



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 5210 OF 2017

1. Anjanabai Mahendrakumar Karnkar,
Age : 47 years, Occu. : Nil.,
2. Mahendrakumar Govind Karnkar,
Age : 51 years, Occu. : Nil.,

Both R/o. Taloda, Tq. Taloda,
Dist. Nandurbar.

... Appellants
(Orig. Claimants)

Versus

1. Jasbirsing Harbhajansing Panjabi,
Age: Major, Occu. : Business,
R/o. Sahjivan Nagar, Near Milk Diary,
Dhule.
2. Shriram General Insurance Company
Limited,
Through Regional Manager,
10003, E-8, EPIP, RIICO Industrial Area,
Sitapura, Jaipur, 302 022
(Rajasthan State)

... Respondents.

.....
Mr. M. R. Deshmukh, Advocate for Appellants.
Mr. A. G. Chaudhari, Advocate for Respondent No.2.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 19 DECEMBER 2025

PRONOUNCED ON : 22 DECEMBER 2025

JUDGMENT :

1. Original claimants, who are dissatisfied by the quantum of compensation awarded by learned Motor Accident Claims Tribunal and Ad-hoc District Judge-1, Shahada in M.A.C.P. No. 299 of 2012 on

account of demise of their son Mayur in road traffic accident, have preferred instant appeal.

2. Facts giving rise to the instant claim petition are that, on 24.09.2012 at about 00.30 a.m, deceased Mayur was travelling on his motorcycle bearing No. MH-39-D-4086 from Taloda to Kukarmunda. One Tata 407 vehicle bearing No. MH-10-K-8893, which was being driven in rash and negligent manner, gave a dash to Mayur, who died on the spot. Crime was registered at Taloda Police Station against the driver of the TATA 407 vehicle. Parents of deceased set up a claim by invoking Section 166 of Motor Vehicles Act seeking compensation from respondent no.1 owner of the offending vehicle and its insurer.

After appreciating the oral and documentary evidence, learned tribunal by order dated 29.08.2015 partly allowed the claim petition, directing respondent nos.1 and 2 to pay compensation jointly and severally to the tune of Rs.6,73,200/- with interest at the rate of 9% per annum.

Primarily feeling dissatisfied by the quantum, original claimants have preferred instant appeal.

3. Learned counsel for appellants would point out that, the deceased, a young man, was son of the appellants and was moreover a bachelor. That, he met with a road traffic accident. According to him, at the time of accident, deceased was working as a peon in Modern English School and Junior College and received salary to the tune of Rs.11,568/-. He pointed out that, this has been substantiated by examining witness of the college apart from placing on record salary register as well as service book at Exhs.32 and 33. He emphasized that, the said employee was of permanent in nature. He further submitted that, apart from above service, deceased was also rendering electrical work by working as electrician as he had undergone necessary training in that field. He used to earn additional income of Rs.4,000/- per month from the said occupation. However, according to learned counsel, entitlement of compensation under this additional work, has not been taken into account by learned tribunal.

4. Learned counsel criticizes the judgment and order of tribunal for deducting 40% for assessed compensation by attributing contributory negligence to the deceased for not wearing helmet at the time of accident. According to him, this was not permissible and to buttress such contention, he sought reliance on the judgment of the Hon'ble Apex Court in the case of ***Sudhir Kumar Rana v. Surinder Singh and Ors.***, (2008) 12 SCC 436, as well as judgment of this court

in First Appeal No.688 of 2024 in the case of ***Mohan s/o. Dhanu Rathod and Ors. v. Kiran s/o. Sharad Vairagkar*** decided on 22.04.2025, and elaborated that, deduction for not wearing helmet was not permissible. He also found fault on the part of learned tribunal in not considering future prospects which are directed by the Hon'ble Apex Court in the case of ***National Insurance Company Limited v. Pranay Sethi and others***, 2017 (16) SCC 680. For all above reasons, he urges for indulgence at the hands of this court by enhancing the compensation as prayed for.

5. None appeared for respondent No.1 in spite of service.

6. Learned counsel Mr. Choudhary for respondent no.2 insurance company would support the judgment of the trial court and according to him, learned tribunal has correctly recorded the finding that there was contributory negligence on the part of deceased also. No fault can be found in the same. He further submitted that, considering the quality of evidence adduced by claimants in the trial court, even no fault can be found either in the manner of computation or in the necessary deduction permissible under law. For all above reasons, he urges not to interfere in the impugned judgment.

7. After hearing the submissions advanced by both sides,

here, admittedly present appellants are original claimants, who had instituted proceedings i.e. M.A.C.P. No. 299 of 2012 by invoking section 166 of Motor Vehicles Act on account of losing their son Mayur in road traffic accident dated 24.09.2012. Before this court, there is no serious contest on the point of age and occupation i.e. service of deceased Mayur as Peon.

