IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 502 OF 2003

1. Laxmibai w/o. Nagnath Navtake,
Age 28 yrs., Occu. Household,

2. Saurabh s/o. Nagnath Navtake,
Age 9 months, Minor U/g. of
natural mother i.e. claimant No.1.

3. Sow. Chandrakala w/o. Mandolappa
Navtake, Age 58 yrs., Occu. Nil,

4. Mandolappa s/o. Nagnathappa Navtake
(Deleted as per order dated 4.10.2022)

All R/o. Kamkheda, Tq. Renapur,
Dist. Latur. ....Appellants
(Claimants)

Versus

1. Sangmeshwar s/o. Rameshappa These,
Age 30 yrs., Occu. Business,
R/o. Kavalram Galli, Ausa, Dist. Latur.

2. The Branch Manager,
New India Assurance Co. Ltd.,
Chandra Nagar, Latur.
Cover Note No. 572471 from
20.5.98 to 19.5.99. ....Respondents

Mr. S.S. Halkude, Advocate for the appellants.

Mr. M.M. Ambhore, Advocate for respondent No. 2.

WITH
FIRST APPEAL NO. 503 OF 2003

1. Sima w/o. Vijaykumar Valsange,
(Deleted as per order dated 4.10.2022)

2. Vishal s/o. Vijaykumar Valsange,
Age 16 yrs, Minor,

3. Vinayak s/o. Vijaykumar Valsange,
Age 12 yrs, Minor,

4. Vishakha d/o. Vijaykumar Calsange,
Age 8 yrs, Minor,

Claimant Nos. 2 to 4 are minors and
u/g. of their natural mother
Claimant No. 1 Sima Vijaykumar Galli,
Ausa, Tq. Ausa, District Latur. ....Appellants
(Claimants)

Versus

1. Sangmeshwar s/o. Rameshappa These,
Age 30 yrs., Occu. Business,
R/o. Kavalram Galli, Ausa, Dist. Latur.

2. The Branch Manager,
New India Assurance Co. Ltd.,
Chandra Nagar, Latur.
Insurance Cover Note No. 572471 from
25.5.98 to 19.5.99. ....Respondents

Mr. S.S. Halkude, Advocate for the appellants.

Mr. Mohit R. Deshmukh, Advocate for respondent No. 2.

WITH
FIRST APPEAL NO. 504 OF 2003

Jagdish s/o. Devidasrao Patil,
Age 39 yrs., Occu. Government Service,
R/o. 3/3, Badmen’s Quarters, Walkeshwar,
Mumbai, now R/o. At and post Ujani,
Tq. Ausa, Dist. Latur. ....Appellants
(Claimants)

Versus

1. Sangmeshwar s/o. Sureshappa These,
Age 30 yrs., Occu. Business,
R/o. Kavalram Galli, Ausa, Dist. Latur.

2. The Branch Manager,
New India Assurance Co. Ltd.,
Chandra Nagar, Latur.
(Cover Note No. 572471 from
20.5.1998 to 19.5.1999.) ....Respondents

Mr. S.S. Halkude, Advocate for the appellants.

Mr. Mohit R. Deshmukh, Advocate for respondent No. 2.

WITH

FIRST APPEAL NO. 508 OF 2003

Chandrashekhar s/o. Nagnathappa Khanapure, Age 40 yrs., Occu. Govt. Service, R/o. Ambajogai Road, Latur, Tq. and Dist. Latur. ....Appellants (Claimants)

Versus

1. Sangmeshwar s/o. Sureshappa These, Age 30 yrs., Occu. Business, R/o. Kavalram Galli, Ausa, Dist. Latur.

2. The Branch Manager, New India Assurance Co. Ltd., Chandra Nagar, Latur. (Insurance Cover Note No. 572471 Valid from 20.5.98 to 19.5.99. ....Respondents

Mr. S.S. Halkude, Advocate for the appellants.

Mr. Mohit R. Deshmukh, Advocate for respondent No. 2.

WITH
FIRST APPEAL NO. 509 OF 2003

1. Rajeshwari w/o. Dhananjay Utage, Age 35 yrs., Occu. H.H.,

2. Sweta d/o. Dhananjay Utage, Age 13 yrs., Minor,

3. Rahul s/o Dhananjay Utage, Age 9 yrs, Minor,

4. Sanchita d/o. Dhananjay Utage, Age 9 yrs., Minor,

Minors Sr.Nos. 2 to 4 are under guardianship of claimant No. 1

All R/o. Utage-Galli, Ausa, Tq. Ausa District Latur. ....Appellants (Claimants)

Versus

1. Sangmeshwar s/o. Sureshappa These, Age 30 yrs., Occu. Business, R/o. Kavalram Galli, Ausa, Dist. Latur.

2. The Branch Manager,
New India Assurance Co. Ltd.,
Chandra Nagar, Latur.
Insurance Cover Note No. 572471 from
20.5.1998 to 19.5.1999. ....**Respondents**

Mr. S.S. Halkude, Advocate for the appellants.
Mr. Mohit R. Deshmukh, Advocate for respondent No. 2.

