

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

FIRST APPEAL NO. 1289 OF 2018

1. Namdeo s/o Tukaram Dhokare
Age : 53 years, Occu. : Govt. Service,
R/o. Room No. G-1/56-2, At Post
Alore, Tq. Chiplun, Dist. Ratnagiri
2. Mrs. Neelam w/o Namdeo Dhokare
Age : 48 years, Occu. : Housewife,
R/o. As above.
3. Aditya s/o Namdeo Dhokare
Age : 22 years, Occu. : Education,
R/o. As above.

.. Appellants
(Orgi. Claimants)

Versus

1. Shaikh Tausim Shaikh Nabi
Age : Major, Occu. : Transport Business,
R/o. Shah Shaukat Darga Kesapuri,
Aurangabad.
2. Syed Waseem s/o Syed Razzaq
Age : Major, Occu. : Driver,
R/o. Shah Shaukat Darga Kesapuri,
Aurangabad.
3. United India Insurance Co. Ltd.,
Through its Divisional Manager,
Aurangabad.

.. Respondents
(Orig. Respondents)

Mr. S. N. Pagare, Advocate for the Appellants.
Mr. Swapnil S. Rath, Advocate for Respondent No. 3.
The Respondent Nos. 1 and 2 are served.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 25th September, 2023.

Date on which order pronounced : 09th November, 2023.

ORDER :-

. This appeal is filed by the original claimants for enhancement of the amount awarded by the learned Member, Motor Accident Claim Tribunal by the judgment and award dated 07.12.2017 in M.A.C.P No. 386/2014. The learned Member, M.A.C.T. by way of judgment partly allowed the claim holding the claimants to be entitled to amount of Rs. 6,22,756/-. The appellants-claimants No. 1 and 2 are the parents of deceased Aniket. Appellant No. 3 is younger brother of the deceased. Respondent No. 1 is owner of the offending vehicle. Respondent No. 2 is the driver of the said vehicle. Respondent No. 3 is the Insurance Company with whom the offending vehicle was insured.

2. The facts in short are that, the deceased was proceeding on a motorcycle bearing registration No. MH-20-AX-1035 towards CIDCO area on 14.10.2013 at around 02.30 p.m. The motorcycle reached near Garware Chowk on Jalgaon road. A truck bearing registration No. MH-20-AT-1968 came from the opposite direction in high speed. The driver lost the control over the truck gave dash to the motorcycle.

One Nikhil died on the spot whereas deceased Aniket received severe injuries. He was immediately taken to hospital. On 17.10.2013, Aniket also succumbed to the injuries while taking treatment. At the time of death age of deceased was 23 years. The claimants filed claim petition. It is the case of the claimants that deceased was taking education of Engineering and he would have earned good income in the future and thus claimed the compensation of RS. 25,29,556/-.

3. The learned Member, M.A.C.T. considered the notional income to be Rs. 4,500/- per month i.e. Rs. 54,000/- per annum and applied multiplier of 18 and considered 50% deductions towards personal expenses. The Tribunal further held that, since the deceased was only studying there is no question of granting future prospects. By considering consortium etc. the total amount of compensation was granted Rs. 6,22,756/-.

4. The case of the appellants-claimants is that the loss of notional income of the deceased ought to have been taken as Rs. 10,000/- per month as the deceased had bright prospects in the career. The Tribunal has wrongly taken the notional income to be Rs. 4,500/- per month. It is further case that the Tribunal has committed mistake by not awarding amount towards future prospects. Considering the age of the

deceased 50% amount ought to have been considered towards future prospects. The filial consortium was also granted less. It ought to have been Rs. 44,000/- per claimant. The funeral expenses ought to have been awarded at the rate of Rs. 25,000/- . Rs. 25,000/- ought to have been granted for loss of estate. The appellants have thus claimed that total amount of Rs. 34,22,000/- ought to have been allowed towards compensation.

5. Learned advocate for respondent – Insurance Company fairly accepts that, the amount of future prospects could have been considered by the Tribunal at the rate of 40%. Though he submits that the notional income is rightly taken as Rs. 4,500/- per month as there was no other proof or evidence to show the income, he justified the award except for future prospects.

