IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.127 OF 2016

1. Smt. Chandanbai Manoj Pawar, (Gondhali)
Age: 27 Years, Occ: Household,

2. Kum. Divya Manoj Pawar, (Gondhali)
Age: 4 Years, Occ: Nil,
(Being minor through her legal
Guardian mother appellant No.1)

3. Sau. Mangalabai Parshuram Pawar, (Gondhali)
Age: 54 Years, Occ: Household,

4. Shri Pershuram Gopal Pawar, (Gondhali)
Age: 57 Years, Occ: Nil,

All R/o. Prakasha,
Tal. Shahada, Dist. Nandurbar. ...Appellants
(Orig. Claimants)

Versus

1. Shri Shashank Sakharam Patkar,
Age: Major, Occ: Car Owner,
R/o. Sujata Nivas, Kashinath Dhura
Road, Dadar Colony, Dadar,
Mumbai 400 028
(Mobile No.9869954259)

2. ICICI Lombard General Insurance Co. Ltd;
Through branch Manager,
Alkanand complex, Adalat road,
Aurangabad. ...Respondents
(Orig. Respondents)

....

Mr. Shrikant S. Patil, Advocate for Appellants
Mr. Abhijit G. Choudhari, Advocate for Respondent No.2

....

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 27th JUNE, 2024
PRONOUNCED ON : 09th JULY, 2024

ORDER :

1. This appeal is filed by appellants/claimants seeking

enhancement of compensation awarded by Motor Accident Claims Tribunal, Shahada, on 29/08/2015, in M.A.C.P. No.255/2012.

2. Claimants approached the Tribunal contending that on 29/01/2012, at 07:00 p.m. Manoj Parashram Pawar (Gondhali), husband of appellant No.1, father of appellant No.2, son of appellant Nos.3 and 4, was going by motorcycle bearing No.GJ-05-EE-6114, from Taloda to Prakasha. Near Pisawar Shivar in Nizar Police Station’s jurisdiction, car bearing No.MH-01-AH-2706 coming from opposite side gave dash to the motorcycle. Car was driven in rash and negligent manner. Due to accident Manoj sustained serious injuries and died on the spot. At the time of accident Manoj was 26 years old and was running rickshaw garage. He was earning Rs.9,000/- per month. All appellants/claimants were dependent on the income of deceased. Crime No.06/2012 was registered with Nizar Police Station. At the time of accident car was owned by respondent No.1 and was insured with respondent No.2 Insurance Company. The accident occurred due to rash and negligent driving of car driver. Claimants, therefore, claimed compensation of Rs.7,00,000/- with interest @ 12% per annum.

3. Respondent No.2 Insurance Company opposed the claim by filing written statement contending that car driver was not holding valid and legal license. Deceased was not wearing helmet and hence, there was contributory negligence on the part of

deceased. Rest of the contentions raised in the claim petition were denied. Claim petition proceeded ex-parte against respondent No.1 owner. Tribunal after recording evidence and hearing the parties awarded compensation of Rs.5,79,000/- to appellants/claimants. Claimants are aggrieved by the inadequate compensation.

4. Heard learned advocate for appellants/claimants and learned advocate for respondent No.2 Insurance Company.

5. Learned advocate for appellants/claimants submitted that Tribunal has erred in assessing income of deceased at Rs.4,000/- per month, as against Rs.9,000/- per month. According to him, Tribunal failed to award just and fair compensation to the claimants. Tribunal has deducted 1/3rd amount towards personal expenses of deceased, which should have been 1/4th as there were four dependents on the deceased. Deduction done by Tribunal is contrary to the ratio in ***Smt. Sarla Verma and Others v. Delhi Transport Corporation and Another, AIR 2009 SC 3104***. Tribunal has failed to award compensation under the head loss of consortium. Tribunal has awarded compensation towards loss of estate @ Rs.10,000/-, which in fact needs to be awarded @ Rs.16,500/-. Tribunal has also failed to award compensation towards future prospects. In support of his submissions, he relied on ***Rijwana w/o Samad Shaikh and Others Vs. Rafiq s/o. Madar Shaikh and Others, [2023 DGLS(Bom.) 3110], Chandabai***

Ramchandra Ubade and Others Vs. Shaikh Mustafa Babu and Others, [2022 DGLS(Bom.) 2491], Bajaj Allianz General Insurance Company Limited Vs. Bhima Dnyanoba Gaikwad and Others, [2024 DGLS(Bom.) 1939] and ***Ashok s/o Keruba Dole Vs. Divisional Controller, Maharashtra State Road Transport Corporation and Others, [2023 DGLS(Bom.) 2897]***.

