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

FIRST APPEAL NO.336 of 2008

1. Digambar s/o Tukaram Jadhav,
age 50 yrs, Occ. Agri and labour.

2. Sojarbai w/o Digambar Jadhav,
age 45 years, Occ. Household.

Both R/o Patod (BK), Tq. Jalkot,
District, Latur. Appellants
(orig. claimants)

Versus

1. M/s. Kamdra Travels,
361, Shukrawar Peth, Pune.
District Pune.

2. The New India Assurance Company Ltd.,
Through it's Branch Manager,
Chandra Nagar, Latur. ..Respondents..
(orig respondents)

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Advocate for Appellants : Mr. R K Ashtekar
Advocate for Respondent 2 : Mr. V R Mundada.

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CORAM : S.G. CHAPALGAONKAR, J.
Dated : July 27, 2023.

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<u>JUDGMENT :-</u>

1. The appellants/original claimants have approached this Court under section 173 of the Motor Vehicles Act, thereby assailing the assessment of the compensation under the award dated 8.6.2005 passed by the Motor Accident Claims Tribunal, Latur in MACP no.211 of 2005.

2. Mr. Ashtekar, learned counsel appearing for the appellants would submit that this is a case of death of bachelor son of the appellants. The Tribunal, while making assessment of the compensation, applied multiplier based on age of the appellants, which is apparently inconsistent with the settled legal position. He would further submit that the Tribunal has considered notional income of the deceased to the tune of Rs.15,000/- p.a. and assessed the compensation which is also inadequate. He would further submit that the compensation on non-pecuniary heads could not have been granted at least as per the law laid down by the Supreme Court in the case of **National Insurance Company Limited Versus Pranay Sethi & Ors. (2017)16 SCC 680.**

3. Mr. Mundada, learned counsel appearing for the respondent- Insurance Company would submit that in absence of income proof, the Tribunal has rightly considered the notional income of the deceased. However, he admits that multiplier can be corrected.

4. Having considered the submissions advanced by the learned Advocates appearing for the respective parties, it is apparent that the Tribunal has committed an error while applying the multiplier based on age of the parents. It is no more *res-integra* that multiplier has to be applied based on the age of the deceased. The deceased was aged about 20 years. Therefore, the appropriate multiplier in such case would be '**18**'. The Tribunal has considered the notional income of the deceased to the tune of Rs.15,000/- p.a. relying upon the II nd Scheduled under section 163-A of the Motor Vehicles Act. Admittedly, the claim is filed under section 166 of the Motor Vehicles Act. Although, the claimants have pleaded about occupation and income of

the deceased, they could not prove it by leading cogent evidence. However, they themselves have claimed income of the deceased to the tune of Rs.2,500/- p.m. Even, considering the minimum wages at the relevant time, the claim of income made in the claim petition appears to be reasonable. Therefore, this Court is inclined to accept the income of the deceased @ Rs.2,500/- p.m. as pleaded in the claim petition. The addition of 40% of established income is permissible towards future prospects in case of victim below 40 years at the time of accident.

5. Since the deceased was Bachelor and the claimants are his parents, 50% of the amount will have to be deducted towards personal and living expenses of the deceased. Further, addition of 40% amount requires to be made towards future prospects. The claimants, parents of the deceased are also entitled for loss of consortium @ Rs.40,000/- each in the light of the judgment of the Supreme Court in case of **Magma General Insurance Company Limited Versus Nanu Ram Alias Chuhru Ram & Ors. reported in (2008)18 SCC 130.** Applying the aforesaid ratio, the compensation amount needs to be modified as under :-

Sr. No.	Heads	Amount
1. 2. 3.	Loss of future earnings. Rs.2,500 x 12 = 30,000/- Add 40% towards future Prospects. 50% deduction towards personal and living expenses.	Rs.30,000/- + 12,000/- (40% addition) = 42,000 42,000/ 2 = 21,000/-
4.	Multiplier of ‘18’ i.e. Rs.21,000 x 18	Rs.3,78,000/-
5.	Addition of consortium Rs.40,000/- each (3,78,000 + 80,000) = 4,58,000/-	Rs.4,58,000/-
	TOTAL	Rs.4,58,000/-

In the result, following order is passed.

ORDER

i. The appeal is allowed.

ii. The award passed by the Motor Accident Claims Tribunal, Latur in MACP No.211 of 2005 dated 7.9.2007 is hereby modified.

iii. The claimants are entitled for compensation of Rs.4,58,000/-(Rs. Four Lakhs Fifty Eight Thousand) (inclusive of NFL) together with future interest @ 6% p.a. from the date of petition till realization of the amount.

iv. The respondent nos.1 and 2 shall jointly and severally pay the compensation to the claimants together with interest.

v. First appeal disposed off. Pending civil application, if any, also stands disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

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aaa/-