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

**FIRST APPEAL NO. 1753 OF 2007**

1. The State of Maharashtra

2. The Executive Engineer,
Public Works Division,
Ambajogai, Dist. Beed ...**Appellants**

**Versus**

1. Devidas Limba Chavan
(Through Lrs) and Ors.

1/1. Surekha Devidas Chavan
Age 37 years, Occu. Household,

1/2. Sneha Devidas Chavan
Age 21 years, Occ. Education

1/3. Sanika Devidas Chavan
Age 18 years, Occu. Education

1/4. Sarthak Devidas Chavan
Age 14 years, Occu. Education
Under Guardianship of Mother
Surekha Devidas Chavan

All R/o. Chikni Tanda, Andur,
Tal. Tuljapur, Dist. Osmanabad

2. The Director of State Insurance
New Administrative Building
Opposite Mantralaya, Mumbai-32 ...**Respondents**

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Mr. S. G. Sangle, AGP for the Appellant
Mr. P. S. Chavan, Advocate for Respondents

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**CORAM : R.M. JOSHI, J.**

**DATE : OCTOBER 10, 2025**

**JUDGMENT:**

1. This Appeal is preferred by the appellant/registered owners under section 173 of the Motor Vehicles Act, 1988 (for the sake of brevity, “the Act”), takes exception to the judgment and award dated 19/07/2007 passed in M.A.C.P No. 219/2004, whereby the Learned Tribunal has partly allowed the claim filed by Deceased Claimant, thereby granting a compensation of Rs. 5,04,000/- along with interest @7.5% per annum from 28/04/2004 till the realisation.

2. The claimants are the legal heirs of the original claimant, who has passed away, contesting the proceedings before this court.

3. For the sake of convenience, the respondent No. 1 is referred to as “Deceased Claimant”, and the respondent No.2 as “Insurer” and the appellants as “registered owners” of the Car No. MH-23/F-0024, involved in the accident.

4. The deceased claimant worked as a Mason. It is the case of the deceased Claimant that on 16 March 2004, the deceased claimant was proceeding from Naldurg

to his village, Chikani Tanda, taluka Tuljapur. He was riding a bicycle on the Naldurg-Tuljapur road, near the Tuljabhavani Sugar Factory, at the petrol pump in Naldurg.

5. At the relevant time, an Ambassador Car No. MH-23/F-0024 came from the back side at high speed and gave a dash to the bicycle of the deceased claimant, resulting in an accident. The deceased claimant sustained serious injuries pursuant to the accident. The driver of the Car was claimed to be responsible for the accident. The deceased claimant was hospitalised from 16/03/2004 to 25/05/2004 as he had sustained serious injuries due to the said accident.

6. As a result, there is a total loss of vision in both eyes of the deceased claimant because of grave injuries sustained. The deceased claimant had to spend a substantial amount for his medical treatment and incidental expenses [like special diet and conveyance charges]. It was averred that the accident occurred due to the rash and negligent driving of the car. later, a First Information Report (FIR) No. 43/2004 was registered in Naldurg under sections 279, 337 & 338

against the driver of the said Ambassador car.

7. It was claimed that the deceased claimant was earning Rs. 4500/- per month before the accident. However, in view of the injuries sustained, he suffered total loss of earnings and earning capacity due to the accident. The Car was insured by the insurer at the time of the accident. The deceased claimant claimed that the registered owner and insurer are liable for payment of compensation. The deceased claimant prayed for an award of Rs 6,00,000/-, including pecuniary and non-pecuniary damages from the registered owners.

8. Accordingly, the appellants/registered owner filed written statement at Exhibit 38, and denied the material contentions raised before the tribunal. It is denied that the driver of the Car was rash and negligent. It is contended that the deceased claimant, who was riding bicycle was negligent and that the bicycle came in contact with the Car. The appellants/registered owners denied their liability and contended that the claim is false and excessive before the tribunal. The insurer filed its written statement at Exhibit 32 stating that the car was not insured at

the time of the accident.

