

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

FIRST APPEAL NO.1194 OF 2018

1. Sumanbai w/o Subhash Mirkale,
age 30 yrs, Occ. Household.
2. Sayali d/o Subhash Mirkale,
age 10 years, Minor.
3. Samrudhi d/o Subhash Mirkale,
age 6 years, minor.

Nos.2 and 3 are minor u/g of their
mother Sumanbai w/o Subhash Mirkale

4. Mudrikabai w/o Prabhu Mirkale,
age 60 years, Occ. Nil.
5. Prabhu s/o Manik Mirkale,
age 60 yrs, Occ. Nil.

All r/o Ambulga (BK),
Tq. Nilanga, Dist. Latur.

..Appellants..
(orig. claimants)

VERSUS

1. Khadar Mastansab Shaikh,
age 33 years, Occ. Driver,
r/o Halgara, Tq. Nilanga,
Dist. Latur.
2. Parshuram Tulsiram Sampal,
age 30 yrs, Occ. Business,
R/o Kalmugli, Tq. Nilanga,
Dist. Latur.
3. Umesh @ Umakant Ashokrao Hore,
age 37 yrs, Occ. Agriculture,
R/o. Ambulga (BK), Tq. Nilanga,
Dist. Latur.
4. The Branch Manager,
United India Insurance Company Ltd.,

Opp. Gorakshan, Tilak Nagar,
Main Road, Latur.

..RESPONDENTS...
(orig. respondents.)

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Mr. S.B. Gastgar, Advocate for appellants.
Ms. M.S. Mhase Adv. I/b Lex Aquila for respondent no.1
Mr. A.G. Kanade Advocate for respondent Nos.4.
Respondent nos. 2 and 3 served.

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CORAM : S.G. CHAPALGAONKAR, J.

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RESERVED ON : 7th JULY, 2023.

PRONOUNCED ON : 17TH JULY, 2023

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JUDGMENT :-

1. The appellants / original claimants, aggrieved by the judgment and award date 22.8.2017 passed by the Motor Accident Claims Tribunal, Nilanga in MACP NO. 7 of 2012, approaches this Court under section 173 of the Motor Vehicles Act.

2. Mr. Gastgar learned advocate appearing for the appellants submits that the present appeal is filed aggrieved by the assessment of the compensation made by the Tribunal. He would submit that the claimants had raised the claim for compensation of Rs.38,95,000/- under section 166 of Motor Vehicles Act before the Tribunal. However, the award is passed for Rs.6,12,000/- along with interest at the rate of 6% p/a. He would further submit that the deceased was running the hotel. His earning ought to have been considered at least Rs.6,000 per month on notional basis. He would further submit that nothing has been granted towards future prospects. The deceased was in age group of 32 to 35 years and his family was dependent on him. As such the award is grossly

inadequate.

3. Mr. Kanade learned advocate appearing for the respondent No. 4 would submit that the Tribunal has rightly considered notional income of the deceased to the tune of Rs.3,000 p.m for want of income proof. He would submit that the accident took place in the year 2012. Therefore, the minimum wages as prescribed that time are considered as basis to determine the notional income. He would further submit that in absence of the evidence regarding income, addition towards future prospects would not be permissible. Therefore, he supports the award under challenge.

4. Respondent nos.2 and 3 though served, failed to cause appearance.

5. Heard the learned advocates appearing for the respective parties. With their able assistance record is perused.

6. Apparently, the deceased was travelling on motorcycle bearing registration no.MH-24/X-5679 as a pillion rider. Respondent no.3 Umesh @ Umakant was the owner/driver of the said motorcycle. It was dashed by the auto-rickshaw bearing registration no.MH-24/J-2058. The claimants have pleaded negligence against the rider of the motorcycle as well as driver of the auto-rickshaw. The Tribunal, on appreciation of evidence on record, concluded that the accident occurred due to fault on the part of both the drivers and their contribution in the cause of the

accident is considered in the equal proportion. It appears that while passing the final Award, liability is fixed in equal proportion against respondent nos.1 and 2 at one hand respondent no.3 and 4 on the other hand. It is trite that in case of composite negligence, all the respondents are jointly and severally liable to pay the compensation. Although the Tribunal has apportioned the contribution of both the drivers in the cause of accident, liability ought to have been fixed by applying the principles of composite negligence. The Supreme Court of India in the matter of **Khenyei Vs. New India Assurance Company Limited and others reported in (2015) 9 Supreme Court Cases 273** observed thus :-

