

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

FIRST APPEAL NO.1693 OF 2022

1. Rajendra s/o Jagannath Baisane,
age 49 yrs, Occ. Business,
2. Sarojini w/o Rajendra Baisane,
age 48 yrs, Occ. Household.

Both R/o Plot No.02-A, Sai Ekta Colony,
Sakri Road, Dhule, Tq. & Dist. Dhule

Appellants.
(orig claimants)

Versus

1. Harshal Sanjay Khairnar,
age 25 yrs, Occ. Car Driver,
R/o Naina Society, Nakane Road,
Deopur, Dhule.
2. Premchand Dnyanoba Kalludomkar
age major, Occ. Car owner,
R/o Yashwant Vinayan Mandir,
Sharda Housing Society, Walwadi
Shivar, Deopur, Dhule.
3. Choramandalam MS General Insurance
Company Limited, Dare House, IInd Floor,
N.S.C. Bose Road, Chennai - 600 001.

Respondents
(orig respondents)

..

Advocate for Appellants : Mr. P. C. Mayure
Advocate for Respondent 2 : Mr. A.D. Sonar
Advocate for Respondent 3 : Mr A.G. Choudhari

...

CORAM : S.G. CHAPALGAONKAR, J.
DATED : 17th AUGUST, 2023.

...

JUDGMENT :-

. The original claimants aggrieved by the judgment and award passed by the M.A.C.T., Dhule dated 11.2.2022 in MACP no.555 of 2018 have filed present appeal under section 173 of the Motor Vehicles Act seeking enhancement of the compensation.

2. It is not in dispute that deceased Hemangi died in a motor-vehicular accident involving car bearing registration No.MH-04/ET-8865. From the averments in the claim petition and the evidence on record, it is apparent that she was pursuing her education in B.Pharmacy second year. The claimants have attempted to put a case that she was working as part time Public Relation Officer and earning Rs.12,000/- p.m. The Tribunal, after appreciation of the evidence discarded contention of the claimants regarding her employment and worked out compensation based on the notional income @ Rs.5,000/- p.m. and consequently passed an award for Rs.8,66,000/- alongwith interest @ 7% p.a.

3. Mr. Mayure, learned counsel appearing for the appellants submits that the claimants have proved the employment of the deceased through evidence of CW 2 Shantikamal Baisane, who has placed on record certificate to that effect at exhibit 45. He submits that there is no reason to disbelieve the evidence of CW 2.

4. Per contra, Mr. Choudhary, learned counsel appearing for respondent no.3 Insurance Company submits that except bare certificate, nothing is produced on record to show that the claimant was employed or she was getting salary of Rs.12,000/- p.m. He would submit that, in case of such employment, some evidence regarding

disbursement of the salary could have been produced on record. In absence of such, the Tribunal has rightly considered notional income @ Rs.5,000/- p.m.

5. Having considered the submissions advanced, it is apparent that case pleaded by the claimants regarding employment of the deceased and her earning of Rs12,000/- has been rightly discarded by the Tribunal for want of sufficient evidence that would inspire confidence. Apparently, the certificate is issued from the same family member as can be seen from the surname. Such certificate cannot be relied . One more reason to affirm finding of the Tribunal is that deceased was pursuing education in B.Pharmacy, which is a full time course. It is not possible to have any other employment. Therefore, finding recorded by the Tribunal discarding case of the claimants regarding her employment and consequential earning cannot be faulted with.

6. Apparently, the claimants have pleaded that deceased was pursuing her education in B.Pharmacy. Statement made in the claim petition as well as evidence affidavit is not disputed by the respondents. On the other hand, they have suggested that the deceased was pursuing her education. Therefore, it can be accepted that the deceased was prosecuting her education in B.Pharmacy Course II nd year at the time of the accident. Tribunal notionally considered income of the deceased @ Rs.5,000/- p.m. If deceased was taking education in the B. Pharmacy Course, certainly within two years she would have completed her graduation and could have earned handsome salary. Considering educational pursues of the deceased she cannot be equated with the labour or skilled labour.

Some better consideration needs to be given while determining her income. The judicial note can be taken of the fact that Pharmacy Graduate can usually gets good package of salary. Hence, this Court finds it appropriate to consider notional income of the deceased @ Rs.8,000/-p.m. Addition of 40% requires to be made towards future prospects and deduction of 50% needs to be made towards personal and living expenses. Multiplier of '18' would be applicable. The Tribunal has granted compensation towards non-pecuniary heads i.e. 1,10,000/- which need not be disturbed. Hence, the compensation can be re-assessed as following table.

Sr. No.	Heads	Amount
1.	Notional income of the deceased Rs.8,000 x 12.	Rs. 96,000/-
2.	Addition of 40% towards future prospects (96,000 + 38,400)	Rs.1,34,400/-
3.	½ deduction towards personal and living expenses (1,34,400 / 2)	Rs.67,200/-
4.	Multiplier of '18 (67,200 x 18)	Rs.12,09,600/-
5.	Non-pecuniary heads as awarded by Tribunal	Rs.1,10,000/-
	Total	Rs.13,19,600/-

7. Resultantly, following order is passed.

ORDER

- i. The appeal is partly allowed.
- ii. The judgment and award passed by the Motor Accident Claims Tribunal, Dhule in MACP No.555 of 2018 dated 11.2.2022 is modified.
- iii. The respondent nos.1 to 3 shall jointly and severally pay a sum of Rs.13,19,600/- (Rs. Thirteen Lakh Nineteen Thousand Six Hundred) to the claimants (inclusive of NFL) together with interest @ 7% p.a.from the date of the claim petition.

- iv. The amount paid/deposited in terms of the award passed by the Tribunal shall be appropriated.
- v. On deposit of the compensation amount as per the modified award, the claimants shall be at liberty to withdraw the same subject to payment of deficit court fees, if any.
- vi. Modified Award be drawn up accordingly.
- vii. First appeal is disposed off. Pending civil application, if any, also stands disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

...

aaa/-