9. The Tribunal framed issues at Exhibit 51. The deceased claimant examined himself at Exhibit 54 and led the evidence of Dr Govind at Exhibit 197 to substantiate his claim before the Tribunal. He also relied upon the documentary evidence from Exhibit 55 to Exhibit 192 and 198. The appellants/registered owners examined the driver at Exhibit 200 before the Tribunal in their defence, and the insurer did not adduce any evidence before the Tribunal. The Tribunal partly allowed the petition against the appellants/registered owner, directing compensation of Rs 5,04,000/- to be paid to the deceased claimant along with interest @ 7.5% per annum till realisation.

10. The learned Addl. Government Pleader for the appellants/registered owners submits that the Tribunal has committed error in awarding amount of Rs. 5,04,000 to the deceased claimant on the grounds of medical expense, loss of earnings capacity and non-pecuniary damages and deciding age and income of injured and multiplier applied. According to him, there is no evidence on record to conclude that the vehicle was

driven in a rash and negligent manner, and further, it is pointed out from the examination of the deceased claimant that the road was not much to enable driving of the vehicle at a high speed.

11. The learned counsel for the deceased claimant supports the judgment passed by the Tribunal and places reliance upon the following judgment to deal with the contentions raised by appellants/registered owners. Learned counsel for the deceased claimant has submitted judgment of Hon'ble Apex Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and Others, (2017) 16 SCC 680***, ***Pappu Deo Yadav and Ors. vs. Vinod Kumar Lamba and Anr., (2018) 3 SCC 208***, ***M/s. Kelkar and Kelkar vs. Mr. Shripad Narayan Gore and Ors, First Appeal No. 956/2002***, ***Oriental Insurance Company Limited vs. Ku. Radhika and Others, 2020(1) ALL MR 78***, ***The APSRTC and Anr vs. M. Ramadevi and Ors, 2008 AIR (SC) 1221***, & ***Jagdish vs. Mohan, AIR 2018 SC 1347***, ***Raj Kumar v. Ajay Kumar and Anr, AIROnline 2010 SC 125***, ***R. D. Hattangadi vs. M/s. Pest Control (India) Pvty. Ltd and Ors, AIR 1995 SC 755*** & ***United India Insurance Co. Ltd vs. Smt. Rukmini Deepak alias Dilip Kachare and Ors, First***

***Appeal No. 105/2007***, seeking enhancement of compensation on the grounds that filing of an appeal or cross-suit is not mandatory to seek such enhancement. In view of the said law laid down by the Hon’ble Apex Court, it would be just and proper to grant him the benefit of enhancement of compensation sought by the deceased claimant to the extent of 40% to be added towards further income for the purpose of calculating compensation.

12. The evidence led before the tribunal prima facie indicates that findings recorded by Tribunal with regard to the occurrence of the accident involving the car and negligence on part of the driver and appellant/registered owners, deserve to be accepted. Claimant himself is witness to accident and victim thereof. His cross-examination does not make his evidence unreliable. In this regard, it's of much importance to note that the Spot Panchnama at Exhibit 56 recorded by the police after registration of FIR, so also the injury certificate at Exhibit 60 indicates that the Ambassador Car No. MH-23/F-0024 was driven rashly and negligently by the driver, resulting in the

occurrence of the said accident.

13. The driver was examined at Exhibit 200 by the appellants/registered owners, it was stated that the road was not in good condition, and therefore, he was driving slowly. The claimant on bicycle suddenly came from the left in contact with car. At the outset, it's not probable that the driver, if driving slowly, could not have seen the deceased claimant soon before the accident, as it was a National Highway. The version narrated by the driver is not supported by the spot panchnama. On careful assessment of evidence, it could be said that the accident in question occurred due to sole negligence of driver of offending vehicle.