CORAM : ARUN R. PEDNEKER, J.
DATED : 14/08/2024

JUDGMENT :

1) The first appeals are filed by the original claimants challenging the common judgment and order passed by the Motor Accidents Claims Tribunal, Latur (for brevity hereinafter referred to as 'MACT, Latur') dated 23.7.2002 in MACP Nos. 185, 191, 223, 307 and 323 of 1999 for enhancement of compensation amount.

2) First Appeals Nos. 502, 503 and 509 are in respect of the death claims and First Appeal Nos. 504 and 508 are in respect of injury claims. The appeals arise out of the same accident.

3) The facts leading to the institution of the appeals are summarized as under :-

In first appeal No. 502/2003 (arising out of MACP No. 185/1999), appellants/Claimant Nos. 1 to 4 are legal heirs of deceased Nagnath Navtake. At the time of accident the deceased was of 32 years old. In First appeal No. 503/2023 (arising out of MACP No. 191/1999), appellants/claimants are legal heirs of deceased Vijaykukar Valsange and in First Appeal No. 509/2003 (arising out of MACP No. 307/1999), appellants/claimants are legal heirs of deceased Dhananjay Utge. It is the case of the claimants that deceased were travelling in Tata Suma Jeep bearing No. MH-24/A7460 along with other injured claimants in First Appeal No. 504/2004 (arising out of MACP No. 223/1999) and First Appeal No. 508/2003 (arising out of MACP No. 323/1999) from Mumbai to Ausa/Latur. When the said jeep reached Pandherwadi, near Shrikrishna Dhaba, the jeep collied with a tanker and the above mentioned occupants of jeep died in the said accident. The other claimants have sustained injuries in the said accident. The insurance claim in all claim petitions is filed against the owner and insurance company of the jeep.

4) In death claims, the MACT, Latur held that driver of the jeep and driver of the tanker were equally responsible for the accident and has granted compensation of Rs.1,82,500/- in MACP Nos. 185/1999 and 191/1999 and amount of Rs.2,42,000/- in MACP No. 307/1999 with interest at the rate of 9% p.a. from the date of petitions till realisation of the full amount to the claimants. Since the driver of the jeep was held equally responsible, the jeep owner and it’s Insurance Company were made liable to pay the above compensation to the extent of their negligence i.e. at the rate of 50% of total compensation determined.

5) In injury claims i.e. MACP No. 223/1999 and 323/1999 the MACT Latur has granted 50% of the lump-sum amount of Rs.1,50,000/- and Rs. 1,22,536/-, respectively, with interest at the rate of 9% p.a. from the date of the petition till realisation of full amount to the claimants. The Tribunal has held that the injured claimant Chandrashekhar in MACP No. 323/1999 has only sustained permanent disability to the extent of 15% due to injuries

sustained to him in the accident. In respect of claimant Jagdish in MACP No. 223/1999, the Tribunal has held that the claimant has not become permanently disabled due to the injuries sustained to him, but he sustained multiple injuries in the accident.

6) The learned counsel appearing for the appellants submits that this is the case of composite negligence and the deceased were occupants of the jeep. The learned counsel for the appellants submits that the Tribunal has wrongly casts liability on respondent/Insurance Company only to the extent of 50% and the entire claim can be fasten upon the Insurance Company of the jeep being the joint tort feasor. The learned counsel relies upon the judgment delivered by this Court in **Writ Petition No. 2067/2023 with connected matters dated 1.3.2024 (Miss Arpita d/o. Tukaram Panchal Vs. Ramchandra s/o. Shrimantra Dhoble)**, whereby relying upon the judgment of Hon'ble Supreme Court in the case of **Khenyei Vs. New India Assurance Co. Ltd. And Ors., reported in 1959 SCC 273**, this Court has held that in the case of composite negligence, claimants are entitled to sue both or any one of the joint tort feasors and to recover the entire amount of compensation as liability from one of the joint tort feasors as the liability is joint and several. In case of composite negligence, apportionment of compensation between two tort feasors vis-a-vis the claimants is not permissible and the claimant can recover whole damages from any of them.

