

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

FIRST APPEAL NO. 387 OF 2019

1. Keshav Malhari Landge
Age; 65 years, Occ; Nil,
2. Vimalbai w/o Keshav Landge
Age; 56 years, Occ; Household,

Both R/o LIC Colony, Latur,
Taluka & District Latur

**APPELLANTS
(Orig. Claimants)**

VERSUS

1. Ismail Mahmommad Hanif Shaikh,
Age; 43 years, Occ; Driver & Business,
R/o; Lamjana, Tq. Ausa Dist; Latur.
2. Shriram General Insurance Com. Ltd.
Through Branch Manager,
E/8/EPIP, RIICO, Industrial Area
Sitapura (Jaipur)
Dist; Jaipur – Rajasthan State

**RESPONDENTS
(Orig.
Respondents)**

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Advocate for Appellants : Mr.Fayaz K. Patel
Advocate for Respondent No. 1 : Mr. A.T.Jagtap
Advocate for Respondent No. 2 : Mr.S.S.Dargad h/f Mr S.G.
Chapalgaonkar

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CORAM : VINAY JOSHI, J.

DATE : 21.02.2022.

JUDGMENT :

1. Dissatisfied with the quantum of compensation awarded

by the Motor Accident Claims Tribunal, Latur in M.A.C.P. No. 367 of 2011, the original claimants i.e. the parents of the deceased have preferred this appeal.

2. The claimants had approached to the Tribunal on account of death of their bachelor son namely Sharad, in vehicular accident dated 12.06.2011. It was the claimants' case that while deceased Sharad was proceeding by riding on the motorcycle, he was dashed by a tempo bearing registration No. MH-23-1939, which came from opposite direction. Said accident took place due to rash and negligent driving of tempo driver, for which police have registered offence against him.

3. The detailed narration of the facts and contentions would not call for reiteration. The vehicular death of Sharad has been established by the claimants before the Tribunal. It was also established that due to rash and negligent driving of tempo by its driver an accident occurred. The said finding has not challenged by the Insurance Company, therefore, it requires no further consideration.

4. The crux of the appeal is about the quantum of the compensation. The learned counsel appearing for the claimants

submitted that the Tribunal has wrongly considered the notional income of the deceased @ Rs. 6,000/- p.m. He submitted that though the claimants led evidence to show that the deceased was serving at two places and was earning salary to the tune of Rs. 4,520/- p.m. and Rs. 6,000/- p.m., however the Tribunal has not considered. Perused the entire evidence in this regard along with documents. As per the claimants case, the deceased was working as Computer Operator with Dayanand Science College, Latur and was drawing salary to the tune of Rs. 4,500/- p.m. In that regard, evidence was led of witness namely Subhash Vishwanath Ektare, from Dayanand College. He has produced salary certificate to show that the monthly emolument of the deceased was Rs. 4,500/-. It has come in his evidence that the deceased was working with them as Computer Operator and his duty hours were from 10.00 a.m. to 6.00 p.m.

5. Besides that, it is the claimants' case that in addition to the said job the deceased was also serving with one Finix Competition Examinations Center, as Computer Operator from 7.00 p.m. to 11.00 p.m. and was drawing salary to the tune of Rs. 6,000/- p.m. Perused the evidence of witness Vidyadhar Maruti Kande Patil to that effect. It reveals that besides mere certificate, there are no documents to show that the deceased was serving with said Finix Examination Center. The witness has attempted to support Claimants case

without filing record. The Tribunal has disbelieved the said evidence. When a special case is made out about two simultaneous services, unless there is clinching material it can not be accepted. Considering the skilled job of deceased and his educational qualification of advance diploma Course in Computer program, the Tribunal has rightly assessed his monthly income to the tune of Rs. 6,000/-, which cannot be faulted with.

6. The claimants learned counsel would submit that the Tribunal has seriously erred in applying multiplier '9' as per the average age of the parents of the deceased. The deceased was a bachelor, falling in the age group in between 26-30 years. In view of the decision of Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 Supreme Court Cases 680**, the multiplier has to be used as per the age of the deceased. In view of that the multiplier of '17' has to be used.

7. The claimants' learned counsel has further submitted that the Tribunal also erred in refusing to make addition on account of loss of future prospects. In above referred case of **Pranay Sethi** it has been ruled that, even if the deceased was in temporary employment or on a fixed salary, there should be addition of 40% on

account of future prospects, as the deceased was below the age of 40 years. In view of that 40% i.e. Rs. 28,800/- is to be added in annual income of Rs. 72,000/- (Rs. 6,000 x 12), which comes to the tune of Rs. 1,00,800/-. Since the deceased was bachelor, it is settled position of law that the half of the amount has to be deducted towards the personal and living expenses of the deceased, which comes to the tune of Rs. 50,400/-. By use of the multiplier of '17' the total loss of dependency would be Rs. 50,400/- x 17 = Rs. 8,56,800/-.

8. On account of conventional heads, there shall be addition of Rs. 15,000/- towards the loss of estate, Rs. 15,000/- towards funeral expenses. In view of the decision in the case of **Magma General Insurance Company Limited Vs. Nanu Ram Alis Chuhru Ram and others (2018) 18 SCC 130**, both the claimants who are parents of the deceased are entitled for Rs. 40,000/- each towards filial compensation. In short under non pecuniary heads the entitlement would be of Rs. 1,10,000/-. In view of above, the appellants are entitled for total compensation of Rs. 8,56,800/- + Rs 1,10,000 = Rs. 9,66,800/-.

9. The learned counsel appearing for the claimants also urged to grant future interest @ 9% p.a. Considering the present

trend in banking sector the interest awarded by the Tribunal at the rate of 6% p.a. calls no alteration. In view of the above the appeal stands allowed. The impugned judgment and order passed in M.A.C.P. No. 367 of 2011 dated 27.01.2017, is modified to the extent that the claimants are entitled for total compensation of Rs. 9,66,800/- along with future interest @ 6% p.a. from the date of petition till full realization of the amount. The compensation shall be disbursed in equal proportion to both claimants. If any amount is already disbursed to the claimants, it shall be adjusted accordingly. The appeal stands disposed of in above terms.

**(VINAY JOSHI)
JUDGE**

mahajansb/