

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2088 OF 2012

1) Sk. Taharabee w/o Sk. Baba
Age: 41 years, Occ: Household,

2) Sk. Firoz s/o Sk. Baba,
Age: 24 years, Occu: Labour

3) Sk. Afroz s/o Sk. Baba,
Age: 22 years, Occ: Labour
All R/o : Near Govt. Hospital,
Mantha, Taluka Mantha,
Dist. Jalna.

...Appellants
(Ori. Claimants)

Versus

1) Ajaykumar Shrivastav,
Age: Major, Occ: Owner of vehicle,
R/o : Plot No. 273, Govt. Society,
Dada Bawdi, Nagpur,
Dist. Nagpur

2) Mohankumar Shri Radhvan Nayar,
Age: Major, Occ: Driver,
R/o: 260, Govt. Press Society,
Dada Bawdei, Nagpur,
District Nagpur

3) The Branch Manager,
Tata AIG General Insurance Co. Ltd.
123/124, IInd Floor,
Shriram Shyam Tower,
S.V. Patel Marg, Kings Way sadar,
Nagpur

..Respondents
(Orig. Respondents)

...

Mr M.M. Patil (Beedkar) Advocate for Appellants
Mr S.M. Gunjal h/f Mr S.R. Deshpande, Advocate for Respondent
Nos. 1 and 2
Mr R.H. Dahat, Advocate for Respondent No. 3

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 24-02-2023

PRONOUNCED ON : 08-03-2023

JUDGMENT :

1. The present appeal impugns the Judgment and award passed by the Motor Accident Claims Tribunal, Jalna in MACP No.5/2011 dated 30-7-2012. The appellants are original claimants. The Tribunal passed an award of Rs. 1,50,000/- in favour of the claimants. The aggrieved claimants are seeking enhancement of compensation by way of present appeal.

2. The claimants approached the Tribunal with pleadings that on 30-10-2010 deceased Shaikh Basmiyah Chotuminya was injured in an accident involving Hyundai Car owned by the respondent No.1 / Mr Ajaykumar Shrivastav, insured with original respondent No. 3 / Tata General Insurance Company. He succumbed to the accidental injuries. He was aged 45 years and was bread earner of the family. He was getting Rs.15,000/- per month being the meson.

3. Mr Milind Patil (Beekar), learned advocate appearing for the appellants would submit that the Tribunal has passed inadequate award. He would submit that the age of the deceased was 45 years

at the time of death, however, Tribunal erroneously applied multiplier of 5 only. He would submit that the Tribunal did not consider future prospects of the deceased. Similarly, inadequate compensation is granted towards non-pecuniary heads. He would urge to enhance the compensation by correcting the aforesaid errors.

4. The learned advocate appearing for the respective respondents would support the Judgment award passed by the Tribunal.

5. Having considered the submissions advanced by the learned advocates appearing for the respective parties, this Court finds that in absence of documentary evidence confirming age of deceased, the Tribunal has rightly relied upon the contents of the post-mortem report showing the age of the deceased as 60 to 65 years. The inquest panchanama at Exh. 24 also records the age of the deceased in the range of 60 to 65 years. The claimants failed to place on record positive evidence confirming age of the deceased to be 45 to 50 years. In absence of positive evidence, Tribunal has rightly relied upon the post mortem report and recorded the finding that the age of the deceased was in the range of 60 to 65 years at the time of accident. However, the multiplier of 5 adopted by the Tribunal appears to be erroneous. For the age group between 60 to 65 years, the multiplier 7 has been prescribed. Therefore, application

of multiplier requires correction accordingly.

6. The Tribunal considered the notional income of the deceased to the tune of Rs. 3,000/- per month. The claimants have not placed on record documentary evidence to establish exact income of the deceased. The claimants contend that the deceased was meson, but except bare statement, no evidence is pressed into service. Considering the minimum wages at the relevant time, the Notional income of the deceased is fixed to the tune of Rs.3,000/- per month. The finding of Tribunal is based of appreciation of evidence and established method. It requires no interference is called for at appellate stage.

7. So far as the compensation towards non-pecuniary heads is concerned, the Tribunal added Rs.25,000/- towards Consortium and Rs.5,000/-towards funeral expenses. However, nothing is granted towards loss of estate. The Supreme Court of India in the matter of ***National Insurance Company Vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680*** as well as ***MAGMA General Insurance Company Ltd. Vs. Nanu Ram*** reported in ***(2018) 18 SCC 130*** laid down guidelines for assessment of compensation in case of accident claims. Applying the said guidelines, the claimants are entitled for compensation as under : -

Sr. No.	Particulars	Amount (Rs.)
1.	Loss of future income (Rs.24,000X7) After deducting 1/3 rd amount towards personal and living expenses.	1,68,000/-
2.	The compensation towards non-pecuniary damages including loss of consortium to claimant No.1.	70,000/-
3.	Loss of consortium to claimant Nos. 2 and 3 Rs.40,000/- each.	80,000/-
	Total	3,18,000/-

8. Hence, the award passed by the Tribunal is modified accordingly.

ORDER

- (i) The appeal is partly allowed with proportionate cost.
- (ii) The respondent Nos. 1 to 3 shall jointly and severally pay the compensation of Rs. 3,18,000/- to the claimants along with interest @ 7% per annum from the date of filing of claim petition till the realisation of the entire amount (inclusive of the amount paid under 'No Fault Liability).
- (iii) The amount already paid / released as per award of Tribunal shall be appropriated.
- (iv) The Award be drawn up accordingly.

[S.G. CHAPALGAONKAR, J.]

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