

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

FIRST APPEAL NO. 107 OF 2022.

1. Chaya w/o. Pundlik Badnale,  
Age 55 years, Occ. Household,
2. Pundlik S/o. Madhavrao Badnale,  
Age 58 years, Occ. Nil.
3. Shubham S/o. Pundlik Badnale,  
Age 21 years, Occ. Education,
4. Madhavrao S/o. Ganoba Badnale (died)  
All R/o. Mhada Colony, Babhalgaon Road,  
Latur, Tq. And Dist. Latur.

.. APPELLANTS.

VERSUS

1. Bhagwat s/o. Dhondiram Londhe,  
Age 39 years, Occ. Salesman,  
R/o. Near Lakshmi Temple, Borude Mala,  
Savadi, Tq. and Dist. Ahmednagar.
2. Bajaj Allianz General Insurance Company Ltd.,  
through it's Branch Manager,  
Branch Office, Near Market Yard,  
Kava Road, Latur, Tq. And Dist. Latur.

.. RESPONDENTS.

Mr. B.R. Kedar, Advocate for appellant.  
Mr. Mohit R. Deshmukh, Advocate for respondent No.2.

**CORAM : S.G. CHAPALGAONKAR, J.**

**RESERVED ON : 8TH AUGUST, 2023  
PRONOUNCED ON : 18TH AUGUST, 2023.**

**JUDGMENT :-**

The appellants/original claimants impugn judgment and

award dated 10.3.2021 passed by the MACT, Latur in MACP No. 155 of 2018 in this appeal filed under Section 173 of the Motor Vehicles Act.

2. The appellants had approached the Tribunal under section 166 of the Motor Vehicles Act, thereby claiming compensation towards the accidental death of Gajanan Bandale, who was the son of appellant Nos. 1 and 2 and brother of appellant No.3 and grandson of appellant Nos. 4 and 5. The appellants contend that on 14.1.2018, the Gajanan was proceeding on his motorcycle as a pillion rider. The said motorcycle was dashed by a truck. The Gajanan had suffered multiple injuries resulting into his death. It is contended that the deceased was serving as a Salesman at Saraswati Saree Center at Ahmednagar and earning a monthly salary of Rs. 16,500/-. It is the contention of the appellants that the accident occurred due to the fault on the part of the motorcycle rider as well as the truck driver.

3. The claim was contested by the respondents i.e. owner and insurer of the motorcycle on the ground that the truck driver was responsible for the accident. The claimants have no cause of action against the owner and insurer of the vehicle and resisted the claim. The averments regarding occupation, age and claim of the deceased was denied. The Tribunal framed the issues and recorded evidence. Claimant No.1 Pundlik deposed for himself and on behalf of other claimants. The claimants have further relied upon the evidence of PW-2 Anil Bendre to prove income. The Tribunal, after evaluation of the evidence, passed an award for respondent Nos. 8,91,720/- alongwith interest @ 8% p.a. in favour of the claimants. The aggrieved claimants are before this court in this appeal

4. Mr. B.R. Kedar, learned advocate for the appellant would submit that the deceased was employed with Saraswati Saree Center and

earning a salary of Rs. 16,500/- p.m. The salary certificate is placed at Exh.36 and proved through evidence of CW-2. However, the Tribunal erroneously considered the notional income of the deceased @ Rs. 7,000/- p.m. He would further submit that there were 5 dependents of the deceased. The tribunal ought to have deducted 1/4th amount towards personal and living expenses. However, the Tribunal erroneously deducted 1/2 amount on that count. He would further submit that a paltry sum is awarded towards non-pecuniary heads. Hence, he seeks enhancement of the compensation.

6. Mr. Mohit Deshmukh, learned advocate for the respondent No.2 vehemently opposed the contention of the claimants. He would submit that the deceased was aged 23 years. It is difficult to accept that he was serving with the shop. The tribunal has rightly discarded the evidence of the claimants on that count. He would submit that although there are 5 claimants, except the mother of the deceased, no one can be considered as dependent. He would submit that the Claimant No.2 is the father, Claimant No.3 is the major brother and Claimant Nos.4 and 5 are grandparents of the deceased. There is nothing on record to show that the claimant Nos. 2 and 3 were not earning or they were incapable of maintaining the family. He would submit that in case Bachelor of death, except mother, none can be considered as dependent. Mr. Deshmukh would further submit that the Tribunal has awarded excessive and exorbitant compensation. There is no scope to show further indulgence in the appeal.

