

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.4168 OF 2008**

1. Smt. Nutan Ganesh Burse,
Age: 37 years, Occu.: Nil.
2. Kum. Yashree Ganesh Burse,
Age: 12 years, Minor,
Occu.: Education.
3. Ku. Aakanksha Ganesh Burse,
Age: 9 years, Minor,
Occu.: Education.

Through natural guardian
Mother-Appellant No.1 for
both Appellant Nos.2 and 3.

4. Smt. Rukhamini Gangadhar Burse,
Age: 82 years, Occ.: Nil,
All R/o Pitale Colony, Nagapur,
Tq. & Dist. Ahmednagar.

..Appellants
(Orig. Claimants)

Versus

1. S. Arjunan,
Age: 41 years, Occu: Driver,
R/o. 18 A Kaliyanoor, Arunthathiyar, St.
Kuppanur, PO: Sankari, Tamilnadu State (Deleted).
2. Mr. V. Thirupathi, S/o L. Vaigundam,
Age: Manjor, Occu.: Business,
R/o. 17, Lind Cross N.T. Peth,
Kalasipalyam, Banglore – 560 002.
3. The Manager,
Royal Sundaram Alliance Insurance Company Ltd.
46, Whites Road, Chennai – 600 014

..Respondents
(Orig. Opponents)

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Mr. L. B. Palod, Advocate for the Appellants.

Mr. A. S. Deshpande, Advocate for Respondent No.3.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 26th JULY, 2023.

PRONOUNCED ON : 07th AUGUST, 2023.

JUDGMENT:-

1. The appellants/original claimants impugn the judgment and award dated 13.08.2008 passed by the Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claim Petition No.521 of 2004, in this appeal filed under Section 173 of the Motor Vehicle Act. (Hereinafter, parties are referred as per their original status before the Tribunal for the purpose of convenience and brevity).

2. The claimants contend that the deceased Ganesh, who was aged about 40 years, died in motor vehicle accident on 26.05.2004. While he was riding his bicycle on Nagar-Manmad Road, the offending Truck bearing No. KA-01-AE-1206 came from the rear side and dashed his bicycle. The deceased suffered multiple injuries resulting into his death. According to the claimants, deceased was doing service as well as driving rickshaw and earning Rs.6000/- per month. The Tribunal after considering the evidence on record, partly allowed the claim and awarded compensation of Rs.3,47,000/- alongwith interest at the rate of 9% per annum from the date of the petition.

3. Mr. Palod, learned Advocate appearing for the claimants submits that the Tribunal passed meager award. The deceased was maintaining family of four persons. He was doing job on the Borewell as well as driving rickshaw. The claimants have specifically pleaded his income to be Rs.6000/- per month. However, the Tribunal considered notional income at the rate of Rs.4000/- per month. He would submit that, although there were four dependents, 1/3rd amount of his income has been deducted towards personal and living expenses. Nothing is granted towards future prospects. The multiplier is wrongly applied. Even, paltry sum is granted towards non-pecuniary heads. Therefore, he urges to allow the appeal granting just compensation.

4. Per contra, Mr. Deshpande, learned Advocate appearing for respondent no.3 supports the Award. He would point out that the present Appeal was dismissed for want of prosecution on 22.03.2010. However, by order dated 22.07.2022 passed in Civil Application No.15864/2010 it has been enhanced subject to condition that the appellants shall not be entitled to the interest for that period.

5. Having considered the submissions advanced by the learned Advocate for the respective parties, it can be gathered that there is no dispute that the deceased lost his life in the motor vehicle accident involving Truck bearing Registration No.KA-01-AE-1206 that was insured with respondent no.3. The insurer has accepted the award passed by the Tribunal. The dispute in the present Appeal is pertaining to the assessment of compensation.

6. It is to be borne in mind that the accident occurred in the year 2004. Although, the claimants have pleaded the income of the deceased to the tune of Rs.6000/- per month by various source, no evidence has been brought on record to prove the same. The evidence of PW-2-Tukaram and PW-3-Janardhan simply suggest the employment of the deceased with Sandip Bore-well. However, nothing is brought on record to show that any amount was disbursed to the deceased from the said firm. The Tribunal has rightly considered the notional income of the deceased to the tune of Rs.4000/- per month.

7. Apparently, the Tribunal has not granted any amount by way of future prospects. The age of the deceased is considered to be 40 years at the time of the accident. Therefore, 25% of his established income will have to be added towards loss of future prospects. The appropriate multiplier to the age of the deceased would be '14'. Since, there

were four dependents on the income of the deceased, 1/4th amount will have to be deducted towards personal and living expenses. The total compensation of Rs.70,000/- can be awarded by way of non-pecuniary heads.

8. Pertinently, this appeal was dismissed in default on 22.03.2010 and restored on 22.07.2012. While restoring the appeal, this Court clarified that the applicants shall not be entitled to claim interest from the date of dismissal till restoration of the appeal i.e. for the period from 22.03.2010 till 22.07.2022. Therefore, claimants would not be entitled to receive interest for the said period.

9. In that view of the matter, the entitlement of the compensation to the claimants can be worked out as shown in the tabular form as under:

Sr. No.	Heads	Amount (Rs.)
1.	Annual loss of earning Rs.4000 x 12 =	Rs.48,000/-
2.	Addition of 25% towards future prospects (Rs.48,000 + Rs.12,000/-)	Rs.60,000/-
3.	1/4 th deduction towards personal and living expenses. Rs.60,000 / 4 = Rs.15,000/- 60,000 – 15,000	Rs.45,000/-
4.	Applying multiplier of '14' (Rs.45,000 x 14)	Rs.6,30,000/-
5.	Rs.70,000/- towards loss of consortium, funeral expenses and loss of Estate	Rs.70,000/-
TOTAL		Rs.7,00,000/-

10. In that view of the matter, the appeal needs to be partly allowed and the award passed by the Tribunal needs to be modified. Hence, the order: -

ORDER

- i. The Appeal is partly allowed.
- ii. The respondent nos.2 and 3 shall jointly and severally pay compensation of Rs.7,00,000/- (Rs. Seven Lakhs only) to the claimants inclusive of amount of 'NFL' along with the interest for the period from 16.09.2004 to 22.03.2010 and thereafter from 22.07.2022 till realization of the amount at the rate of 9% per annum.
- iii. On deposit of the compensation amount, it shall be apportioned equally amongst claimants.
- iv. Award be drawn up on deposit of deficit Court fees, if any.
- v. On deposit / recovery of the compensation amount from respondent nos.2 and 3, it be disbursed to the claimants.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2023