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

FIRST APPEAL NO.688 OF 2024

1. Mohan s/o Dhanu Rathod,
Age: 47 years, Occu- Labour

2. Sou. Sunita Mohan Rathod,
Age: 42 years, Occu. Household

3. Vikas Mohan Rathod,
Age- 18 years, Occ.- Education

4. Akash Mohan Rathod,
Age- 16 years, Occ- Education
U/G of Claimant No.2
Sunita Mohan Rathod

All R/o. Kaldev Limbala,
Tq. Omerga, Dist. Osmanabad. ..Appellants
(Original Claimants)

Versus

1. Kiran s/o. Sharad Vairagkar,
Age- Major, Occ. Business,
R/o. Balaji Nagar, Osmanabad,
Tq. & Dist. Osmanabad
(Owner of Pick Up No.MH-25/P-5926)

2. Reliance General Insurance Co. Ltd., Latur,
Through: The Branch Manager,
Reliance General Insurance Co. Ltd.,
Unit No.211 & 212, 2nd Floor, Yash Plaza,
Near Shivneri Gate, Kava Road, Latur,
Policy No.202422123340018464 ..Respondents
(Original Respondents)

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Mr. Y. P. Jadhav, Advocate for Appellants.
Mr. S. S. Patil h/f Mr. R. H. Dahat, Advocate for Respondent No.2.
Respondent No.1 is served.

…

CORAM : S. G. CHAPALGAONKAR, J.
DATED : 22nd APRIL, 2025.

ORDER:-

1. Being aggrieved by quantum of compensation awarded by Motor Accident Claims Tribunal, Osmanabad in M.A.C.P. No.40/2022, vide judgment dated 04.11.2023, present Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 by original claimants seeking enhancement of compensation. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The claimants instituted M.A.C.P. No.40/2022 under Section 166 of the Motor Vehicle Act seeking compensation of Rs.20,00,000/- towards accidental death of late Manoj Mohan Rathod, who was son of claimant nos.1 and 2 and brother of claimant nos.3 and 4. On 08.12.2021, while he was proceeding on motorcycle, offending Mahindra Pick Up bearing Registration No.MH-25-P-5926 gave dash to motorcycle. Late Manoj suffered fatal injuries. He died on 11.12.2021 while under medical supervision. The incident was reported to police station. Eventually, offence was registered against driver of Pick Up van. According to claimants, late Manoj was pursuing education in 12th Standard. He was aged about 19 years.

3. The claim was contested by respondent no.2/insurer on all counts. They raised defence that there was inordinate delay in lodging FIR, which is not explained. The involvement of vehicle is doubtful. According to them, late Manoj was minor. He drove

motorcycle without authorization/valid licence. He was not wearing headgear/helmet. As such, he was major contributor in cause of accident and consequential death.

4. The Tribunal after evaluation of evidence observed that since deceased was not holding valid licence to drive motorcycle and he was not wearing helmet/headgear, his contribution in cause of accident has to be assessed to the extent of 20%. The Tribunal assumed notional income of deceased @ Rs.8000/- per month in absence of income proof and after deducting one half towards personal and living expenses, ultimately, passed award of Rs.7,17,600/- alongwith interest @ 9% per annum in favour of claimant nos.1 and 2.

5. Mr. Jadhav, learned Advocate appearing for appellants submits that Tribunal erroneously assumed contributory negligence of deceased for reason that he was not holding licence or not wearing headgear/helmet. According to him, Tribunal could have assumed his notional income @ Rs.12,000/- per month in consonance with minimum wages applicable at the time of accident. Further nothing is granted towards loss of consortium to claimants. On this count, he seeks enhancement of compensation.

6. Per contra, Mr. Patil, learned Advocate appearing for respondent no.2/Insurance Company justifies award. According to

him, deceased was minor. He was driving motorcycle without authorization and without wearing helmet/headgear. The conduct of deceased was not only contrary to statutory provisions under Motor Vehicle Act, but same was detrimental to his own safety. According to Mr. Patil, Tribunal has rightly deducted 20% amount towards contributory negligence. Mr. Patil would further submit that in absence of income proof, Tribunal has rightly worked out compensation based on notional income. Therefore, he urges to maintain award as passed by Tribunal.

7. Having considered submission advanced, it can be observed that respondent no.2/insurer has accepted award as passed by Tribunal and released compensation amount in favour of claimant nos.1 and 2. Therefore, points for consideration that arises in this Appeal is as to fixing just compensation and to examine correctness of findings on the point of negligence. This Court will have to examine whether quantification of compensation is in consonance with law laid down by Supreme Court of India in cases of ***National Insurance Company Limited Vs. Pranay Sethi & Ors.***[1] and ***Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram***[2].

8. As far as findings on the point of contributory negligence is concerned, learned Tribunal relying upon evidence of CW-1

1 **(2017) 16 SCC 680.**
2 **2018 (4) TAC 345.**

observed that deceased was not holding valid licence or he was not wearing headgear. Consequently, applied deduction of 20% towards contributory negligence of deceased. It is trite that, issue of negligence has to be decided on the basis of evidence tendered into service. The Tribunal has to record findings as to the act of negligence or carelessness on the part of driver/rider of vehicle that has actually contributed in cause of accident.

