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

FIRST APPEAL NO. 3221 OF 2015

1. Nirmalabai Kailas Wagh,
   Age : 34 years, Occu : Household

2. Varsha Kailas Wagh,
   Age : 16 years, Occu : Student,

3. Shubham Kailas Wagh,
   Age : 12 years, Occu : Student,
   All R/o. Fardapur, Tq. Soyegaon,
   Dist. Aurangabad. ...**Appellants**
   [Orig. Claimants]

Versus

1. Devidas Daulat Phuse,
   Age : Major, Occu : Driver,

2. Pandit Tukaram Damdhar,
   Age : Major, Occu : Driver,
   Respondent No. 1 and 2 R/o. Panwadod,
   Tq. Sillod, District : Aurangabad.

3. Mansaram Asaram Joshi,
   R/o. Kumbhari, Tq. Jamner,
   District : Jalgaon.

4. Raju Sheshrao Welhal,
   Age : Major, Occu : Driver,
   R/o. At Post Fardapur, Tq. Soyegaon,
   District : Aurangabad.

5. The Manager,
   United India Insurance Company Ltd.,
   Through Manager, New Osmanpura, Aurangabad,
   District : Aurangabad. ....**Respondents**

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Mr. Mahesh K. Bhosle – Advocate for the Appellants
Respondent Nos. 1 to 4 served.
Mr. S. R. Bagal – Advocate for Respondent No. 5

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CORAM : NEERAJ P. DHOTE, J.
DATED : 12TH AUGUST, 2025

JUDGMENT : -

1. This is an Appeal under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'M. V. Act'] filed by the Original Claimants arising out of the Judgment and Order dated 08.01.2015, passed by the learned Motor Accident Claims Tribunal, Aurangabad [for short 'the learned Tribunal'] in Claim Petition No. 406 of 2011, for enhancement of compensation.

2. The facts, in brief, giving rise to the present Appeal are as follows : -

[i] The Appellants are the Widow and Children of Kailas Laxman Wagh (hereinafter referred to as 'the Deceased'). They filed the above-referred Claim Petition contending that, on 09.02.2011, when the Deceased was travelling on a Motorcycle as a pillion-rider from Sillod to Fardapur with one Raju Sheshrao Welhal, the Truck bearing No. MH-20/AY-6384, which was being driven in a rash and negligent manner, gave dash to the Motorcycle near Golegaon Phata. The Deceased suffered severe injuries to which he succumbed. The accident was reported to the concerned Police Station, and Crime bearing No. I-18/2011

came to be registered for the offence punishable under Sections 279, 304-A, 337 of the Indian Penal Code against the Respondent No. 1. The Deceased was aged 40 years and earning his livelihood by doing agricultural work and milk business, and was having monthly earning of Rs.15,000/-. The Appellants were dependent on the Deceased. The Respondents, i.e. the driver of the offending vehicle, the owner of the offending vehicle, the driver of the motorcycle, and the Insurance Company, were jointly and severally liable to pay the compensation of Rs. 5,00,000/- with interest @ 18% p.a.

[ii] The Claim Petition was contested by Respondent Nos. 1 and 2 by filing a Written Statement below Exh. 23, and by Respondent No. 5 Insurance Company by filing a Written Statement below Exh. 15. The issues were framed, and the Appellants led evidence. Respondent No. 5 Insurance Company examined the witness. Upon appreciation of the evidence available on record, and after hearing both the sides, the learned Tribunal passed the above-referred Judgment and Order.

3. It is submitted by the learned Advocate for the Appellants that the learned Tribunal considered the income of the Deceased on the

lower side, though the 7/12 extract was filed on record to show that there was irrigated agricultural land in the name of the Deceased. The compensation under the conventional heads, such as loss of estate, funeral expenses, and Consortium, be awarded in accordance with the settled position under the law. The interest @ 6% p.a. was on the lower side and it be enhanced to 9% p.a. In support of his submissions, he relied on the following judgements:

[i] Santosh Devi v. National Insurance Company Ltd. and Ors., AIR 2012 SC 2185,

[ii] Rajesh And Others Versus Rajbir Singh And Others, (2013) 9 SCC 54,

[iii] Puttamma And Others Versus K. L. Narayana Reddy and Another, (2013) 15 SCC 45,

[iv] Smt. Sarla Verma and Ors.v. Delhi Transport Corporation and Anr, 2009 AIR SCW 4992,

[v] Syed Sadiq etc v. Divisional Manager, United India Ins. Co, 2014 AIR SCW 724,

[vi] Smt. Savita v. Bindar Singh and Ors, 2014 AIR SCW 2053 and

[vii] Smt. Neeta Kallappa Kaddolkar and Ors. Etc. v. Div. Manager, MSRTC, Kolhapur, AIR 2015 SC (Supp) 565.

4. None appeared for Respondent Nos. 1 to 4, though served.

5. It is submitted by the learned Advocate for the Respondent No.5 Insurance Company that the Claim was for Rs. 5,00,000/- and the leaned Tribunal has awarded the compensation to the tune of Rs.3,85,000/-, which was just and proper compensation. The Appeal is

for the remaining amount of compensation. In the absence of any evidence to show the monthly income of the Deceased, the learned Tribunal has rightly considered the notional income of Rs. 3,000/- per month, and no fault can be found with the same. He further submitted that the compensation under the conventional heads, such as loss of estate, funeral expenses, consortium**,** and future prospects, be considered as per the settled position under the law in ***National Insurance Company Limited v. Pranay Sethi and others, (2017) 16 SCC 680***. He further submitted that the interest @ 6% p.a. was just and proper, and there is no ground for enhancing the rate of interest. He submitted that the Appeal be dismissed.

