

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

FIRST APPEAL NO. 1016 OF 2002

01 Smt. Ujawala w/o Tanaji Mali,
age: 34 years, Occ: Household;

02 Sneha d/o Tanaji Mali,
age: 16 years, Occ: Edu.;

03 Sunayana d/o Tanaji Mali,
age: 14 years, Minor,
Occ: Edu.;

04 Kiran s/o Tanaji Mali,
age: 9 years, Occ: Edu.(minor);

05 Venkatesh s/o Tanaji Mali,
age: 7 years (minor),
Occ: Edu.;

Appellants No.2 to 5 are the
minors and they are under
guardianship of their natural
mother i.e. Appellant No.1
Smt. Ujawala w/o Tanaji Mali,
presently residing at Parbhani,
District Parbhani.

Appellants

Versus

01 Ashadkhan s/o Gulam Dastgir
Pathan, age: major, Occ: Business,
R/o Patel Chowk (Mali Galli),
Siddeshwar Mandir Road,
Latur, District Latur.

02 Vinayak s/o Laxman Sotgir,
age: major, Occ: Driver,

R/o Renapur, Tq. Renapur,
District Latur.

03 The Oriental Insurance Co.
Ltd., Branch at Latur, District
Latur, through its Manager.

Respondents

Mr. V. D. Gunale, advocate for the Appellants
Respondents No.1 and 2 served.

Mr. D. P. Deshpande, advocate for Respondent No.3.

CORAM : SANDIPKUMAR C. MORE, J.

Reserved on : 17th February, 2023.

Pronounced on : 21st February, 2023.

JUDGMENT :

1 The appellants, who are the claimants in M.A.C.P. No. 384 of 1997, have challenged the judgment and award passed in the said Claim Petition on 15.09.2001 by the learned Motor Accident Claims Tribunal, Latur ("the learned Tribunal", for short), for enhancement and setting aside the observation whereby contributory negligence of the deceased was held to the extent of 25%.

2 The appellant no.1 is the widow whereas, appellants no.2 to 5 are the children of deceased Tanaji

Manohar Mali, who was in service with Irrigation Department as an Assistant Engineer. From the judgment itself, it appears that the learned Tribunal has determined amount of compensation as Rs.6,50,000/- including award under Section 140 of the Motor Vehicles Act and awarded interest @ 9% p.a. from the date of Claim Petition till its realisation. It is evident that the learned Tribunal, after deducting an amount to the extent of 25% on account of contributory negligence of the deceased, has awarded the aforesaid amount.

3 The learned Counsel for the appellants submits that though there is no dispute about income of the deceased and the multiplier applied, but the learned Tribunal did not consider any amount towards future prospects. Moreover, no proper amount was granted on account of loss of consortium, loss of estate and funeral expenses, as observed by the Hon'ble Supreme Court in its judgments in the case of **National Insurance Company Limited Vs. Pranay Sethi and others**, (2017) 16 SCC 680; and **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and**

others, (2018) 18 SCC 130. It is also pointed out that the learned Tribunal has wrongly held that the deceased had also contributed in the occurrence of accident to the extent of 25%.

4 On the contrary, learned Counsel for Respondent No.3 – Insurance Company has strongly opposed the submissions and contended that the learned Tribunal has properly come to the conclusion about contributory negligence of the deceased. However, he submits that in respect of determination of compensation in the light of aforesaid subsequent judgments of the Hon'ble Supreme Court, proper amount of compensation may be awarded. He further submits that in case any amount is enhanced, as per the observations of the Hon'ble Supreme Court in the aforesaid judgments, there should not be any interest on the compensation amount awarded under non pecuniary heads.

5 With the assistance of learned Counsel for contesting parties, I have gone through the impugned

judgment and also the record and proceedings of original Claim Petition.

6 So far as the ground of challenge in respect of contributory negligence is concerned, the learned Tribunal has dealt with it extensively and by considering the situation in spot panchanama and damage sustained to the offending truck, it was observed that the deceased motor-cyclist was having an opportunity to watch the truck while taking turn, but he did not avail the last opportunity to avoid the accident. Thus, the observation of the learned Tribunal, as regards contributory negligence of the deceased motor-cyclist to the extent of 25%, appears to be appropriate.

