IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 129 OF 2023

1. Sandeep Madhukarrao More
   Age : 52 years; Occ. : Service

2. Sumit s/o Sandeep More
   Age : 25 years; occ. : Education

3. Shruti d/o Sandeep More
   Age : 23 years; Occ. : Education

All R/o Waswadi, Behind Prince Steel,
Barshi Road, Latur,
Tal. & Dist. Latur. … **APPLICANTS**
(Ori. Claimants)

VERSUS

1. Dnyaneshwar S/O Shivaji Jadhav,
   Age : 35 years, Occ. : Private Service
   R/o Moti Nagar, Near Suwarna Hanuman Temple
   Latur Tal. & Dist. Latur

2. Rashid Sharipoddin Shahanedivan
   Age : 55 years, Occ. : Service
   R/o House No. 2072/2 old MIDC Road
   Indira Nagar, Near Babu Fulari's House,
   Latur Tal. & Dist. Latur

3. The New India Assurance Co. Ltd.
   Through Its Branch Manager,Opp. S.B.H.
   (Main Branch) Chandra Nagar,
   Latur Tal. & Dist. Latur … **RESPONDENTS**
   (Ori. Respondents)

Mr. Fayaz K. Patel, Advocate for Appellant
Mr. V. S. Valse, Advocate for Respondent Nos. 1 and 2
Mr. M. R. Deshmukh, Advocate for Respondent No. 3

CORAM : ROHIT W. JOSHI, J.
DATE : 25th FEBRUARY, 2025

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. The original claim petitioners are aggrieved by the amount of compensation awarded by learned Ad-hoc District Judge-1 and Ex-Officio Member, Motor Accident Claims Tribunal, Latur in M.A.C.P. No. 18 of 2016. Deceased Janki W/o. Sandeep More had suffered serious injuries in a road accident on 16.11.2015 and succumbed to the said injuries on 17.11.2015. The respondent No. 1 was driving the offending vehicle, which was owned by respondent No. 2 and was insured with the respondent No.3/The New India Assurance Co. Ltd. as on the date of accident. The deceased is survived by three dependents, namely her husband and two children. The appellants original petitioners state that she was a housewife. The learned Tribunal proceeded to compute compensation taking notional income of Rs. 5000/- per month. It has applied multiplier of 13 by making 1/3rd deduction for personal expenses since her age was 47 years and she has left behind three dependents. Learned Tribunal has not considered the head of future prospects, while computing loss of financial dependency. Likewise, the learned Tribunal has also not awarded compensation towards loss of consortium to the children. Learned counsel for appellants claims enhancement of compensation on the count that the consortium ought to have been awarded to the Appellant Nos. 2 and 3 and 4, future prospects ought to have been considered.

3. Per contra, the learned advocate for respondent No. 3/The New India Assurance Company Ltd. supports the award contending that all the dependents are entitled to consolidated amount of Rs. 40,000/- towards loss of consortium and he further states that compensation on account of loss of financial dependency is also rightly computed.

4. Having heard the rival submissions following points arise for my consideration.

I. Is the amount of compensation granted towards the loss of financial dependency correctly computed?

II. Are the appellant Nos. 2 to 3 namely children of the deceased individually entitled to compensation against the head of loss of consortium?

5. The learned Tribunal has rightly considered notional income of Rs. 5000/- per month and has also correctly made deduction of $1/3^{rd}$ amount towards personal expenses, since the deceased is survived by three dependents. Multiplier of 13 is also correctly applied having regard to age of deceased. To this extent, the judgment and award do not call for any interference. However, in my considered opinion, the learned Tribunal has erred in not taking into consideration the head of future prospects. Since the age of deceased was 47 years and she was not having stable income, an addition of 25% should be made on account of loss of future prospects.

6. Point No. II - It is no longer in dispute that apart from the spouse, children of deceased are also entitled to compensation against the head of loss of consortium individually. The learned Tribunal has erred in not awarding compensation to the children of the deceased on this count. The compensation for loss of consortium therefore, requires to be increased by a sum of Rs. 80,000/-.

7. The computation of compensation is therefore, required to be made as under :

Income considered Addition of Future Prospect @25%	5000/- + 1250/-
Monthly income after Addition 1/3rd Deduction for personal and living expenses	6250/- – 2083/-
Monthly dependency	4167/-
	4167/- X 12
Annual dependency Multiplier 13	50,004/- X 13
Pecuniary Loss	**6,50,052/-**
Consortium (40,000/- X 3) Funeral Estate Medical bills as awarded	1,20,000/- + 15,000/- + 15,000/- + 17,705/-
Total	**8,17,757/-**
Already awarded	8,17,757/- – 6,07,653/-
Enhancement	**2,10,104/-**

8. In view of the aforesaid, the appeal is partly allowed by enhancing the compensation awarded by the learned Tribunal by a sum of Rs. 2,10,104/-.

9. At this stage the learned counsel for respondent No. 2 has drawn my attention to order dated 09.12.2022 passed by this Court on Civil Application No. 4048 of 2020 which is the application for condonation of delay in filing the present appeal. Paragraph 4 of the said order states that the appellants will not be entitled to receive interest on the enhanced amount of compensation up to the date of filing of appeal, in the event, the appeal is allowed. Paragraph 4 is required to be read harmoniously along with paragraph 2 of the order condoning delay. Paragraph 4 when read and interpreted in the light of paragraph 2 would clearly indicate that what is intended is that, the respondent should not be penalized by fastening liability to pay interest for the period of delay. It is inconceivable that the Court has deprived the claimants of the right to receive interest for the prescribed period of limitation provided by law. The order needs to be interpreted in the right spirit. In view of the aforesaid, the appellants will be entitled to receive interest for enhanced amount of compensation at rate of 7.5% per annum from the date filing of the claim petition i.e. 25.01.2016 till the date of realization of the said amount excluding the period of 154 days.

10. In view of the above, the appeal is partly allowed in the following terms.

ORDER

(i) The respondent Nos. 1 and 3 are jointly and severally liable to pay additional compensation of Rs. 2,10,104/- to the appellants along with interest at the rate of 7.5% per annum from 25.01.2016 till the date of realization of entire amount excluding period of 154 days over and above, compensation of Rs. 6,07,653/- awarded by learned Member, Motor Accident Claims Tribunal, Latur in M.A.C.P. No. 18 of 2016.

(ii) Rule is made absolute in above terms.

(iii) Parties to bear their own costs.

[ROHIT W. JOSHI]
JUDGE

KS_Kamble/