



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2534 OF 2018

1. Meenakshi W/o Goroba @ Aaba Khadke
Age: 51 years, Occ- Household,
2. Amol s/o Goroba @ Aaba Khadke,
Age: 28 years, Occu- Education
3. Yogeshwari d/o Goroba @ Aaba Khadke
Age-22 years, Occu- Education,
All R/o Murud, Tq. & Dist. Latur.

...APPELLANTS
[Orig. Claimants]

VERSUS

1. Namdeo s/o Pandari Pimpre,
Age: Major, Occ. Business,
R/o. Gumpewadi, Tq. & Dist. Latur.
2. Bajaja Allianz General Insurance
Co. Ltd., R/o Shop No. 32 & 34
Navander Arcade, Kawa Road,
Market Yard Gate No. 2, Latur,
Through its Branch Manager.

...RESPONDENTS
[Orig. Opponents]

.....
Mr. Manoj Shinde h/f. Mr. P.P. More, Advocate for appellants
Mr. R.K. Ashtekar, Advocate for respondent No. 1
Mr. M.R. Deshmukh, Advocate for respondent No. 2
.....

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 16th OCTOBER, 2024

ORAL JUDGMENT :

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

Bhagyawant Punde

3. Being aggrieved by the inadequate compensation awarded by learned Member, Motor Accident Claims Tribunal, Latur in Motor Accident Claim Petition No. 139 of 2011, appellants/claimants have preferred this appeal under Section 173 of Motor Vehicles Act.

4. Facts in brief, leading to this appeal can be stated thus:

On 30.10.2010 Goroba alias Aaba Khadke went to the field of Manik Narayan Landge for repairing submersible motor pump, on his motorcycle No. MH-24-N-8695. When he was returning from there and reached within the area of Borgaon-Kale village on Murud-Latur road, at that time, one motorcycle bearing registration No. MH-24-U-1593 came from Murud side in high speed and gave dash to the front side of motorcycle of Goroba. Due to forceful dash, Goroba fell down and sustained multiple grievous injuries on his head. He was admitted in the hospital of Dr. Walsangkar at Solapur on 30.10.2010. During treatment, he expired on 06.11.2010.

5. Claimants by filing claim petition claimed compensation of Rs. 56,25,000/- contending that at the time of death, deceased was running a motor repair shop at Murud and

was earning Rs. 20,000/- per month from it. He owned 10 she-buffaloes and 5 cows and used to sell milk to the hotels and was earning Rs. 20,000/- per month from milk business. He was Pigmy agent of PACL and was earning Rs. 10,000/- from the same. Claimants spent an amount of Rs. 2,25,000/- towards medical, travelling and other expenses. They claimed amount of Rs. 1,00,000/- towards pain and suffering and future expenses.

The Tribunal after recording evidence partly allowed the claim and awarded compensation of Rs. 5,87,289/- along with interest @ 6% per annum to be paid by respondents No. 1 and 2. Claimants are aggrieved by the quantum of compensation.

6. Heard learned advocate for claimants, learned advocate for respondent No. 1/owner and learned advocate for insurer.

7. Learned advocate for claimants submits that though there is sufficient evidence on record to show that deceased was a skilled worker and was doing water pump repairing work, the Tribunal has erroneously assessed his income at Rs. 4500/- ignoring the evidence led by claimants of the employee of the deceased working in the shop of deceased and eye witness of

the accident who has stated that deceased had come to their field for repairing electric motor. He submits that though 7/12 extract of the agricultural land was produced on record, the Tribunal has failed to award compensation towards supervision charges. According to him, Rs. 2,000/- per month needs to be awarded towards supervision charges. The Tribunal has failed to award compensation under the head 'future prospects' and consortium to appellants No. 2 and 3. He therefore submits that the Tribunal has not awarded just and fair compensation and appellants are entitled for enhanced compensation. In support of his submissions, he relied on notification dated 31 May, 2010 issued by Ministry of Labour and Employment, *State of Haryana and another v. Jasbir Kaur and others*, AIR 2003 SC 3696, *K. Ramya & Ors. v. National Insurance Co. Ltd Anr.*, 2022 LiveLaw (SC) 816, *Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram and others*, 2019(4) Mh.L.J. 1 and *National Insurance Company Limited v. Pranay Sethi and Others*, 2017 AIR (SC) 5157.

8. Learned advocate for the 2nd respondent/insurer supported the impugned judgment and award passed by the Tribunal. He submits that there is no evidence on record to show

that deceased was cultivating the agricultural land and was getting any income from it. He submits that CW3 who is employee of deceased has specifically deposed that deceased was earning Rs. 200-300 per day. In that view of the matter, it is not possible to accept that deceased was earning Rs. 20,000/- per month from the shop and Tribunal is justified in recording a finding that since there was no renewal of shop act license and in the light of deposition of CW3 it is not possible to hold that deceased was earning Rs. 20,000/- per month from the shop. He fairly concedes that in view of settled legal position future prospects needs to be awarded to the claimants. According to him, there is no evidence of age of the deceased and Tribunal has relied on the age mentioned in the post mortem report and inquest panchnama. Since, age is mentioned as 50 years, in terms of decision in Pranay Sethi (supra), according to him, age group of deceased needs to be held between 50-60 and claimants are entitled for future prospects @ 10%. He submits in the facts of present case multiplier applicable would be of 11 and not of 13 as held by Tribunal. In support of his submissions he relied on *New India Assurance Company Limited v. Somwati and Others*, (2020)9 SCC 644.