14. The deceased claimant, in order to demonstrate that he has sustained serious injuries, has examined Dr Govind Kokate at exhibit 197 and has placed on record injury certificate at exhibit 60, discharge card at exhibit 61, another discharge card at exhibit 63, several medical bills and receipts at exhibit 65 and 192 so also deceased claimant has a produced disability certificate at exhibit 198 which duly proved by Dr Govind Kokate. Furthermore, from the cross-examination

of Dr. Govind Kokate, it is clear that the deceased claimant suffered permanent disablement due to 100% loss of vision in both eyes as a result of the said accident.

15. As per evidence led by Claimant at exhibit 54, its elicited that he was working as a mason, was about 25 years of age when the accident occurred, was earning about Rs 150/- to Rs 200/- per day, was hospitalised for 2 and ½ month at Solapur and was required to spend about Rs 2,50,000/- to Rs 3,00,000/- in connection to the medical treatment. It's also evident that he sustained 100% loss of vision in both eyes due to said accident, and thus, total loss of earning capacity has occurred.

16. In view of the above, there is no reason not to accept that the Deceased claimant was earning a minimum of Rs 1500 per month. Therefore, the annual loss of earnings assessed by the tribunal at Rs 18,000 per annum is bona fide. The total amount covered by bills and receipts after hospitalisation came to approximately Rs 79,000, and the tribunal asserted the amount to the tune of Rs 80,000 under the head of

medical expense. Further, considering the age of the deceased claimant at the time of the accident, the Tribunal deemed it appropriate to use a multiplier of 18. Taking into account all the above arithmetic, i.e. the total loss of earnings capacity, which is Rs 18,000 x 18 (Multiplier) comes to Rs 3,24,000/-. So far the non-pecuniary damages are concerned, the tribunal determined the same at Rs 1,00,000. Thus, the total compensation as construed by the Tribunal comes to Rs.80,000/- (medical expenses) + Rs.. 3,24,000/- (Loss of earning or earning capacity) + Rs 1,00,000/- (non pecuniary damages) = Rs. 5,04,000/- along with interest @7.5% per annum from the date of the claim of petition.

17. The conclusions drawn by Tribunal are in consonance with the material placed on record and hence, the order passed by Tribunal requires no interference. Accordingly, the appeal deserves to be dismissed and accordingly stands dismissed.

18. Now coming to the claim of enhancement sought to be made by claimant without filing Appeal or Cross-objection is concerned, in view of the settled law by Hon'ble Supreme Court in case of **Pranay Sethi** (supra)

and **Pappu Deo Yadav** (supra), it is open for the claimant to seek enhancement even without formally filing Appeal or Cross-objection. Hence, claim for enhancement is entertained.

19. Learned Counsel for Claimant seeks enhancement on sole ground that future prospects are not considered by Tribunal while granting compensation. A reference could be made to judgment of Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Pappu Deo Yadav** (supra). By following the said judgment, claimant is entitled for additional compensation towards future prospects.

20. Thus, having regard to age and income of claimant and by following the judgment of the Hon'ble Supreme Court in the case of **Pappu Deo Yadav** (supra), 40% income is required to be added towards prospects.

| Sr No. | Header | Calculation in Rs. |
|---|---|---|
| 1. | Income of Rs 18,000 per annum + 40% (Addition of future prospects) = Rs. 25,200/- Per Annum<br>Income of Rs. 25,200/- per annum x 18 (multiplier) = Rs. 4,53,600 | 4,53,600/- |
| 2. | Non pecuniary damages | 1,00,000/- |
| 3. | Medical Expense | 80,000/- |
| | Hence, the deceased claimant is entitled for total Compensation of Rs. ( 4,53,600+ 1,00,000 + 80,000) | **6,33,600/-** |

21. Since the claimant has not filed any Cross-suit or Appeal, he is not entitled to interest thereon till decision of this Appeal.

22. However, if the amount is not paid within a period of 8 weeks from today, the claimant will be entitled to interest receive @ 7% till realization of the amount. The claimant to pay deficit Court Fees.

23. Appeal stands disposed of in above terms.

24. Pending civil application, if any, stands disposed of.

**(R. M. JOSHI, J.)**

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