6. On the other hand, learned advocate for respondent No.2 Insurance Company has supported the impugned judgment of the Tribunal. He submits that Tribunal has rightly considered monthly income of deceased at Rs.4,000/- per month. There is no error on the part of Tribunal in awarding compensation of Rs.5,79,000/-. By relying on ***Kalpana Madhu Gavali and Others Vs. Maharashtra State Road Transport Corporation, [2023 DGLS(Bom.) 3774]***, he submits that interest is not payable on the future prospects. He also relied on ***Manusha Sreekumar and Others Vs. The United India Insurance Co. Ltd. [2022 LiveLaw (SC) 858]***.

7. Heard learned advocates for the respective parties at length. Perused the record.

8. It is a matter of record that there is no specific denial that deceased was doing a job of mechanic at garage. Hence, he needs to be considered as a skilled worker. The Tribunal, in absence of evidence that deceased had taken any technical education to run

rickshaw garage, has held notional income of deceased at Rs.4,000/- per month. Learned advocate for claimants vehemently submitted that Tribunal ought to have assessed notional income of deceased at Rs.6,000/- per month. In support of this submission he has relied on ***Ashok s/o Keruba Dole*** (supra). In that case, accident was of the year 2018 and deceased was a mason. In these facts, this Court has held his notional income as Rs.6,000/-.

9. In ***Chandabai Ramchandra Ubade*** (supra) accident was of the year 2014 and the deceased was a mason, and it was claimed that he was earning Rs.400/- per day. In absence of any evidence in support of that contention, Tribunal considered notional daily income of deceased as Rs.200/- per day i.e. Rs.6,000/- per month.

10. In ***Rijwana w/o Samad Shaikh*** (supra) accident had taken place in the year 2011. Deceased was in the business of fruit commission agent. Tribunal has held his notional income @ Rs.6,000/- per month.

11. In ***Bhima Dnyanoba Gaikwad*** (supra), accident had taken place in the year 2013 and deceased was doing the work of carpenter and it was claimed that he was earning Rs.12,000/- per month. In support of said contention, claimants examined father of deceased who was also a carpenter. Therefore, this Court has held notional monthly income of deceased at Rs.7,000/- per month.

12. Coming to the facts of the present case, it is not disputed that deceased was a skilled worker i.e. mechanic, hence, in view of observations in ***Ashok s/o Keruba Dole*** (supra) his notional income can be assessed at Rs.200/- per day i.e. Rs.6,000/- per month. Tribunal has erred in assessing notional income of deceased at Rs.4,000/- per month. Since deceased was 26 years old, Tribunal has rightly applied multiplier of 17.

13. As per the ratio in ***Smt. Sarla Verma*** (supra), if the dependents are four to five, then 1/4th deduction towards personal expenses of deceased should be made. In present case, Tribunal has deducted 1/3rd amount towards personal expenses of deceased which is contrary to the ratio in ***Smt. Sarla Verma*** (supra) and hence, the same cannot be sustained.

14. Tribunal has erroneously denied compensation towards future prospects on the ground that there is nothing to show that deceased has taken any technical education and he had an opportunity to expand or open garage, which is contrary to the ratio in ***National Insurance Co. Ltd. v. Pranay Sethi and Others, 2017 (16) SCC 680***. As per this judgment future prospects @ 40% of monthly income of deceased is to be awarded, i.e. Rs.6,000 x 40% = Rs.2,400/- per month. Tribunal has also failed to award compensation towards loss of consortium. As per ratio in ***Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram***

and Others, AIR 2019 SC (Supp) 906, loss of consortium of Rs.44,000/- is payable to each claimant. Since there are four claimants, Rs.44,000 x 4 = Rs.1,76,000/- is payable towards loss of consortium.