“22. What emerges from the aforesaid discussion is as follows :

22.1 In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

22.2 In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

*22.3 In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case **one joint tortfeasor can recover the amount from the other in the execution proceedings.***

22.4. It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.”

7. Applying the aforesaid analogy in the facts of the case, the liability of the respondents ought to have been fixed joint and several with liberty in their favour to recover the compensation from their counter-part. However, the claimants would be entitled to recover the compensation from any one of them.

8. So far as the quantum of compensation is concerned, the Tribunal has considered notional income of the deceased to the tune of Rs.3,000/- p.m. Although, the claimants have pleaded that deceased was in hotel business, except bare statement of the claimants, no evidence is brought on record. The Tribunal has, therefore, resorted make assessment of compensation on the basis of the notional income of the deceased. The Tribunal fixed notional income of the deceased to the tune of Rs.3,000/- p.m. However, it cannot be approved. In the year 2012, even as per minimum wages the income of the deceased could not have been assumed less than Rs.5,000 p.m. Pertinently nothing is added towards future prospects of the deceased. It is trite that, even in a case estimation of income on notional basis, addition of 40% towards future prospects is permissible, where the age of the deceased is less than 40 years.

9. In that view of matter, this court is inclined to consider the income of the deceased @Rs.5,000/- p.m. and add 40% of his income towards future prospects. The Tribunal has rightly applied multiplier of '16'. The Tribunal has granted compensation of Rs.50,000/- towards

mental agony, Rs. 50,000/- towards loss of love and affection, Rs. 50,000/- towards medical expenses and added Rs.30,000/- towards funeral expenses. However, considering the law laid down by the Supreme Court in the case of **Magma General Insurance Company Limited Versus Nanu Ram Alias Chuhru Ram & Ors.** reported in (2008)18 SCC 130, all the claimants are entitled for loss of consortium @ Rs. 40,000/- each. However, once the compensation towards loss of consortium is awarded, separate head of love and affection is not available. In that view of the matter, the compensation needs to be reassessed as follows.

Sr. No.	Heads	Amount
1.	Notional annual Income of the deceased Rs.5,000 x12=	Rs.60,000/-
2.	Addition of 40% towards future prospects 60,000 + 24,000=	Rs. 84,000/-.
3.	1/4th deduction towards personal and living expenses. 84,000 / 4 = Rs.21,000 84,000 -21,000	Rs.63,000/-
4.	Applying multiplier of '16' (Rs.63,000 x 16)	Rs.10,08,000/-
5.	Add Rs.2 Lakh towards loss of consortium (Rs. 40,000/- each x 5)	Rs.2,00,000/-
6.	Rs.30,000/- towards funeral expenses and loss of Estate (Rs.15,000 x 2)	Rs.30,000/-
7.	Towards medical expenses	Rs.50,000/-
	TOTAL	<u>Rs.12,88,000/-</u>

10. In view of the aforesaid calculations, the Award passed by the Tribunal needs to be modified. Hence, the following order.

ORDER

- a. First appeal is partly allowed.
- b. The respondents are jointly and severally shall to pay the compensation of Rs.12,88,000/- (Rs. Twelve Lakhs, eighty-eight thousand only) (inclusive of NFL) to the claimants along with interest @ 6 % p.a. from the date of claim petition.
- c. The amount paid/released in terms of the Award passed by the Tribunal shall be apportioned.
- d. The respondent nos.1 and 2 at one hand and respondent nos.3 and 4 on the other hand shall be liable to pay the compensation in equal proportion, however, this apportionment shall not be an impediment for the claimants to recover the entire compensation from either of the respondents.
- e. The respondents, from whom the compensation is recovered excess than his liability, shall be entitled to recover that excess amount paid by him from the other respondents as per apportionment indicated above.
- f. On payment of deficit court fees, if any, Award be drawn up accordingly. Pending civil application, if any, stands disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

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aaa/-