



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1051 OF 2012

1. Padminbai w/o Raosaheb Kendre,
Age: 49 years, Occu. Household,
2. Sandeep s/o Raosaheb Kendre,
Age: 24 years, Occu. Agri.,
3. Shankar s/o Govinda Kendre,
Age: 77 years, Occu. Nil,

All R/o: Nagdarwadi, Post. Malakoli,
Tq. Loha, Dist. Nanded.

...Appellants
(Orig. Claimants)

Versus

1. Subjan Ali Gowlani S/o Ameer Ali Gowlani
Age: 40 years, Occu. Business,
R/o: 3-9-281, Gandhi Chowk,
Adilabad, Tq & Dist. Adilabad.
(A.P. State)
2. The New India Assurance Company Ltd,
Through its Branch Manager,
Branch at Adilabad (A.P.)
3. The New India Assurance Company Ltd.
Through its Branch Manager,
Branch at Nanded,
Tq & Dist. Nanded.
4. Kusumbai w/o Raosaheb Kendre (alleged)
Age Major, Occu. Unknown,
R/o: Gudihatnoor, Tq & Dist. Adilabad (A.P)
[Respondent No. 4 is formal party
Therefore notice is not required]

...Respondents

...
Mr. H. I. Pathan, Advocate for Appellants
Mr. A. G. Kanade, Advocate for Respondent Nos. 2 and 3
...

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : NOVEMBER 25, 2025
PRONOUNCED ON : NOVEMBER 27, 2025**

JUDGMENT:

1. Dissatisfied by the quantum of compensation awarded vide judgment and order dated 20.10.2010 in Motor Accident Claim Petition No. 646/2010 passed by Motor Accident Claims Tribunal, Kandhar, Dist. Nanded, original claimants preferred instant appeal seeking enhancement of compensation primarily on the ground of inadequate compensation.

2. Learned counsel for the appellants submit that, appellants are original claimants and they have instituted proceedings under Section 166 of Motor Vehicles Act before MACT, Kandhar on account of death of Raosaheb Shankar Kendre, who was proceeding on motorcycle with his friend Maruti and they had been given a dash by truck bearing no. AP-01/T-7374 coming from Adilabad side. Therefore, on account of fatal injuries and death, above claim petition was set up seeking compensation to the tune of Rs. 4,00,000/-.

After appreciating the case of claimants as well as hearing respondents, learned Tribunal was pleased to partly allow the claim directing respondent nos. 1 to 3 jointly and severally liable to pay compensation of Rs. 2,67,000/- @ 7% rate of interest.

Dissatisfied by the above quantum, instant Appeal has been filed on various grounds raised in the appeal memo.

3. Sum and substance of the arguments raised by learned counsel for appellants is that, deceased was proceeding on a motorcycle and the said motorcycle was given dash by offending truck and crime was registered against truck driver. That, after complete appreciation of documentary evidence, learned Tribunal had recorded findings that there was rashness and negligence on the part of truck driver. He would further submit that claimants, by virtue of previous orders, modified the initial claim and raised it to the tune of Rs. 4,00,000/-. He pointed out that deceased was truck driver, however, learned Tribunal failed to consider and appreciate the same and on the ground of no evidence in that regard, disbelieved such occupation of the deceased and considered the deceased to be labour and Rs. 100/- daily wages, compensation has been derived and arrived. He point out that even daily wage worker earns at least Rs. 250/- per day and as such, earns Rs. 7,500/- per month. That, at least same ought to have been considered but learned Tribunal failed to do so.

4. He point out that here respondent insurance company has not controverted the alleged occupation of deceased and neither there was any suggestion in the cross. Therefore, it is his submission that learned Tribunal ought to have accepted the deceased to be working as truck driver and

ought to have granted compensation accordingly. He further point out that even learned Tribunal failed to grant compensation under heads of love and affection, loss of estate and loss of consortium and even amount granted towards funeral expenses is meager and, therefore, he urges to grant the same in appeal and thereby enhance the amount of compensation.

5. In answer to above, learned counsel for respondents would point out that there was no evidence about deceased to be working as driver and no driving license was placed on record and, therefore, according to him, no fault can be found on the part of learned Tribunal in refusing to accept the case of claimants that deceased works as truck driver. According to him, learned Tribunal has passed well reasoned order and he took this Court through paragraphs 19, 20 and 21 and would submit that computation of compensation is just and proper and, therefore, he urges for not to interfere in the impugned judgment and order.

6. Heard. Perused the record as well as impugned judgment. Present appeal is only for enhancement of compensation. Neither negligence nor findings recorded to that extent by Tribunal are questioned here. Precisely submissions made before this Court are that deceased was working as driver and, therefore, fault is found on the part of Tribunal for not considering the same. However, admittedly, except submissions to that extent in the claim petition, there was no distinct evidence that deceased

was employed as driver. Even on Court's query, learned counsel pointed out that there is no license to demonstrate that deceased was pursuing such occupation. Therefore, no fault can be found on the part of Tribunal in holding that claimants failed to prove alleged occupation of deceased. However, as pointed out, learned Tribunal has considered deceased to be a labour and has made computation by considering his daily wages to the tune of Rs. 100/-. Such consideration is apparently on lower side. Even in the year 2004, daily wage earner might be earning more than that. Therefore, it would be just and proper to consider daily wage of the deceased to the tune of Rs. 350/-. Hence, monthly income of the deceased comes to Rs. 10,500/- and annual income comes to Rs. 1,26,000/-.

7. In view of the ratio laid down in *National Insurance Company Limited v. Pranay Sethi and Ors.*, 2017 SCC OnLine SC 1270 ; *Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram and Others*, (2018) 18 SCC 130 and *Nagappa v. Gurudayal Singh and Others*, (2003) 2 SCC 274, claimants are entitled for Rs.40,000/- each, i.e. 1,20,000/- towards loss of consortium, Rs. 10,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses.

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

Sr. No.	Heads	Amount (Rs.)
1.	Annual Income (Rs. 10,500 X 12) Rs. 1,26,000/- (-) Rs.42,000 1/3 rd deduction towards personal expenses = Rs.84,000/- Rs. 84,000 x 13 multiplier = Rs. 10,92,000/-	10,92,000/-
2.	Loss of consortium	1,20,000/-
3.	Loss of estate	10,000/-
4.	Funeral expenses	5,000/-
5.	Total compensation to be paid	Rs. 12,27,000/-
6.	Compensation awarded by Tribunal	Rs. 2,67,000/-
7.	Total enhanced compensation (Rs. 15,00,000 (-) Rs. 2,67,000)	Rs. 9,60,000/-

9. In the result, following order is passed:

O R D E R

- (i) Appeal is partly allowed with proportionate costs.
- (ii) Impugned judgment and award dated 20.10.2010 in Motor Accident Claim Petition No. 646/2010 passed by Motor Accident Claims Tribunal, Kandhar, Dist. Nanded is modified.
- (iii) Respondent nos. 1 to 3 to pay enhanced compensation of Rs. 9,60,000/- to claimants within 12 weeks from today along with interest @ 7% 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, appellants/claimants are permitted to withdraw the same.

(ABHAY S. WAGHWASE, J.)