

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4076 OF 2016

United India Insurance Co Ltd
Thr it's Divisional Manager and
authorised representatives & signatory,
Shrirampur Divisional office,
Hotel Karam Building, Opp S.T. Stand,
At & Post & Tq. Shrirampur - 422605
Dist. Ahmednagar

... APPELLANT
(Ori. Opp. No.3)

VERSUS

1. Ramnath Ganpat Maid,
Age : 50 years, Occu. : Proprietor General Stores
(Halwai Business)
R/o. : Ashwi Khurd, Tq. Sangamner,
Dist. Ahmednagar
2. Sandip Ramnath Maid,
Age : 24 years, Occu. : service/business,
R/o. : Ashwi Khurd, Tq. Sangamner,
Dist. Ahmednagar
3. Pradip Vitthal Shewal,
Age : Major, Occu. : vehicle owner,
R/o. : Sangamner road, near Bhalla show room
At & Post & Tq. Shrirampur, Dist. Ahmednagar,
(owner of Truck No.MH-16b/1111)
4. Sanjay Sarjerao Rokade,
Age : Major, Occu. : Driver,
R/o. : Newasa road, near Padghan hospital,
near Shree Fabrication,
At & Post & Tq. Shrirampur,
Dist. Ahmednagar

... RESPONDENTS
(Nos.1 & 2 - Ori. Claimants,
Nos.3 & 4 - Ori. Opp. Nos.1 & 2)

...
Mr. A.B. Gatne – Advocate for Appellant
Mr. C.K. Shinde – Advocate for Respondent Nos.1 and 2
....

CORAM : S.G. DIGE, J.
DATE : 6th October, 2022

JUDGMENT :

1. Being aggrieved and dissatisfied by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Shrirampur, Dist. Ahmednagar (*for short 'the Tribunal'*), appellant Insurance Company – original respondent No.3 has preferred this appeal.

2. It is contention of learned Counsel for appellant that, appellant has challenged the impugned judgment and order on the ground that, income of the deceased considered on higher side.

3. Learned Counsel further submits that, salary - income of the deceased Pradip is considered at Rs.15,000/- per month. It has come on record that, the Tribunal has not considered basic salary and the said salary includes various allowances. The basic salary of the deceased was of Rs.7,000/- but the Tribunal has not considered this fact and

has awarded exorbitant compensation. Hence, requested to allow the appeal.

4. It is contention of learned Counsel for respondent Nos.1 and 2 - original claimants that, the compensation awarded by the Tribunal is proper. The Tribunal has considered all the aspects while awarding the compensation. Hence, requested to dismiss the appeal.

5. I have heard both the learned Counsel. Perused judgment and order passed by the Tribunal.

6. Issue involved in this appeal is salary of deceased. It is contention of learned Counsel for appellant that, the Tribunal has considered personal allowances of the deceased which do not go to the family of the deceased. The basic salary of deceased was Rs.7,000/- per month, this fact is not disputed by the learned Counsel for respondent Nos.1 and 2.

7. Perused Exh.41. It shows that, basic salary of deceased was Rs.7,000/-. It is settled position of law that, personal allowances need to be excluded while calculating

the compensation. Hence, I am considering income of deceased at Rs.7,000/- per month.

8. The Tribunal has not awarded future prospects to the deceased. As per the view of Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680***, it should be 40% future prospects. I am awarding 40% future prospects. The Tribunal has deducted 1/3 for personal expenses of the deceased. Deceased was bachelor hence, it should be 1/2. The respondent Nos.1 and 2 are entitle for the amount of Rs.70,000/- under conventional head.

9. In view of above calculations, respondent Nos.1 and 2 are entitle for following compensation.

Sr. No.	Heads	Amount
1.	Basic Pay	Rs.7,000/-
2.	Future Prospect 40% (Rs.7,000 + Rs.2,800)	Rs.9,800/-
3.	50% Deduction (Rs.9800/2)	Rs.4,900/-
4.	Annual (4,900 x 12)	Rs.58,800/-
5.	Multiplier (Rs.58,800 x 18)	Rs.10,58,400/-
6.	Conventional (Rs.10,58,400 + Rs.70,000)	Rs.11,28,400/-
Total		Rs.11,28,400/-

10. The Tribunal has awarded compensation amount of Rs.22,40,000/- exclusive of N.F.L. amount. By the calculations respondent Nos.1 and 2 are entitle for amount of Rs.11,22,400/-, if this amount deducts from amount of Rs.22,40,000/- it comes to Rs.11,17,600/-. Hence, respondent Nos.1 and 2 are entitle for amount of Rs.11,17,600/- along-with accrued interest thereon.

11. The appellant has deposited some amount out of award amount before this Court. Respondent Nos.1 and 2 have withdrawn amount of Rs.7,00,000/- from the said deposited amount. Respondent Nos.1 and 2 are entitle to withdraw remaining amount along-with interest @ 6% on it from filing of the petition till realisation of amount.

12. Respondent Nos.1 and 2 are entitle for interest on already withdrawn amount of Rs.7,00,000/- @ 9% till 27.10.2016.

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

ORDER

(a) Appeal is partly allowed.

- (b) Respondent Nos.1 and 2 are entitled for total compensation amount of Rs.11,28,400/- @ 6% p.a. from filing of Claim Petition till its realisation, deducting already withdrawn amount of Rs.7,00,000/-.
- (c) Respondent Nos.1 and 2 are entitled for interest @ 9% on withdrawn amount of Rs.7,00,000/- till withdrawal date i.e. 27.10.2016.
- (d) Remaining/balance amount, if any, be refunded along-with interest on it to the appellant.
- (e) Appeal is disposed of, accordingly.

[S.G. DIGE, J.]