



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

FIRST APPEAL NO. 1735 OF 2019

1. Rashidbhai Miyabhai Shaikh
Age: 55 Years, Occ: Nil,
2. Gulshanbi Rashidbhai Shaikh,
Age: 51 Years, Occ.: Housewife,
3. Miyabhai Abdulbhai Shaikh,
Age:78 years, Occ.: Nil,
4. Maheebubbi Miyabhai Shaikh,
Age: 73 Years, Occ.: Nil,
All R/o. Momin Aakhada,
Tal. Rahuri, Dist. Ahmednagar

...Appellants
(Ori. Claimants)

Versus

1. Sikandar Fakir Mohammad Shaikh,
Age: 45 years, Occ.: Transport,
R/o.: Vitbhatti, Tanpure wadi Road,
Behind Satkar Hotel, Rahuri,
Tal. Rahuri, Dist. Ahmednagar.
(Owner of TATA Ace Zip No.MH-17-BD-0980)
2. The Manager,
ICICI Lombard General
Insurance Company Ltd.
A/p:- "Adventure Towers," Third Floor,
In front of Oberoi Hotel,
Nagar Manmad road, Ahmednagar.

...Respondents
(Ori. Opponents)

...
Mr. Abhijit C. Darandale, Advocate for Appellant
Mr. Vinayak N. Upadye, Advocate for Respondent No.2
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 26th SEPTEMBER, 2024

ORAL JUDGMENT :

1. Heard.

2. Admit. Taken up for final hearing with the consent of the parties.

3. This appeal filed under Section 173 of the Motor Vehicles Act, challenges the judgment and award dated 27/09/2018, passed by the Motor Accident Claims Tribunal, Ahmednagar, in M.A.C.P. No.188/2015.

4. Facts leading to this first appeal can be summarized as follows:

Claimant filed claim petition contending that on 26/03/2015, Sadique Rashidbhai Shaikh along with driver Sunil Katore was proceeding to deliver fish from Rahuri to Shirur by Tata Ace Zip (mini tempo) bearing No.MH-17-BD-0980. Sadique was working as cleaner on the said vehicle and was sitting on the cleaner's seat. Sunil was driving the mini tempo in rash and negligent manner and while overtaking another vehicle he gave dash to the said vehicle. He dashed his cleaner side to the said vehicle which was proceeding ahead of the tempo. Due to the dash Sadique received serious injuries and died on the spot.

Crime was registered against driver of the tempo at C.R. No.I-65/2015, with Taluka Police Station, under Sections 304(A), 279, 337, 338, 427 of Indian Penal code and Sections 183 and 184 of the Motor Vehicles Act.

5. Appellants/claimants filed claim petition seeking compensation of Rs.24,45,000/-, but they restricted their claim to Rs.8,00,000/-. The Tribunal after recording evidence partly allowed the claim and awarded compensation of Rs.4,38,000/- along with interest @ 8.5% per annum. Claimants are aggrieved by the inadequate compensation.

6. Heard learned advocate for appellants/claimants and learned advocate for respondent No.2/Insurance Company. Though served, none appears for respondent No.1.

7. Learned advocate for appellants submits that the Tribunal has wrongly assessed notional income of deceased at Rs.4,000/- per month. Considering the fact that owner of the tempo was paying salary of Rs.4,000/- per month to deceased Sadique while he was working as cleaner and he was also earning Rs.4,000/- by doing labour work on the same tempo, the Tribunal ought to have assessed monthly income of deceased at Rs.8,000/-. Tribunal has failed to give compensation towards future prospects. As there are two claimants, in terms of ***National Insurance Co. Ltd. v. Pranay Sethi and Others, 2017 (16) SCC 680***, Tribunal ought to have awarded compensation of Rs.40,000/- each towards loss of consortium. He, therefore, submits that claimants are entitled for enhanced compensation.

