-. In the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram*** reported in ***2018 SCC Online SC 1546***, the Hon'ble Apex Court has held that in legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation." Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

10. In the present case, the cost of consortium is

granted Rs.1,00,000/-, it should be Rs.2,00,000/- as there are five appellants, who are wife, children of deceased. As per the view taken by the Hon'ble Apex Court in the case of **Magma General Insurance (supra)**, the appellants are entitle for Rs.40,000/- each as consortium. It would come to Rs.2,00,000/-.

11. In the light of abovementioned discussion, the appellants are entitled to the following amounts :-

Head Compensation awarded

i.	Income	:	Rs.6000/-
ii.	Future Prospects	:	Rs.2400/- (i.e. 40% of the income)
iii.	Deduction towards personal expenditure	:	Rs.8400/- (i.e. 1/4th Rs.2100/-)
iv	Total Income	:	Rs.6,300/-, Rs.6,300 X 12 = Rs.75,600/-
v	Multiplier	:	Rs.75,600/- X 15 = Rs.11,34,000/-
vi	Funeral expenses	:	Rs.15,000/-
ix	Loss of estate	:	Rs.15,000/-
x	Loss of Consortium	:	Rs.2,00,000/-
	Total compensation awarded		Rs.13,64,000/- inclusive of N.F.L.

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

ORDER

- (i) The appeal is allowed.
- (ii) The amount of compensation is enhanced from Rs.10,35,000/- to Rs.13,64,000/-. The appellants are entitled to enhance amount of Rs.3,29,000/- @ 9 % from the date of filing claim petition till realization of amount.
- (iii) The appeal is disposed of accordingly.

**[S.G.DIGE]
JUDGE**

SGA/-