

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1766 OF 2002

1. Mrs. Najma Begum Mohammed Saheed Ahmed Pathan,)
Age 38 years.)
2. Kumari Nidha Fatma Mohammed Saheed Ahmed Pathan,)
Age 16 years.)
3. Master Shahanbaz Mohammed Saheed Ahmed Pathan,)
Age, 14 years.)
4. Kumari Heera Fatma Mohammed Saheed Ahmed Pathan,)
Age 12 years.)
5. Kumari Sawa Fatma Mohammed Saheed Ahmed Pathan,)
Age 10 years.)
6. Kumari Heena Fatma Mohammed Saheed Ahmed Pathan,)
Age, 6 years.)
7. Master Sahajeb Ahmed Mohammed Saheed)
Ahmed Pathan, Age 3 years.)
Appellant Nos. 2 to 7 minor by their mother and)
next friend Mrs. Najma Begum Mohammed Saheed)
Ahmed Pathan, Appellant No.1. All the Appellants are)
residing at Post and Village Samdan,)
Mohalla Mahel, Azad Nagar, Dist. Farukhabad,)
Uttar Pradesh State.)

...Appellants
(Original Applicants)

Versus

1. Mrs. Parveen Tarique A. Siddique)
603, Diamond Apartment, Jasmine Mill Road,)
Dharavi, Mahim, Mumbai - 400 017)
(Owner of Motor Lorry No. MRL-6762))
2. Mr. Abdulbhai Haji Ibrahimbhai Kuskiwala,)
Ganchiwada, Post Meghraj, Modassa, Gujarat State)
(Owner of Motor Truck No. GJ-7-U-7004).)
3. M/s. United India Insurance Co. Ltd.)
Bombay Regional Office No.1.)

Stadium House, 5th Floor, Churchgate, Mumbai-400020)
4. M/s. United India Insurance Co. Ltd.)
Bombay Regional Office No.1,)
Stadium House, 5th Floor, Churchgate, Mumbai-400020)

... Respondents
(Orig. Opp. Parties Nos.
1 & 2 and Insurers 1 & 2)

Mr. T. J. Mendon for the Appellants.
Mr. Shubham Misar i/b H.G. Misar & Sachin Chindarkar &
Respondent Nos. 3 & 4.

CORAM : S. G. DIGE, J.

DATE : 6th FEBRUARY 2023.

JUDGMENT:

1. This appeal is preferred by the original claimants for enhancement of compensation.

2. It is contention of learned counsel for the Appellant/claimants at the time of accident deceased was 48 years old, multiplier should be 13 but Tribunal has wrongly applied 9. The learned counsel further submits that future prospects are not awarded. The consortium amount and funeral expenses and loss of estate are not awarded. The tribunal has deducted 1/3rd amount for personal expenses. It should be 1/5th as there are seven claimants. The learned counsel further submits that the claim petition was filed in the

year 1995, but the Tribunal has awarded the compensation from 1st January, 1998 which is improper, hence requested to allow the appeal. He relied on *National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)*.

3. The learned counsel for the Respondent Nos. 3 and 4-Insurance Company submits that deceased was travelling in commercial vehicle, it is admitted in the claim petition by the claimant that deceased was travelling in the commercial vehicle, but Tribunal has not considered this fact. Appellant No.1 who examined before the Tribunal has admitted that she does not know how much amount her husband was earning. In spite of that, the tribunal has considered the monthly income of deceased on higher side i.e. Rs. 4,000/- per month, the order passed by the tribunal is legal and valid.

4. I have heard both learned counsel, perused judgment and order passed by Motor Accident Claims Tribunal, Mumbai (for short '**the Tribunal**'). In respect of issue of multiplier, it has come on record that at the time of accident deceased was 48 years old. As per the view of Hon'ble Apex Court in case of *Sarla Verma & Ors vs Delhi Transport Corp.& Anr. AIR 2009 SC 3104* the proper multiplier is 13 but the Tribunal has applied the multiplier of 9 which is improper. The Tribunal has not awarded future prospects, as per the view of Hon'ble Apex Court in the case of **Pranay Sethi (supra)**. The claimants are entitled for future prospects of 25%, as he was more than 45 years old. The Tribunal has deducted 1/3rd amount for personal expenses.

There are seven claimants, deduction should be $1/5^{\text{th}}$. The Tribunal has awarded loss of consortium Rs. 10,000/-, loss of the estate Rs. 10,000/- and funeral expenses Rs. 2,500/-, it should be 40,000/- each along with 10% increase in every three years, as per the view of *N. Jayasree & Ors. vs. Cholanmandalam MS General Insurance Company Limited 2021 SCC OnLine SC 967*. The Tribunal has awarded the rate of interest @ 9% per annum from 1st January, 1998 till realization of amount, it should be from the date of filing claim petition. Though, learned counsel for the Respondent Nos. 3 & 4 has raised objections regarding that deceased was travelling in commercial vehicle and no monthly income of deceased proved before the Tribunal but, the respondents have not challenged the order passed by the tribunal. Hence, without any appeal these points cannot be considered.

5. In view of above calculations, claimants are entitled for following compensation.

1.	Age of the deceased	48 years
2.	Income	4000/-p.m.
3.	Future Prospect 25%	1000/-
	Multiplier for age 48 years	13
	4000X12X13=	Rs.6,24,000/-
4.	Consortium (seven claimants)	Rs.03,08,000/-
5.	Funeral	16,500/-
6.	Loss of Estate	16,500/-

	Rs. 09,65,000/-

6. The Tribunal has awarded compensation of Rs.3,10,320/-if this amount deducted from the amount calculaed by this Court it comes to Rs. 4,55,180/-.

7. In view of the above calculations, the appellants/claimants are entitled for amount of Rs. 4,55,180/-. Hence, I pass following order.

ORDER

- i. The appeal is allowed.
- ii. The claimants are entitled for the enhanced amount of Rs. 4,55,180/-, out of this amount around Rs. 3,40,000/- amount is awarded as consortium, so claimants are entitled interest @ 7.5% per annum on this amount from 1 January, 2018 till realization of amount, on remaining amount of Rs. 1,15,180/-. The claimants are entitled rate of interest @ 7.5% per annum from date of filing claim petition till realization of amount.
- iii. The claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.

(S. G. DIGE, J.)