7) The learned counsel has also taken me through para 47 of the impugned judgment and submits that in MACP No. 185/1999 the computation made is erroneous by the Tribunal as multiplier of 15 is applied

instead of 16 to the annual income of the deceased. He further submits that the claimants have been granted only Rs.5,000/- towards funeral expenses of which 50% is further deducted towards the liability of the tanker owner.

8) The learned counsel appearing for the Insurance Company have strongly opposed the appeals filed for enhancement of compensation.

9) In First Appeal No. 502/2003, having considered the submissions of the learned counsel for the appellants and the learned counsel appearing for the Insurance Company, it is seen that the Tribunal has considered the income of the deceased as Rs. 3000/- per month and deducted 1/3rd amount towards personal expenses and had applied multiplier of 15 and had directed the respondents to pay the compensation amount to the extent of liability of 50% only which is not permissible in law in view of the judgment in the case of Khenyei cited supra. Considering the age of the deceased as 32 years at the time of accident, the Tribunal ought to have applied multiplier of 16. The Tribunal ought to have deducted 1/4th amount towards personal expenses. For the funeral expenses, the Tribunal ought to have granted amount of Rs.15,000/- and towards loss of estate Rs. 15,000/-. Towards consortium the Tribunal ought to have granted an amount of Rs.40,000/- (total Rs. 40000/- x 4 = Rs. 1,60,000/-) to each claimant. Thus, by deducting the amount already paid to the claimants, the claimants are entitled to get compensation as follows :-

	Particulars	Amount
	Monthly income of the deceased	Rs.3000/-
	1/4th towards personal deductions	Rs. 750/-

	Total	Rs.2250/-
	Rs. 2250/- x 12 (months) x 16 (multiplier as deceased was 41 years old at the time of accident)	Rs.4,32,000/-
	Consortium (Rs.40000/- x 4 claimants)	Rs.1,60,000/-
	Loss of Estate	Rs.15,000/-
	Funeral expenses	Rs.15,000/-
	Total Compensation	Rs.6,22,000/-
	Amount awarded by MACT needs to be deducted	Rs.1,82,500/-
	Compensation payable after deduction	Rs.4,39,500/-

The claimants are also entitled to get interest at the rate of 7.5% from the date of claim petition till the realization of the entire amount of the additional payable compensation. Thus, the First Appeal No. 502/2003 is allowed and disposed of accordingly.

10) In First Appeal No. 503/2003, having considered the submissions of the learned counsel for the appellants and the learned counsel appearing for the Insurance Company, it is seen that the Tribunal has considered the income of the deceased as Rs. 3000/- per month and deducted 1/3rd amount towards personal expenses and had applied multiplier of 15 and had directed the respondents to pay to the extent of 50% liability only which is not permissible in view of the judgment in the case of **Khenyei** cited supra. Considering the age of the deceased at the time of accident, the Tribunal has rightly applied multiplier of 15. The Tribunal ought to have deducted 1/4th amount towards personal expenses. For the funeral expenses, the Tribunal ought to have granted amount of Rs.15,000/- and towards loss of estate Rs. 15,000/-. Towards consortium the Tribunal ought to have granted an amount of Rs.40,000/- (total Rs. 40000/- x 4 = Rs. 1,60,000/-) to each

claimant. Thus, by deducting the amount already paid, the claimants are entitled to get compensation as follows :-

	Particulars	Amount
	Monthly income of the deceased	Rs.3000/-
	1/4th towards personal deductions	Rs.750/-
	Total	Rs.2250/-
	Rs. 2250/- x 12 (months) x 15 (multiplier as deceased was 41 years old at the time of accident)	Rs.4,05,000/-
	Consortium (Rs.40000/- x 4 claimants)	Rs. 1,60,000/-
	Loss of Estate	Rs. 15,000/-
	Funeral expenses	Rs. 15,000/-
	Total Compensation	Rs.5,95,000/-
	Amount awarded by MACT needs to be deducted	Rs.1,82,500/-
	Compensation payable after deduction	Rs.4,12,500/-

The claimants are also entitled to get interest at the rate of 7.5% from the date of claim petition till the realization of the entire amount of the additional payable compensation. Thus, the First Appeal No. 503/2003 is allowed and disposed of accordingly.

11) The learned counsel submits that appellant No. 1 Sima died and her legal heirs are already on record and he has submitted pursis to that effect. In view of the above, share of deceased appellant No. 1 is to be equally distributed between appellant Nos. 2 to 4.

