

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

FIRST APPEAL NO.2046 OF 2022

1. Parveen wd/o Shaikh Imran
Age: 31 years, Occu: Household,
R/o Galli No.27, Baijipura,
Aurangabad.
2. Uman s/o Shaikh Imran
Age: 9 years, Occu: Student,
Minor, u/g of real mother,
i.e. appellant No.1
3. Nashim w/o Rasheed Shaikh
Age: 61 years, Occu: Household,
R/o as above

**... Appellants
[Orig. Claimants]**

Versus

1. New India Insurance Co. Ltd.
Through its Branch Manager,
Adalat Road, Aurangabad
2. Bansode Varaji Luis
Age: Major, Occu: Owner of Car
Bearing Reg. No.MH-17/AZ-0708,
R/o Godavari Vasahat, Sakuri,
Taluka Rahata, Dist. Ahmednagar

**... Respondents
[Orig. Opponents]**

...

Mrs. Kazi Sahabat T., Advocate for the Appellants
Mr. M .M. Ambhore, Advocate for respondent no.1
Respondent No.2 Served

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 10th July, 2023

PRONOUNCED ON : 17th July, 2023

JUDGMENT :

1. The appellants / original claimants in Motor Accident Claim Petition No.123/2018, impugns the judgment and order dated 16/5/2019, passed by the Motor Accident Claims Tribunal, Aurangabad [for short 'the Tribunal'] in this appeal filed under Section 173 of Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short].
2. The aggrieved claimants assail the assessment of compensation made by the Tribunal and consequential award, which according to them, is inadequate.
3. The contention of the claimants before the Tribunal was that, on 01/12/2017, while deceased was driving his motorcycle, a car bearing Registration No.MH-17-AZ-0708 gave dash to his motorcycle. In that accident deceased suffered multiple injuries resulting into his death.
4. The claim was contested by the respondents. The issues were framed and the evidence was also recorded. The Tribunal after hearing the parties passed an award of Rs.10,94,000/- along with interest @ 8% per annum in favor of the claimants.
5. Mrs. Kazi, learned Advocate appearing for the appellants would submit that although the claimants have specifically pleaded that the deceased was

working as a Mason and earning Rs.24000/- per month, the Tribunal has estimated his notional income @ Rs.5000/- per month. She would further submit that the age of the deceased was less than 35 years. Hence, the appropriate multiplier would be '16'. However, the Tribunal erroneously adopted multiplier of '15'. She would further submit that the assessment of compensation is unjust and require to be reconsidered.

6. Mr. Ambhore, the learned Advocate appearing for respondent no.1 – insurer vehemently opposes the contentions of the appellants. He would submit that except pleading in the claim petition, no evidence regarding nature of job of the deceased or his earning is brought on record. The Tribunal has rightly considered notional income of deceased @ Rs.200 per day and passed the award.

7. Having considered the submissions advanced, it can be gathered that the claimants have pleaded about the occupation of the deceased as Mason. However, no supporting documentary or oral evidence is pressed into service. Bare statement in the claim petition or in the deposition of claimant no.1 is not sufficient to establish that the deceased was actually working as a Mason. The claimants could have recorded evidence of his employer or at least his co-worker to establish such fact. In absence of plausible evidence, the Tribunal cannot be faulted to gather notional income of the deceased in the range of Rs.200/- per day. However, there was no reason to bring down

monthly income to Rs.5000/- per month. It could have been considered to Rs.6000/- per month.

8. The age of the deceased was in the range of 30 to 35 years. The postmortem report supports such contention. The appropriate multiplier to the age group of 30 to 35 years is '16' but the Tribunal has erroneously adopted multiplier of '15' which requires to be corrected. The compensation granted by Tribunal on other heads need not be disturbed. In that view of the matter, the compensation can be re-assessed as under:

SR. NO.	HEADS	AMOUNT
1.	Future loss of Loss of earning after adding future prospects @ 40% and deducting 1/3 rd towards personal and living expenses.	10,75,200/-
2.	Spousal Consortium for claimant No. 1	40,000/-
3.	Filial Consortium for claimant No. 2	40,000/-
4.	Parental Consortium for claimant No. 3	40,000/-
5.	Funeral Expenses	15,000/-
6.	Loss of estates	15,000/-
7.	Love and Affection as awarded by Tribunal	1,00,000/-
	TOTAL	Rs.13,25,200/-

9. In the light of the above, the appeal deserves to be partly allowed by passing following order:

ORDER

(i) The appeal is partly allowed with proportionate costs.

(ii) The appellants are entitled to the total compensation of Rs.13,25,200/- (Rupees Thirteen Lakhs, Twenty Five Thousand, Two Hundred Only) [inclusive of NFL].

(iii) The appellants are entitled to the interest at the rate of 8% per annum on enhanced compensation from the date of application till realization.

(iv) The respondent nos.1 and 2 are jointly and severally liable to pay compensation.

(v) On depositing of the amount of compensation, it be apportioned amongst claimants in terms of award passed by the Tribunal.

(vi) Award be drawn up accordingly after payment of deficit court fees, if any.

(vii) Appeal is disposed of accordingly.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer