IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2271 OF 2022

1. Smt. Bijabai Bhausaheb Wabale
   Age: 58 years, Occu: Household

2. Shri. Sandip Bhausaheb Wabale
   Age: 28 years, Occu: Agri.,

Both R/o Ghogargaon, Tq. Shrigonda,
Dist. Ahmednagar **... Appellants**
[Orig. Claimants]

Versus

1. Sambhaji Rambhau Tonde
   Age: Major, Occu: Business,
   R/o. Ghogargaon, Tq. Shrigonda,
   Dist. Ahmednagar

2. ICICI Lombard General Insurance
   Company Ltd.
   Through its Branch Manager,
   In front of Hotel Oberai,
   Savedi Road, Ahmednagar **... Respondents**
[Orig. Opponents]

...
Mr. U. U. Wagh, Advocate for the Appellants
Mr. Swapnil Patil h/f Mr. R. H.Dahat, Advocate for Respondent No.2
...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 18.07.2023
PRONOUNCED ON : 26.07.2023

JUDGMENT :

1. The appellants / original claimants aggrieved by the assessment of compensation under award dated 23/10/2019, passed by the Motor Accident Claims Tribunal, Ahmednagar, in Motor Accident Claim Petition [MACP] No.35/2013 approached this Court under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short] seeking enhancement of compensation.

2. The claimants contend that the deceased Bhausaheb was riding his motorcycle, another motorcycle bearing registration No. MH-16-AR-4819 gave forceful dash to the motorcycle of the deceased. On account of the said accident, he suffered multiple injuries. He was continuously under medical supervision till 07/11/2012, however, he succumbed to the injuries. The offence was registered against the rider of motorcycle bearing registration No. MH-16-AU-3962. The death of Bhausaheb was attributable to the negligence of the said motorcycle rider. It was owned by original respondent no.1 and insured with respondent no.2.

3. The claimants further contend that the deceased was aged about 55 years at the time of his death and he was employed with District Central Co-operative Bank, Ahmednagar as Cashier and earning monthly salary of Rs.18000/-. The claimants were dependent on his income. Therefore, they instituted the claim seeking compensation of Rs.30,00,000/- under Section

166 of the Act from the respondents. The claim petition was contested by the respondents alleging contributory negligence of the deceased and the breach of policy condition. The Tribunal after framing the issues recorded the evidence. The claimant no.2 - Sandip Bhausaheb Wabale deposed for himself and on behalf of another claimant and relied upon documentary evidence. In order to prove the income of the deceased, salary slips [Exhibits – 47, 48 and 49] were filed and those were proved through the evidence of Yashwant Arjun Lawate. The resolutions of the Bank dated 31/03/2012 [Exhibit-50] and 04/10/2011 [Exhibit-51] were filed in order to show bonus was receivable to the deceased. The Tribunal, after considering the evidence on record, passed an award for Rs.30,18,592/- in favour of the claimants.

4. Mr. Wagh, learned Advocate appearing for the appellants submits that the Tribunal erroneously made ½ deduction towards personal and living expenses although there were two dependents. He would further submit that the Tribunal did not grant loss of consortium to claimant no.2. Further, the bonus amount that could have been received by the deceased is ignored while estimating his income.

5. Per contra, Mr. Patil, learned Advocate appearing for the respondent no.2 – insurance company submits that the Tribunal recorded adequate reason in Paragraph No.17 of the judgment to discard dependency of claimant no.2. He invites attention of this Court to the finding of the

Tribunal which shows that claimant no.2 was holding licence to run a Pharmacy shop and he had completed Diploma in Pharmacy, as such, he could not be dependent on the income of the deceased. He further submits that although there is resolution of District Central Co-operative Bank to release the bonus, it is based on performance and not the part of salary as such the same cannot be treated as a part of salary. The Tribunal has rightly discarded the same from the consideration.

6. Having heard the arguments advanced by the learned Advocates for the respective parties and after going through the record and proceedings, it can be gathered that the deceased was serving as a Cashier with District Central Co-operative Bank. At the time of his death, he left behind the claimants as his legal heirs. The evidence of PW-2, namely, Yashwant Arjun Lawate is recorded at Exhibit-47. He placed on record a salary certificate at Exhibit-48 and the printed copies of salary slips at Exhibits-48 and 49. The resolution of the District Central Co-operative Bank passed in the meeting dated 31/03/2011 is also placed at Exhibit-51.

7. Mr. Wagh, learned Advocate for the appellants relying upon the aforementioned evidence submits that the salary certificate placed on record along with list of documents at Exhibit-43 clearly mentioned that generally the Bank employees are granted excretion of bonus @ 20%. However, perusal of the salary slips [Exhibits - 48 & 49] nowhere disclosed that any

additional amount was ever disbursed to the deceased. Even it is assumed that as per resolution dated 04/10/2011 placed at Exhibit-51, the deceased was entitled for extra remuneration in lieu of overtime or bonus, nothing is placed on record to show that such amount was disbursed to the deceased anytime during the period from 2011 till his death. The claimants could not establish that the extra emoluments mentioned in the resolution were made a part of salary. The Tribunal has, therefore, rightly considered the salary of the deceased as per the salary slips pressed into service. Hence, it is difficult to accept the contentions of the claimants that in terms of his service condition, the bonus was a part of salary. The careful reading of the documents to that effect shows that it is made contingent upon performance. There is nothing on record to show that the bonus was released to the deceased or any other co-employee who is in service with the Bank. The Bank resolution relied upon by the appellants can be considered as assurance for the payment based on performance. Therefore, the arguments advanced by the appellants on this point cannot be accepted.

8. The next contention of the appellants is that the Tribunal has erroneously applied deduction of ½ amount towards personal and living expenses of the deceased. It is true that at the time of the death of the deceased, both the claimants were dependent on his income. Only because claimant no.2 has attained the age of majority or obtained a degree of Diploma in Pharmacy, he would not lose his dependency. The similar issue is

considered by the Supreme Court in the matter of **National Insurance Co. Vs Birender and others** Reported in **(2020) 11 SCC 356**.

9. In view of the principles of law laid down in the aforesaid judgment, the observations of the Tribunal that claimant no.2 was not dependent, cannot be sustained. Thereafter, the Tribunal ought to have considered 2/3rd dependency of the claimants on income of the deceased. It is further contention of the claimants that claimant no.2 is also entitled for loss of consortium. In view of the law laid down by the Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram & Ors.** reported in **(2018) 18 SCC 130**, claimant no.2 would be also entitled for the compensation towards loss of consortium @ Rs.40,000/-.

10. In view of the above, the award passed by the Tribunal requires to be modified. Hence, the claimants would be entitled for the compensation as shown in the tabular form as under:

Sr. No.	**Heads**	**Amount**
1.	Monthly salary after addition of 15% towards future prospects	Rs.32,290/-
2.	1/3rd deduction towards personal and living expenses [Rs.32,290 – 10763 = 21527]	Rs.21,527/-
3.	Multiplier 21527x12x11	Rs.28,41,564/-
4.	Towards medical expenses	Rs. 8,17,452/-
4.	Towards loss of consortium	Rs.80,000/-

5.	Towards loss of estate	Rs.15,000/-
6.	Towards funeral expenses	Rs.15,000/-
	Total compensation	**Rs. 37,69,016/-**

11. In view of the aforesaid assessment, the claimants would be entitled for total compensation of Rs.37,69,016/- [**Rupees Thirty Seven Lakhs Sixty Nine Thousands Sixteen Only**] from the date of filing of the petition. Hence, this Court proceeds to pass following order:

ORDER

(a) The appeal is partly allowed.

(b) The appellants are entitled to the total compensation of **Rs.37,69,016/- [Rupees Thirty-Seven Lakhs Sixty Nine Thousands Sixteen Only]** [inclusive of NFL].

(c) The appellants are entitled to the interest at the rate of 9% per annum on enhanced compensation from the date of petition till realization

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

(e) On depositing of the amount of compensation, it be apportioned in the ratio of 70:30 to claimant no.1 and claimant no.2 respectively.

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

[S. G. CHAPALGAONKAR, J.]

Sameer