8. What is pinching the appellants is primarily the 40% deduction made by the tribunal for the deceased's failure to wear a helmet at the time of the accident.

9. Observations to this extent, which are reflected in paragraph 11, is revisited. Specific case was set up by insurance company in the trial court that, deceased being a rider, was not wearing a helmet, and as there was head injury, deceased was also negligent. In paragraph 11 of the judgment, it is held that, in normal course party who raised objection of contributory negligence will have to prove the same. However, by further holding that considering the fact about the incident, insurer can prove the same through documents or through cross examination of the petitioners witness and holding that no such evidence is brought from petitioner side. Learned tribunal held that, section 149 of M.V. Act provides the compulsory wearing of Helmet by two wheeler rider. Considering the nature of injuries sustained to him and the exact cause of death it is

very much clear that due to non wearing Helmet the nature of injury was very serious and that was main cause for his death, resultantly it was opined that there was contributory negligence on the part of deceased Mayur.

10. Learned counsel for appellants has sought to place reliance on the judgment of Hon'ble Apex Court in the case of ***Sudhir Kumar Rana (supra)***, which was also relied upon by this court in the case of ***Mohan Dhanu Rathod*** (Supra). The relevant observations of the Hon'ble Apex Court, as narrated in the appeal, are reproduced 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 who was driving 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."

11. Thus, what is emerging from above observations of both,

the Hon'ble Apex Court as well as this court is that, failure to wear Helmet, at the most, would constitute violation of traffic rules and such factor cannot be taken recourse to in fixing the contributory negligence.

12. Resultantly, appellants have succeeded in pointing out that learned tribunal has erred in holding contributory negligence of deceased and further erred in making deductions by applying 40% liability. Therefore, finding to that extent, is required to be set aside.

13. The second objection raised here is that, non consideration of additional income earned by deceased by rendering the work of electrician. In the claim petition filed on oath, it was stated that, after rendering the duties as peon, the deceased earned Rs.4,000/- by doing work of electrician.

The claim of additional income earned by the deceased as an electrician is not supported by any documentary or independent evidence, and therefore cannot be accepted for the purpose of determining compensation. It is settled law that, the burden of proving income lies upon the claimants. In the present case, the claimants have failed to discharge the said burden with respect to the alleged additional income of the deceased as an electrician.

14. As per salary certificate, gross salary of deceased was Rs.11,568/- and after considering deduction towards Professional Tax i.e. Rs.200/-, his monthly income comes to Rs.11,368/-.

15. Third limb of arguments is that, claimants are not granted compensation towards future prospects. Admittedly, deceased was in permanent employment. Claimants had proved his such service by examining witness, who placed on record documentary evidence. Therefore, with such nature of evidence on record, even learned tribunal ought to have been considered ratio laid down by the Hon'ble Apex Court in the case of *Pranay Sethi* (supra) and ought to have been granted future prospects 50% in view of ratio laid down in the case of *Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram and Others*, (2018) 18 SCC 130.

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

Sr. No.	Heads	Amount (Rs.)
1.	Annual Income (Rs.11,368 x 12)	1,36,416/-
2.	Future Prospects 50% i.e. 68,208 (1,36,416 + 68,208)	2,04,624/-
3.	Less 50% deduction towards personal expenses. (Rs. 2,04,624 – Rs.1,02,312)	1,02,312/-

4.	Multiplier of 17 (1,02,312 X 17)	17,39,304/-
5.	Loss of consortium and love and affection (Rs. 40,000 x 2 = 80,000/-) Loss of Estate – 15,000/- Funeral Expenses – Rs.15,000/-	1,10,000/-
6.	Total compensation to be paid	18,49,304/-
7.	Compensation awarded by Tribunal	6,73,200/-
8.	Total Enhanced Compensation (i.e. Rs.18,49,304 – 6,73,200)	11,76,104/-

17. In the result, following order is passed :-

ORDER

- (i) Appeal is allowed with proportionate costs.
- (ii) Impugned judgment and award dated 29.08.2015, passed by the Member, Motor Accident Claims Tribunal, Shahada in M.A.C.P. No.299 of 2012 is modified.
- (iii) Respondent no.2 - insurance company to pay enhanced compensation of Rs.11,76,104/- to claimants within 12 weeks from today along with interest @ 9% per annum from the date of registration of claim petition till its realization.
- (iv) Modified award be prepared accordingly.

(v) Claimants to pay court fees on enhanced compensation as per rules.

(vi) On deposit of the amount by Insurance Company, appellants/claimants are permitted to withdraw the same.

(ABHAY S. WAGHWASE, J.)