9. In present case, offence has been registered against driver of offending vehicle. CW-1 during course of his evidence placed on record police papers, which are admitted in evidence. It shows that after registration of offence against driver of Pick Up van, investigation was carried and charge-sheet was also filed against him. No evidence is brought on record to show how deceased has contributed in cause of accident. Assuming that the deceased was not duly authorized to drive the motorcycle or was not wearing headgear, both acts are punishable with a fine for infraction provisions under Motor Vehicles Act or Rules framed thereunder. However, that itself cannot be ground to charge contributory negligence against deceased. The Supreme Court of India in case of ***Sudhir Kumar Rana and Surinder Singh and Ors.***[3] held that negligence cannot be attributed against victim only because he driven his vehicle without valid authorization at the time of accident. If third party vehicle driver because of his rashness and

3 **2008 (12) SCC 436.**

negligent act gave dash to vehicle of victim, contributory negligence of victim cannot be assumed. The relevant observations of Supreme Court states as under:

> *"8. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck which was being driven rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence."*

10. Applying aforesaid exposition of law in facts of case, in absence of any evidence to indicate rash and negligent driving on the part of deceased, findings of contributory negligence as recorded by Tribunal cannot be countenanced. In result, this Court holds that there is no rational for holding 20% contributory negligence of deceased and consequential deduction of compensation on that count.

11. Even non-wearing of headgear by deceased at the time of accident, *ipso facto* does not constitute reason for attributing contributory negligence against victim. The violation of traffic rule would be definitely punishable under Rule, that attracts penalty or fine, but concept of contributory negligence is based on act of carelessness of driver while driving vehicle, which formulated

cause of accident. Even assuming that deceased was not wearing headgear, that has no relevance with cause of accident. Non-wearing of headgear or helmet has no resemblance with cause of accident. Those are two independent facts and cannot be mixed together to draw any inference to make out case of contributory negligence. The respondents have not brought any material on record to indicate that because deceased was not wearing helmet or headgear, accident in question occurred. In result, findings of contributory negligence is liable to be set aside.

12. So far as submissions advanced by learned Advocates appearing for appellants, notional income of deceased could have been considered @ 12,000/- per month, there is nothing on record to substantiate such contentions. The Tribunal considered age of deceased as 19 years. Admittedly, he was a student of 12th Standard. There is no evidence that deceased was contributing to parents or adding to family income. Nothing is brought on record that minimum wages as on date of accident for particular area or sector would apply in fact of the case. In absence of any such material, this Court do not find merit in contentions that notional income of deceased needs consideration @ Rs.12,000/- per month.

13. Last submissions advanced on behalf of appellants is that nothing is granted towards loss of consortium. The claimant nos.1 and 2 are parents of deceased, whereas claimant nos.3 and 4 are

siblings. In case of death of bachelor son, unless specific circumstances are brought on record, only mother can be considered as dependent of deceased. However, loss of consortium can be considered to both parents. In this case, claimant nos.3 and 4 being siblings are not entitled for compensation, since they are dependents on their father. In that view of matter, particularly, considering law laid down by Supreme Court of India in case of ***Magma General Insurance Co. Ltd*** (supra) claimant nos.1 and 2 needs to be compensated towards loss of consortium @ Rs.40,000/- each. In that view of matter, claimant nos.1 and 2 are entitled for compensation as per following table:-

Sr. No.	**Heads**	**Amount (Rs.)**
1	Annual Income (Rs.8000 x 12)	Rs.96,000/-
2	Addition of 40% towards future prospects (Rs.96,000/- + Rs.38,400/-) =	Rs.1,34,400/-
3	One half deduction towards personal and living expenses. Rs.1,34,400 / 2 = Rs.67,200/-	Rs.67,200/-
4	Apply multiplier of ‘18’ (Rs.67,200 x 18)	**Rs.12,09,600/-**
5	Rs.40,000/- to claimant nos.1 and 2 each towards loss of consortium (Rs.40,000/- x 2)	**Rs.80,000/-**
6	Rs.15,000/- towards funeral expenses	**Rs.15,000/-**
7	Rs.15,000/- towards loss of estate	**Rs.15,000/-**
	TOTAL	**Rs.13,19,600/-**

14. In that view of the matter, the appeal deserves to be allowed. Hence, following order: -

<u>ORDER</u>

i. First Appeal is partly allowed.

ii. The judgment and award dated 04.11.2023 passed by the Motor Accident Claim Tribunal, Osmanabad in M.A.C.P. No.40/2022 is modified.

iii. The respondents shall jointly and severally pay compensation of Rs.13,19,600/- (Rs. Thirteen Lakhs Nineteen Thousand Six Hundred only) alongwith interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the amount to claimant nos.1 and 2 (inclusive of amount of 'NFL').

iv. The compensation amount shall be apportioned in proportion of 30% and 70% to claimant nos.1 and 2 respectively.

v. On deposit of compensation amount, same be released in favour of claimant nos.1 and 2.

vi. Award be drawn up on payment of deficit court fees, if any.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2025