12) In First Appeal No. 509/2003, having considered the submissions of the learned counsel for the appellants and the learned counsel appearing for the Insurance Company, it is seen that the Tribunal has considered the

income of the deceased as Rs. 4000/- per month and deducted 1/3rd amount towards personal expenses and had applied multiplier of 15 and had directed the respondents to pay the amount jointly and severally to the extent of 50% liability only which is not permissible in view of the judgment in the case of **Khenyei** cited supra. Considering the age of the deceased as 35 years at the time of accident, the Tribunal has rightly applied multiplier of 15. The Tribunal ought to have deducted 1/4th amount towards personal expenses. For the funeral expenses, the Tribunal ought to have granted amount of Rs.15,000/- and towards loss of estate Rs. 15,000/-. Towards consortium the Tribunal ought to have granted an amount of Rs.40,000/- (total Rs. 40,000/- x 4 = Rs. 1,60,000/-) to each claimant. Thus, by deducting the amount already paid, the claimants are entitled to get compensation as follows :-

	Particulars	Amount
	Monthly income of the deceased	Rs.4000/-
	1/4th towards personal deductions	Rs.1000/-
	Total	Rs.3000/-
	Rs.3000 /- x 12 (months) x 15 (multiplier as deceased was 41 years old at the time of accident)	Rs.5,40,000/-
	Consortium (Rs.40000/- x 4 claimants)	Rs. 1,60,000/-
	Loss of Estate	Rs. 15,000/-
	Funeral expenses	Rs. 15,000/-
	Total Compensation	Rs. 7,30,000/-
	Amount awarded by MACT needs to be deducted	Rs.2,42,500/-
	Compensation payable after deduction	Rs.4,87,500/-

The claimants are also entitled to get interest at the rate of 7.5% on the enhanced amount from the date of claim petition till the realization of the entire amount. Thus, the First Appeal No. 509/2003 is allowed and disposed of accordingly.

13) First Appeal No. 504/2003 is in respect of injury claim. On perusal of the impugned judgment and award, it is seen that the claimant – Jagdish has not produced any disability certificate and no evidence is there before the Tribunal in terms of the nature of disability suffered and loss on that account. But the Tribunal agree with the fact that the claimant has proved that he sustained multiple injuries in the accident. But, the Tribunal has awarded only 50% of the determined compensation on account of contributory negligence of Rs. 1,50,000/-. This Court finds that compensation ought to have been granted in entirity as the joint tort feasor is liable jointly and severally. So this Court modifies compensation as Rs. 3,00,000/-. Amount of Rs. 1,50,000/- is already paid to the claimant in this case as per the impugned judgment and award. Thus, the claimant is entitled to receive additional amount of Rs. 1,50,000/- with interest at the rate of 7.5% from the date of claim petition till the realization of the entire amount. Thus, the First Appeal No. 504/2003 is allowed and disposed of accordingly.

14) First Appeal No. 508/2003 is in respect of injury claim. On perusal of the impugned judgment and award, it is seen that the claimant – Chandrashekhar Khanapure has produced disability certificate issued by one Dr. Jadhav wherein he stated that there was fracture to scapular spine right and restricted movements of right shoulder and hence, he observed that claimant Chandrashekhar sustained permanent disability to the extent of

15%.

15) Although the above certificate is produced, the claimant was working in Government service and continued to work as government servant. He has not lead any evidence to show that he suffered any loss. The Tribunal held that the claimant is entitled to receive compensation at Rs. 2,00,000/- for the loss of leave, pains, agony and disability sustained to him due to the injuries. The claimant has filed medical bills for an amount of Rs. 45,072/-. So the Tribunal held that the claimant is entitled to receive compensation of Rs. 2,45,072/- from the respondents. But, as the liability of the respondent Nos. 1 and 2 to pay the compensation has been fixed to the extent of 50%, the Tribunal held that the claimant is entitled to receive compensation of Rs. 1,22,536/- from the respondents. It is not permissible to grant 50% of compensation as this is a case of composite negligence. In view of the above, this Court holds that the claimant is entitled to receive compensation of Rs.2,45,072/-. Amount of Rs. 1,22,536/- is already paid to the claimant in this case as per the impugned judgment and award. Thus, the claimant is entitled to receive additional compensation of Rs. 1,22,536/- due to the injuries with interest at the rate of 7.5% from the date of claim petition till the realization of the entire amount. Thus, the First Appeal No. 508/2003 is allowed and disposed of accordingly.

16) In view of the discussion made above, the first appeals are disposed of accordingly.

[ARUN R. PEDNEKER J.]

SSC/