6. Perused the record. Though the Appellants claim that the Deceased was earning Rs. 15,000/- per month, except for the 7/12 extract, no evidence was brought on record to establish the monthly income of the Deceased – Kailas Wagh. The 7/12 extract shows three other names, in addition to the name of the Deceased – Kailas, which goes to show that agricultural land was jointly owned by the Deceased and his brothers. The extent of land shown in the 7/12 extract is 6 Hectares 97 R, and as per the pleadings, the Deceased was cultivating the land to the extent of 1 Hectare 74 R. The 7/12 extract was of the year 2010 and shows Sorghum and Pigeon Pea crops against the name of the Deceased therein. From this, it goes to show that the Deceased

was doing the agricultural work. It has come in the cross-examination of the Widow of Deceased that the dry land to the extent of 3 and 1/2 acres had come to the share of the Deceased. In the Judgment, the learned Tribunal observed that, *"considering the evidence on record it will be just and proper to consider the notional income of the Deceased @ Rs. 3000/- per month."* The Judgment nowhere shows that the above referred aspect, in respect of the extent of agricultural land which the Deceased was cultivating and the crops shown in the 7/12 extract against the extent of land cultivated by the Deceased, were considered, and thereafter such notional income was fixed. Had there been no evidence at all as discussed above, the said notional monthly income would have been appropriate. However, considering the above discussion based on the evidence available on record, the notional monthly income of Deceased can safely be considered as Rs.4,500/- per month. Though the Appellants claimed that the Deceased was doing milk business, there is no iota of evidence to support or prove said contention.

7. As regards the future income of the Deceased is concerned, the learned Tribunal considered the same as Rs. 2,000/- per month. The compensation towards future prospects and towards the conventional heads i.e. funeral expenses, loss of estate, and consortium, will have to be granted as per the judgment in the case of *Pranay Sethi* (*supra*).

8. The above referred judgments cited by the learned Advocate for the Appellants are on the facts and circumstances of the cases therein and distinguishable on facts. In the light of the above discussion, the compensation granted by the learned Tribunal is re-calculated as under : -

Sr. No.	Head	Compensation awarded
1	Notional Monthly Income	Rs. 4,500/-
2	Future Prospects (40%), since the age of the Deceased was below 40 years as the date of birth in the extract of School Register at Exh.14 is shown 01.06.1971.	Rs. 1,800/-
3	Total Monthly Income	Rs. 4500/- + Rs. 1800/- = Rs. 6300/-
4	1/3rd deduction towards personal living expenses	Rs. 6300/- % 3 = Rs. 2100/-
5	Net Monthly Income after 1/3rd deduction	Rs. 6300/- – Rs. 2100/- = Rs. 4200/-
6	Net Yearly Income	Rs. 4200/- [Net monthly income] X 12 months =Rs. 50,400/-
7	Multiplier of 15	Rs.50,400/- [Yearly income] X 15 = Rs.7,56,000/-
8	Funeral Expenses	Rs. 15,000/-
9	Loss of Estate	Rs. 15,000/-
10	Consortium	Rs. 40,000/- X 3 dependents = Rs.1,20,000/-
	Total	**Rs.9,06,000/-**

9. As regards the interest is concerned, the reliance is placed by the learned Advocate for the Appellants on the Judgment in the case of *Syed Sadiq* (*supra*) wherein the interest @ 9% p.a. was granted. In the case at hand, the learned Tribunal granted interest @ 6% p.a. The accidental death of the Deceased took place in February – 2011. It is

needless to state that the rate of interest of the Nationalised Bank keeps on fluctuating and never static. Taking into consideration all these aspects, the interest @ 7.5% p.a. would be appropriate.

10. True it is that, the compensation claimed by the Petitioners [Appellants] in the Claim Petition was to the extent of Rs. 5,00,000/-. However, the above calculation shows that the amount of compensation goes above Rs. 5,00,000/-. It is needless to state that just and proper compensation is to be granted. Useful reference can be made to the Judgment in the case of ***Nagappa vs. Gurudayal Singh & Ors., (2003) 2 SCC 274***. In light of the above discussion, the following order is passed:-

ORDER

[i] The Appeal is partly allowed.

[ii] The compensation awarded by the learned Tribunal is modified to Rs. 9,06,000/- [Rupees Nine Lakh Six Thousand only] inclusive of 'No Fault Liability' [NFL] amount with interest @ 7.5% p.a. from the date of filing of the Claim Petition till its realization.

[iii] The amount of enhanced compensation of Rs. 5,21,000/- [Rs. 9,06,000/- – Rs. 3,85,000/-], with Interest be kept in the Fixed Deposit in any Nationalized Bank for a period of one [1] year and thereafter, it be renewed as per choice/wish of the Appellants.

[iv] The amount of enhanced compensation i.e. Rs. 5,21,000/- [Rupees Five Lakh Twenty One Thousand] with Interest be equally divided/apportioned amongst the Appellants, who are the original Claimants.

[v] Award be drawn up accordingly.

[NEERAJ P. DHOTE]
JUDGE

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