15. Without assigning any reason, Tribunal has failed to award compensation towards non-pecuniary losses. Tribunal has awarded Rs.10,000/- towards loss of estate, in fact, Rs.16,500 is payable to claimants towards loss of estate. Funeral expenses @ Rs.16,500/- is payable to claimants. However, Tribunal has awarded Rs.25,000/- towards funeral and transportation expenses and the same is not liable to be disturbed. Therefore, total non-pecuniary losses would be Rs.1,76,000/- (loss of consortium) + Rs.16,500/- (loss of estate) + Rs.25,000/- (funeral expenses) = Rs.2,17,500/-.

16. In view of the aforestated discussion, claimants are entitled for following compensation:-

Sr. No.	**Heads**	**Amount (Rs.)**
1	Notional income Rs.6,000/- + future prospects @ 40% of computed income i.e. Rs.2,400/-	Rs.8,400/-
2	Monthly dependency compensation after deduction towards personal and living expenses (Rs.8,400 – Rs.2,100)	Rs.6,300/-
3	Annual dependency Compensation (Rs.6,300 x 12)	Rs.75,600/-
4	Pecuniary Losses (Annual dependency multiplied by multiplier) (Rs. 75,600 x 17)	**Rs.12,85,200/-**
5	Non-pecuniary Losses:- Loss of Consortium Rs.44,000/- to each claimants (Rs.44,000 x 4) = Rs.1,76,000/- Loss of Estate = Rs.16,500/-	**Rs.2,17,500/-**

	Funeral Expenses = Rs.25,000/- (as already granted)	
6	Total compensation needs to be awarded (Rs.12,85,200 + Rs.2,17,500)	**Rs.15,02,700/-**
7	Compensation awarded by the Tribunal	**Rs.5,79,000/-**
Total Enhanced Compensation (Rs.15,02,700 – Rs.5,79,000)		**Rs.9,23,700/-**

17. Learned advocate for Insurance Company has relied upon judgment delivered by learned Single Judge of this Court at Bombay in ***Kalpana Madhu Gavali*** (supra) to contend that future interest is not payable on future prospects. In this judgment learned Single Judge has relied on the decision of Jammu and Kashmir and Ladakh High Court in *MAC APP No.33/2022 [National Insurance Company Limited Vs. Mst. Aisha Bano and Others],* wherein reliance is placed on ***Khusboo Chirania @ Kanta Chirania Vs. Kamal Kumar Sovasaria [2018 Supreme (Gau.) 966]*** and ***Nasima Begum Vs. Keramat Ali [2019 Supreme (Gau.) 507]***. Agreeing with the reasoning given in paragraph No.12 of said judgment, learned Single Judge has taken that view.

18. The Division Bench of this Court at Bombay in ***Sunil Shankar Patil and Others Vs. Suhel Shaukat Shaikh and Others, [MANU/MH/2043/2024]***, has held,

> *“9. Point No.(f) [Interest] :-*
> *(i) .....*
> *(ii) .....*
> *(iii) The Respondent, on the other hand has relied upon decision of the Gauhati High Court in the case of the Oriental Insurance Co. Ltd. Vs. Smti Champabati Ray & Ors. MAC Appeal 378 of*

2017 and the decision of Jammu & Kashmir & Ladakh High Court in the case of National Insurance Co. Ltd. Vs. Mst. Aisha Bano & Ors. MAC Appeal 33 of 2022 and contended that no interest should be granted on future prospects as the same relates to an income to be given in the future.
(iv) The contention of the Respondent that no interest should be granted cannot be accepted in the absence of an appeal by Respondent No.3-Insurance Company against the order of the Tribunal granting 6% p.a. interest. If the Insurance Company was aggrieved by this direction of the Tribunal then they ought to have challenged the same. In the absence of any challenge, the Respondents are not justified in placing reliance on the decisions of the Gauhati High Court and Jammu & Kashmir & Ladakh High Court."

In the case in hand also Insurance Company has not filed appeal. Therefore, said decision would be of no help to the Insurance Company, in view decision of the Division Bench of this Court at Bombay.

19. In the result, following order:-

<u>O R D E R</u>

(I) First Appeal is allowed.

(II) Claimants are held entitled for enhanced compensation of Rs.9,23,700/-. The enhanced compensation shall carry interest @ 7.5% per annum from the date of filing of claim petition, till 2017 and thereafter interest @ 6% per annum till realization of the amount.

(NITIN B. SURYAWANSHI, J.)