8. Having considered the submissions of learned advocates appearing for the parties, apparently, there is no dispute about the accidental death of the deceased. The contentious issue raised before this Court is regarding assessment of compensation. The first contention raised on behalf of the appellant is that the Tribunal has erroneously

considered notional income of the deceased while discarding evidence of CW-2. On that count, it can be observed that the CW-2 was cross-examined. He states as authorized by the owner of Saraswati Saree Center, he deposed before the Court. However, he could not produce on record indicating disbursement of salary to the deceased. He could not place on record appointment order or any other document that would substantiate the case of the claimants regarding employment of deceased with Sarswati Saree Center. He admits that there is separate accounts department with the firm but no document like register of wages or disbursement of the amount has been produced by him. In view of such admission, the Tribunal cannot be faulted in discarding evidence of the claimants witness on the point of income of the deceased. By liberal standards, the Tribunal has estimated notional income of the deceased at Rs. 7000/- p.m. No indulgence is required in such assessment.

9. The next contention advanced on behalf of the claimants is that the Tribunal could not have deducted  $\frac{1}{2}$  of income towards personal and living expenses. However, such contention is also unacceptable for the reason that no specific pleading and evidence is brought on record to show that father of the deceased was not working or physically or mentally incapable to work and maintain his family. Even the claimant No.3, is the major brother or claimant Nos. 4 and 5 who are grand parents cannot be considered dependents of deceased in absence of specific evidence to that effect.

10. As contended by learned advocate appearing for the respondent no.2 only mother can be considered as dependent of the deceased. The Supreme Court of India in the matter of Sarla Varma Vs. Delhi Transport Corporation reported in (2009)7 TAC 677 SC, has considered the aspect of dependency in case of Bachler death, holding that only mother can be considered as dependent of a Bachelor son.

11. The third contention raised on behalf of the claimants is that, a paltry sum is awarded towards non-pecuniary heads. Apparently, the Tribunal has awarded Rs. 30,000/- towards non-pecuniary heads. However, now it is well settled that loss of consortium can be considered even for the parents of the deceased son. Therefore, the claimant Nos. 1 and 2 would be entitled for compensation of Rs. 40,000/- each towards loss of consortium as per the law laid down by the Honourable Supreme Court in the matter of **Magma General Insurance Co. Ltd V. Nanu Ram reported in 2018 SCC Online SC 1546**. The claimants would also be entitled for Rs. 15,000/- towards ambulance charges for carrying the dead body. The claimants are also entitled for compensation of Rs. 30,000/- towards loss of estate and funeral charges.

12. Next contention raised on behalf of the claimants it that the Tribunal has deducted 20% of the amount towards negligence of the motorcycle rider. It is trite that in case of composite negligence, the claimant has a right to prosecute his remedy against either of the joint tort feors. In the present case, the Tribunal has recorded a finding that the accident occurred due to composite negligence of the motorcycle rider and truck driver. In that view of the matter, there was no reason to deduct any amount towards the self-negligence of the deceased, particularly when, he was a pillion rider. Even in such cases, non-wearing a head guard cannot be a ground for applying the principle of contributory negligence against the deceased. Therefore, the contention of the appellants on this point, needs to be accepted and award passed by the Tribunal needs to be modified. In view of the aforesaid observations, the compensation can be reassessed as shown in the following tabular format.

| Sr. No. | Particulars                                                         | Amount          |
|---------|---------------------------------------------------------------------|-----------------|
| 1.      | Annual Income of deceased<br>i.e. 7,000 x 12 = 84000                | Rs. 84,000      |
| 2.      | Add 40% toward future prospects<br>i.e. Rs. 33,600                  | Rs. 1,17,600/-  |
| 3.      | Deduct $\frac{1}{2}$ amount towards<br>personal and living expenses | Rs. 58,800/-    |
| 4.      | Apply multiplier of 18.<br>58,800 x 18                              | Rs. 10,44,000/- |
| 4.      | Add towards loss of consortium                                      | Rs. 80000/-     |
| 6.      | Add towards loss of estate and<br>funeral expenses                  | Rs. 30,000/-    |
| 7.      | Add towards Ambulance Charges                                       | Rs. 15,000/-    |
|         | Total                                                               | Rs.11,69,000/-  |

In view of above award passed by Tribunal require modification. Hence following order.

[i] The appeal is partly allowed.

[ii] The Judgment and award passed by the MACT, Latur in MACP No. 155 of 2018 is modified

[iii] The respondent Nos. 1 and 2 shall jointly and severally pay a sum of Rs.11,69,000/- (Rupees eleven lakhs sixty nine thousand only) to the claimant (including NFL) alongwith interest @ 6% p.a. from the date of filing of the claim petition.

[iv] Compensation already paid/deposited in terms of the award passed by the Tribunal shall be appropriated

[v] Award be drawn accordingly on payment of deficit court fees, if any.

[vi] First appeal is disposed off.

**[S.G. CHAPALGAONKAR]**  
**JUDGE**

grt/-