

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

**FIRST APPEAL NO.3129 OF 2022**

Cholamandalam MS General Insurance Co. Ltd.,  
Branch Office at 112/113, Agarwal Plaza,  
1 st Floor, Opposite Gurunanak Petrol Pump,  
Jalana Road, Aurangabad.  
Through It's Legal Manager.  
Cholamandalam MS General Insurance Co. Ltd.  
Shop No.4, Plot No.33, Rokdiya Hanuman Colony,  
Opp. LMS Jeweller Jalna Road, Aurangabad.  
Through its Authorized Signatory.

APPELLANT  
[Ori. Resp. No.3]

VERSUS

1] Smt. Manisha wd/o. Manoj Pasare,  
Age: 34 years, Occu: Household,

2] Kum. Srujal d/o Manoj Pasare,  
Age: 14 years, Occu: Education,2

3] Kum. Ishwari d/o Manoj Pasare,  
Age: 11 years, Occu: Nil,

4] Jagannath s/o Maganappa Pasare,  
Age: 68 years, Occu: Nil,

5] Sou. Hirabai w/o Jagannath Pasare,  
Age: 60 years, Occu: Household,

6] Smt. Sonabai wd/o Maganappa Pasare, (dead)

7] Kedar S/o. Jagannath Pasare,  
Age: 32 years, Occu: Education,  
respondent Nos.2 and 3 are minors  
under guardinship of respondent No.1.

All R/o. Uttara Nagari, Brijwadi,  
Chikalthana, Aurangabad.

8] Sandeep s/o Baburao Shinde,  
Age: 37 years, Occu: Driver,  
R/o. At Post Daulatabad,  
Taluka and Distict-Aurangabad.

9] Kaduba s/o Keshavrao Jadhav,  
Age: Major, Occu: Business,  
R/o. At Post Daulatabad,  
Taluka and Distict-Aurangabad.

**RESPONDENTS**

[Resp. No.1 to 07 are ori. Claimants &  
Resp. No.8 to 09 are ori. Respondents  
No.01 and 02].

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Mr. A.G. Choudhary, Advocate for appellant.  
Mr. A.P. Baraskar Advocate for respondent Nos.1-6

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**CORAM : S.G. CHAPALGAONKAR, J.**  
**DATE : 27<sup>th</sup> JULY, 2023**

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**JUDGMENT :-**

1. This first appeal takes an exception to the judgment and Award dated 27.6.2022 passed by the Motor Accident Claims Tribunal, Aurangabad thereby awarding the compensation of Rs.29,42,832/- alongwith interest @ 9% p.a. to the claimants.

2. The appellant/insurer raised challenge to the quantum of the award on the ground that the Tribunal has granted compensation under the head of loss of love and affection as well as loss of consortium.

3. Mr. Choudhary, learned counsel appearing for the Appellant-insurance company submits that the Tribunal could not have awarded the sum of Rs.3 Lakhs to the claimants under the head of loss of love and affection, once compensation towards loss of consortium has been awarded. He placed reliance on a judgment of the Supreme Court in the case of **Oriental Insurance Company Ltd. Vs. Rinku Devi** reported in 2019 SCC online Del 10493 as well as **New Assurance Company Limited Vs. Somvati and others** reported in (2020) 9 Supreme Court Cases 644. Both the judgments have categorically held that the loss of love and affection is not an independent head to be considered for grant of compensation, once the compensation for loss of consortium is awarded on the basis of ratio laid down in the case of **Magma General Insurance Company Limited Versus Nanu Ram Alias Chuhru Ram & Ors.** reported in (2008)18 SCC 130.

4. Learned counsel appearing for the respondents-claimants supports the award contending that the Tribunal has passed the award based on well settled principles of law. He relies upon the judgment in the case of **Sarla Verma & Ors. Versus Delhi Transport Corporation and Ors.**(2009) 6 SCC121 : AIR 2009SC 3104 and **National Insurance Company Limited Versus Pranay Sethi & Ors.** (2017)16 SCC 680 to submit that principles of assessment are settled and various heads for grant of non-pecuniary loss have been approved by the Courts.

5. Having considered the submissions advanced, it can be gathered that the Supreme Court of India has recognized the grant of consortium to the claimants, however, loss of love and affection is not approved to be an independent head.

6. In that view of the matter, the compensation of Rs.3 Lakh awarded by the Tribunal on count of loss of love and affection cannot be sustained under law.

7. Next submission advanced on behalf of the appellant is that, the Tribunal awarded excessive interest @ 9% p.a. on the compensation amount which requires modification. It is trite that section 171 of the Motor Vehicles Act provides for grant of interest on the compensation amount. Discretion is left with the Tribunal to grant appropriate rate of interest. It is dependent upon the rates of the interest on the fixed deposits by the Nationalized Bank.

8. In the present case, though the interest granted by the Tribunal is challenged, no material is brought on record to demonstrate that interest rate during the period of 2014 till the disposal of the claim petition were less than 9% p.a. or the Tribunal has arbitrarily exercised the jurisdiction. In that view of the matter, the contention in this regard cannot be accepted. Resultantly, the appeal needs to be partly allowed. Hence, the order.

#### **ORDER**

- i. The appeal is partly allowed.
- ii. The Award passed by the Tribunal is modified to the extent of grant of compensation on head of loss of love and affection.
- iii. The claimant would be entitled for total compensation of Rs.26,42,832/- alongwith interest @ 9% p.a.

- iv. Rest of the operative part of the Tribunal's order shall be maintained as it is.
- v. First appeal disposed off. Pending civil application, if any, also stands disposed off.
- vi. The amount deposited by the Insurance Company shall be disbursed to the claimants in terms of the modified award. Balance of amount be refunded to the Insurance Company.

[ S.G. CHAPALGAONKAR ]  
JUDGE

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aaa/-