9. Learned advocate for 1st respondent/owner adopted the arguments of the insurer.

10. Heard learned advocate for appellants, learned advocate for respondent No. 1 and learned advocate for respondent No. 2 at length. Perused the record.

11. It appears from the record that to prove the fact that deceased was a motor mechanic claimants have relied on evidence of Balaji Sawant (C.W.3), who claimed that he was working along with deceased in the shop. Admittedly, shop act license of the deceased is not renewed. However, claimants have produced on record certificate (Exhibit-53) issued by Village Panchayat, Murud stating that deceased was resident of Murud. He was running a shop by name "Gurudatt Motor Rewinding Work" and due to accidental death the shop is closed. Said certificate is signed by Village Development Officer and Sarpanch.

Munna Ade (C.W.2), who is an eye witness to the accident has stated in his evidence that he is working in the field of Manik Landge on yearly contract basis. Since, electric water pump installed on the well of his employer was not working, deceased was called to repair it. On the date of accident

deceased came for the repair work and he tried to repair the pump, however, the pump was not working. Hence, deceased was returning to his village Murud. At that time, when deceased took a turn on the main road, offending motorcycle came in high speed and dashed to the motorcycle of deceased and deceased received serious injuries in the said accident.

12. From the aforesaid evidence it is clear that deceased was doing work of motor mechanic. There is sufficient material on record to show that deceased was a skilled worker and was doing work of motor mechanic, hence his monthly income could not have been assessed at Rs. 4500/- by the Tribunal. Fact remains that deceased was supporting the family of wife, son and daughter. In view of notification published by Ministry of Labour and Employment under section 4(1B) of the Employee's Compensation Act, 1923, in Gazette of India on 31.05.2010, the Central Government has specified minimum monthly wages of unskilled workers at Rs.8,000/- p.m. In the present case, since deceased was doing skilled work of motor mechanic, his notional income needs to be assessed at Rs. 8,000/- per month.

13. There appears merit in the submission of learned advocate for the appellants that considering the fact that 7/12

extract of 9 Acre land owned by deceased was placed on record, the Tribunal ought to have awarded compensation towards supervision charges. In Jasbir Kaur (supra) it is observed;

"8. It is clear on a bare reading of the Tribunal's decision as affirmed by the High Court that no material was placed before the former to prove as to what was the income. As rightly contended by learned counsel for the appellants, there was not even any material adduced to show type of land which the deceased possessed. The matter can be approached from a different angle. The land possessed by the deceased still remains with the claimants as his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered. Furthermore, there was no material before the Tribunal to arrive at the figure of Rs.4500 per month. No reason has been indicated to arrive at this figure. In the light of what has been discussed above about "just compensation" the income cannot be estimated without any material to justify the estimation....."

This decision is followed in K. Ramya & Others (supra). Considering the facts of the present case, supervision charges @ Rs. 2,000/- per month would be fair and adequate compensation.

14. Age of the deceased is held as 50 years on the basis of inquest panchnama and post mortem report and the Tribunal

has rightly applied multiplier of 13. There is no merit in the submission of insurer that age of the deceased needs to be held between the age group of 51-60 and multiplier of 11 needs to be applied to the facts of the present case.

15. Admittedly, no compensation under the head 'future prospects' is awarded by the Tribunal and consortium is not awarded to appellants No. 2 and 3. In terms of decision in *Pranay Sethi (supra)*, appellants are entitled for Rs. 44,000/- each towards consortium. Since, deceased was between the age group of 40-50, 25% needs to be awarded towards future prospects in terms of *Pranay Sethi (supra)*. Claimants are therefore entitled for following compensation.

Sr. No.	Heads	Amount in Rs.
1.	Monthly Income of Deceased (Income of Deceased from mechanic work- Rs. 8,000 + Supervision Charges- Rs. 2,000)	10,000/-
2.	Annual Income (10,000 x 12)	1,20,000/-
3.	Future Prospects @ 25% i.e. Rs. 30,000 (1,20,000 + 30,000)	1,50,000/-
4.	Less 1/3rd deduction i.e. Rs. 50,000 (1,50,000 – 50,000)	1,00,000/-
5.	Multiplier of 13 (1,00,000 x 13)	13,00,000/-
6.	Non pecuniary losses:- (i) Consortium- Rs. 44,000 each i.e. Rs. 1,32,000/- (ii) Loss of Estate- Rs. 16,500/-	2,14,289/-

	(iii) Funeral Expenses- Rs. 16,500/- (iv) Medical bills- Rs. 49,289/- as awarded by the Tribunal	
	Total Compensation needs to be awarded (13,00,000 + 2,14,289)	15,14,289/-
	Compensation Awarded by the Tribunal	5,87,289/-
	Total Enhanced Compensation (15,14,289 – 5,87,289)	9,27,000/-

16. In the result, following order:

ORDER

- (I) First Appeal is partly allowed with proportionate costs.
- (II) Impugned judgment and award dated 17.11.2017, passed by District Judge-4/Ex-officio Member of M.A.C.T., Latur in M.A.C.P. No. 139/2011 is modified, to the effect that claimants are held entitled for enhanced compensation of Rs. 9,27,000/- to be paid by Insurance Company and respondent No. 1 jointly and severally within 12 weeks from the date of uploading of this judgment.
- (III) Claimants shall be entitled for interest @ 6% per annum on the enhanced compensation from the date of filing of claim till realization.
- (IV) Claimants to pay deficit court fees on enhanced compensation as per rules.

[NITIN B. SURYAWANSHI, J.]