7 Further the impugned judgment indicates that the learned Tribunal has not considered any amount on account of future prospects and also not considered amounts falling under the heads of “loss of consortium”, “loss of estate” and “funeral expenses”. Significantly, at the time of passing of the impugned judgment and award by the learned Tribunal, the

judgments of the Hon'ble Apex Court in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 12, **National Insurance Company Limited Vs. Pranay Sethi and others**, (2017) 16 SCC 680; and **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others**, (2018) 18 SCC 130 were not in existence. However, this Court, at the principal seat at Bombay, has already relied upon the observations of the Hon'ble Supreme Court in its judgment dated 28.01.2021 in the case of **Reliance General Insurance Co. Vs. Manju Vikram Choudhary** in First Appeal No. 833 of 2016, and observed that though the aforesaid judgments were not in existence when the Claim Petition was decided, but nothing is mentioned in these judgments by the Hon'ble Supreme Court, whether they are prospective or retrospective in nature. As such, the aforesaid judgments are also applicable to the pending Claim Petitions and even to the pending appeals arising out of such Claim Petitions. Therefore, just compensation for which the appellants are entitled, is to be determined afresh in the light of observations of Hon'ble Apex

Court in the aforesaid cases.

8 It is not disputed that the offending truck was insured with Respondent No.3 – Insurance Company at the time of accident. Further, monthly income of the deceased being Rs.8100/- was also not disputed. The learned Counsel for the appellants has submitted that there should not have been deduction of 1/3rd, as done by the learned Tribunal, but considering the number of claimants, the learned Tribunal should have deducted 1/4th amount from the income of the deceased towards his personal expenses, as observed and directed in the case of **Sarla Verma** (*supra*). Moreover, so far as compensation towards future prospects is concerned, addition of 50% actual salary of the deceased needs to be effected since the deceased was having permanent job and was aged about 39 years at the time of accident.

9 There is no dispute that the deceased was having permanent job in Irrigation Department and his completed age was 39 years at the time of accident. As such, there must

be such addition of 50% of his actual salary on account of future prospects, as directed by the Hon'ble Supreme Court in the case of **Pranay Sethi** (*supra*).

10 Now I proceed to determine just and proper compensation. The income of the deceased is taken as Rs.8100/- per month and considering his age in the age group between 36 and 40, multiplier "15", as observed in the case of **Sarla Verma** (*supra*), is applicable. Thus, the annual income of the deceased comes to Rs.97,200/- (Rs. 8100 x 12). Further, an amount of Rs.48,600/- (50% of Rs.97,200) needs to be added in this amount being the future prospects. Thus, the annual income of the deceased now comes to Rs.1,45,800/-. Considering the number of claimants being 5, 1/4th amount is required to be deducted from the aforesaid amount towards personal expenses of the deceased. As such, after the amount of Rs.36,450/- on account of personal expenses of the deceased is deducted, the annual income of the deceased comes to Rs.1,09,350/-and if the multiplier "15" is applied to this figure, the loss of dependency comes to

Rs.16,40,250/-. From this amount, one has to deduct 25% amount on account of contributory negligence of the deceased in the accident and as such, on such deduction of 25% i.e. Rs.4,10,062/-, the loss of dependency comes to Rs.12,30,188/-. In the aforesaid amount, amount of Rs.2,00,000/- on account of *spousal* and *filial* consortium needs to be added i.e. Rs.40,000/- for each appellant, as per the observations of the Hon'ble Apex Court in the case of **Magma** (*supra*). Further, a of sum of Rs.33,000/- under the heads of loss of estate and funeral expenses needs to be added as per the observations of the Hon'ble Apex Court in the case of **Pranay Sethi** (*supra*). Thus, in the light of aforesaid discussion, the appellants-claimants are entitled for compensation as follows:

01	Loss of dependency	Rs. 12,30,188/-
02	Amount on account of <i>spousal</i> and <i>filial</i> consortium	Rs. 2,00,000/-
03	Amount on account of loss of estate and funeral expenses	Rs 33,000/-
	Total	Rs. 14,63,188/-

the prevailing rate of interest, applicable to such compensation, will be @ 6% p.a. Further, this Court has already taken a view that the amount of compensation granted under the heads of loss of consortium, loss of estate and funeral expenses, being non pecuniary, shall not carry any interest *pendente lite* i.e. from the date of Claim Petition till its realisation.

12 Thus, considering all these aspects, following order is passed:

: Order :

{A} Appeal is partly allowed.

{B} The appellants are entitled to the compensation of Rs.12,30,188/- along with interest @ 6% p.a. from the date of Claim Petition till its realisation.

{C} The appellants are also entitled for additional compensation of Rs.2,33,000/- under the heads of loss of consortium, loss of estate and funeral expenses. However, this amount shall not carry any interest *pendente lite* i.e. from the date of Claim Petition till its realisation.

{D} Respondent No.3 – Insurance Company shall

deposit the balance amount of compensation within two months from the date of this order.

{E} On deposit of balance amount of compensation, the appellants no.1 to 5 are permitted to withdraw the same in equal proportion.

{F} The award be drawn accordingly.

{G} Appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

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