6. Coming to the judgments cited by the parties learned advocate for the appellants relied upon the judgment in the case of **S. Vasanthi & Anr. Vs. M/s. Adhiparasakthi Engg. College and another** decided by the Hon'ble Apex Court in Civil Appeal No. 7180/2022. In the said case, the deceased was riding on a motorcycle on 22.05.2010 when he met with an accident with a truck of respondent college. The Tribunal in that case considering that the age of the deceased was 23 years who

was a second year student of MBA course passed an award directing to pay compensation of Rs. 7,48,052/- along with interest at the rate of 7.5% per annum. The High Court in an appeal enhanced the amount of compensation by taking notional income at the rate of Rs. 10,000/- per month and enhanced the compensation. The Hon'ble Apex Court in that case held that, the deceased was a qualified engineer graduate pursuing MBA degree to further his professional capabilities. The Hon'ble Apex Court considered his monthly income of Rs. 30,000/- and deducted 50% of the amount towards personal and living expenses. The Hon'ble Apex Court considered 40% future prospects per month and applied multiplier of 18 and enhanced the amount of compensation including transportation, loss of consortium, funeral expenses etc.

7. Learned advocate for respondent No. 3 relied upon the judgment of the Hon'ble Apex Court passed in Civil Appeal No. 9858/2013 in the case of **Radhakrishna and another Vs. Gokul and others**. In that case the deceased was 19 years of age when he met with an accident on 20.01.2003. He was a student of engineering course. The Tribunal has taken his annual income to Rs. 15,000/- and the compensation was awarded accordingly.

8. This Court finds that, the judgment in the case of S. Vasanthi & Anr. (supra), is a recent judgment. In that case, accident had taken place on 22.05.2010 whereas, in the present case the accident had occurred on 14.10.2013 i.e. after three years of the case of S. Vasanthi & Anr. (supra). In that case, the deceased had already completed engineering course and he was pursuing in MBA course. In the present case, the deceased was taking education in the engineering course. That factor also needs to be considered.

9. In the case of Radhakrishna and another (supra), the accident had taken place in the year 2003 i.e. ten years before the present case. Therefore, this Court is not inclined to consider the figures in that case. In the present case, considering the figures in the judgment in the case of S. Vasanthi & Anr. (supra), the notional income of the deceased in our case ought to have been taken to be Rs. 15,000/- divided by two as Rs. 7,500/- per month which would have been personal expenses as deceased was a bachelor.

10. The Tribunal has granted only Rs. 15,000/- towards funeral expenses and Rs. 15,000/- towards loss of estate. The same ought to have been Rs. 25,000/- each considering the present position. The consortium also ought have been taken as Rs. 44,000/-. Thus, this

Court finds that, in the present case the amount of compensation ought to have been as per the chart below :

Sr. No.	Head	Compensation required to be awarded
i.	Notional Income : Rs. 15,000 ÷ 2 Rs. 7,500 × 12 Rs. 90,000 × 18	Rs. 7,500/- p.m. Rs. 90,000/- Rs. 16,20,000/-
ii.	Future Prospects at 50% of (i) :	Rs. 8,10,000/-
iii.	Total income :	Rs. 24,30,000/-
iv.	Filial consortium : Rs. 44,000 × 3	Rs. 01,32,000/-
v.	Funeral expenses :	Rs. 25,000/-
vi.	Loss of estate :	Rs. 25,000/-
	Total :	Rs. 26,12,000/-

11. Since the Tribunal has already awarded amount of Rs. 6,22,756/- the same shall be deducted from the amount of Rs. 26,12,000/-. The claimants shall be entitled to receive additional compensation of Rs. 19,89,244/- (Rs. Nineteen Lakh Eighty Nine Thousand Two Hundred and Forty Four only) along with interest at the rate of 7.5% per annum from the date of filing of the claim petition.

12. With this, the first appeal stands disposed off.

(KISHORE C. SANT, J.)

PS.B.