8. Learned advocate for respondent No.2/Insurance Company, on the other hand, supported the impugned judgment and award. He submits that the Tribunal has assessed notional income of deceased based on material placed on record. In the alternate, he submits that claimants are not entitled to claim interest on future prospects, if this Court is inclined to grant future prospects to them. In support of said submission, he relied on ***Suman and Others Vs. The Branch Manager, Bajaj Allianz General Insurance Co. and Others, MANU/MH/4390/2021*** and judgment dated 21/09/2023, passed by this Court in First Appeal No.1579/2006 (*Smt. Kalpana Madhu Gavali and Others Vs. M.S.R.T.C., Pune*).

9. Heard learned advocate for appellants/claimants and learned advocate for respondent No.2/Insurance Company at length. Perused the record.

10. Fact of accidental death of deceased is not in dispute. Claimants have claimed that deceased was earning Rs.4,000/- per month as cleaner and was getting Rs.4,000/- by doing labour work on the same tempo. The first respondent/owner admitted that he was giving Rs.4,000/- salary to deceased as cleaner. On that basis Tribunal has assessed notional income of deceased at Rs.4,000/- per month. Considering the fact that deceased was supporting family of four persons, it is not possible to accept that he was earning only

Rs.4,000/- per month.

The Ministry of Labour and Employment has issued notification under Section 4(1B) of the Employee's Compensation Act, 1923, in the Gazette of India on 31/05/2010, specifying minimum monthly wages of unskilled workers at Rs.8,000/- per month. In this view of the matter, notional income of deceased needs to be assessed at Rs.8,000/- per month.

11. There is substance in the contention of claimants that Tribunal has failed to award compensation towards future prospects. As the deceased was of 27 years age, at the time of accident, claimants are entitled for 40% addition towards future prospects. Claimants are further justified in contending that in terms of **Pranay Sethi** (supra) they are entitled for Rs.40,000/- each towards loss of consortium.

12. Though learned advocate for Insurance Company has placed reliance on **Suman** (supra) and the decision rendered by learned Single Judge of this Court in First Appeal No.1579/2006, contending that no interest on future prospects is payable, in view of decision of the Division Bench of this Court in **Sunil Shankar Patil and Others Vs. Suhel Shaukat Shaikh and Others, [MANU/MH/2043/2024]**, the said argument is unacceptable.

13. For the aforestated reasons, claimants are entitled for

following compensation:-

Sr. No.	Heads	Amount (Rs.)
1	Notional income Rs.8,000/- + future prospects @ 40% of computed income i.e. Rs.3,200/-	11,200/-
2	Monthly dependency compensation after deducting 50% towards personal and living expenses (Rs.11,200 - Rs.5,600)	5,600/-
3	Annual dependency Compensation (Rs.5,600 x 12)	67,200/-
4	Pecuniary Losses (Annual dependency multiplied by multiplier) (Rs.67,200 x 17)	11,42,400/-
5	Non-pecuniary Losses:- Loss of Consortium Rs.40,000/- to each claimants (Rs.40,000 x 2) = Rs.80,000/- Loss of Estate = Rs.15,000/- Funeral Expenses = Rs.15,000/- (as already granted)	1,10,000/-
6	Total compensation needs to be awarded (Rs.11,42,400 + Rs.1,10,000)	Rs.12,52,400/-
7	Compensation awarded by the Tribunal	Rs.4,38,000/-
Total Enhanced Compensation (Rs. 12,52,400 - Rs.4,38,000)		Rs.8,14,400/-

14. In the result, following order:-

ORDER

- (I) First appeal is partly allowed with proportionate costs.
- (II) Impugned judgment and award is modified to the extent that claimants are held entitled for enhanced compensation of Rs.8,14,400/- along with interest @ 8.5% per annum from the date of application till its realization.
- (III) Claimants shall pay the deficit Court fees, as per rules.

(NITIN B. SURYAWANSHI, J.)