IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1005 OF 2003

1] Smt.Anandi Eliyas Amolik
Age-45 years, Occupation-Service,
R/o. At/post,Puntamba,
Tal.Kopergaon,Dist.Ahmednagar. ..Appellant

VERSUS

1] Sureshchand Shivnarayan Sharma
Age : Adult, Occu.Business
R/o. A.B.Road, Julwaniya,
Dist. Khargaon (M.P).
(Appeal is dismissed against Respondent No.1 as per Registrar's order dated 03.05.2005)

2] The New India Assurance Co.
Ltd. Ahmednagar Branch.

3] Ramkisan Bhagwat Chaudhari
Age : Adult. Occ.Business,
R/o. At post, Jalgaon,
Tq.Shrirampur,Dist.Ahmednagar.

4] The New India Assurance Co.Ltd.
Ahmednagar Branch. ...Respondents

WITH
CIVIL APPLICATION NO.4769 OF 2007

1] Smt.Anandi Eliyas Amolik
Age-56 years, Occupation-Service,
Tal.Kopergaon,Dist.Ahmednagar. ..Applicant

VERSUS

1] Sureshchand Shivnarayan Sharma
Age : Adult, Occu.Business
R/o. A.B.Road, Julwaniya,
Dist. Khargaon (M.P).
(Appeal is dismissed against Respondent No.1 as per Registrar's order dated 03.05.2005)

2] The New India Assurance Co.
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Age : Adult. Occ.Business,
R/o. At post, Jalgaon,
Tq.Shrirampur,Dist.Ahmednagar.

4] The New India Assurance Co.Ltd.
Ahmednagar Branch. ...Respondents

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Advocate for Appellant : Mr. K.M.Nagarkar
Advocate for Respondent Nos.2 and 4 : Mr. V.N.Upadhye

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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 28th APRIL 2025

PRONOUNCED ON : 05th MAY 2025

FINAL ORDER :

1. Heard both sides finally.

2. Appellant who is original claimant has filed this appeal for

enhancement of the compensation being dissatisfied by judgment and award of Rs.3,50,000/- with interest at the rate of 6% per annum from the date of filing of the petition passed by learned member of M.A.C.T. Kopergaon in M.A.C.P No.54 of 2002.

3. Appellant lost her husband in an accident on 21.05.1995 when he was traveling in a jeep which collided with the truck coming from the opposite direction. Respondent No.1 is the owner of the truck and Respondent No.3 is the owner of jeep. Both the vehicles were insured with Respondent Nos.2 and 4 which are self-same, The New India Assurance Co.Ltd.

4. Appellant's deceased husband was permanent teacher in aided school and was earning Rs.5500/- per month. He was 52 years old at the time of accident. His daughters were married and therefore appellant was the only dependent on him. After accident, first information report was lodged. Papers of investigation were produced before the tribunal. Appellant examined four witnesses including herself. She claimed compensation of Rs.5,00,000/-.

5. Appellant's claim was contested by Respondents. The insurance company denied the liability and entitlement of the

appellant. It was contended that both the vehicles were being driven in violation of traffic rules. The Respondent No.3/owner of the jeep contended that due to rash and negligent driving of the truck, accident took place and he is not liable for anything.

6. Considering the evidence on record and the submissions of the parties, it was held by the tribunal that death of the appellant's husband was due to accident involving both the vehicles insured with the common insurance company. It was held to be composite negligence out of which 80% liability was that of owner of jeep and 20% liability was that of driver of the truck. The deceased was held to be earning Rs.5735/- per month and was of 52 years old. By applying split multiplier, the compensation was calculated to the tune of Rs.3,50,000/-. The insurance company was held to be liable jointly and severally with owner of the jeep and owner of the truck in the proportion of 80% and 20% respectively.

7. Learned counsel Mr.Nagarkar appearing for the appellant submits that method of split multiplier applied by the tribunal is patently illegal. No amount was awarded for future prospect and loss of consortium. It is submitted that the compensation is extremely inadequate. He would submit that in the absence of any appeal or

cross-examination on part of the respondents, it is desirable to enhance the compensation to the tune of Rs.7,26,084/-. He tenders on record calculation chart with a copy of judgment of the Supreme Court in the matter of **Magna General Insurance Co.Ltd. vs. Nanu Ram Alias Chuhru Ram And Ors.** reported in 2018 (18) SCC 130.

8. *Per contra*, learned counsel Mr.Upadhye appearing for the contesting respondents/insurance company supports impugned judgment and order. He would submit that considering the evidence on record, the tribunal has arrived at just and reasonable conclusion.

9. Respondents have not preferred any appeal against judgment and award. During the course of hearing also respondents did not contest any particular finding recorded by the tribunal. In that view of the matter, the monthly income, age of the deceased, factum of accident and the contributory negligence in the proportion of 80% for the owner of the jeep and 20% for the owner of the truck are undisputed. Only short point remains to be adjudicated is as to the quantum.

10. Learned member of the tribunal applied split method of multiplier while calculating the loss of income. Such type of method is deprecated by the Supreme Court. The observations in that regard recorded by the tribunal are unsustainable. In view of judgment of Supreme Court in the matter of **Sarla Verma and Ors. vs. Delhi Transport Corporation and Ors.** reported in 2009(6)SCC 121 and considering age of the deceased as 52 years, the multiplier would be 11. The appellant was the only dependent on him. Hence, 1/3rd of the annual income needs to be deducted for personal expenses. Deceased was permanent employee of a private school and was earning Rs.5735/- per month.

11. In view of judgment of Supreme Court in the matter of **National Insurance Company Limited Vs. Pranay Sethi and Ors.** reported in AIR 2017 SC 5157, the appellant is entitled to 30% of future prospect. This aspect is totally overlooked in the judgment. Obviously, at that time there was no pronouncement of any High Courts or the Supreme Court for awarding any amount for future prospect. Tribunal has not awarded anything for loss of estate, funeral expenses and loss of consortium. The claim of the appellant

for loss of consortium to the tune of Rs.40000/-, loss of estate to the tune of Rs.15000/- and funeral expenses to the tune of Rs.15000/- are reasonable and proper.

12. The compensation awarded by the tribunal is inadequate. Appellant is entitled to receive Rs.7,26,084/- It's breakup is as follows :

Sr.No.	Heads of Income	Computation
A	Annual Salary (5735 x 12)	68,880/-
B	1/3rd to be deducted for personal expenses	22940/-
C	Annual salary after deduction	45880/-
1	Multiplier and loss of income (45880 x 11)	5,04,680/-
2	30% of future prospect	1,51,404/-
3	Loss of consortium	40000/-
4	Loss of Estate	15000/-
5	Funeral expenses	15000/-
	Total :	**7,26,084/-**

13. During the course of hearing it is informed that respondents/insurance company had deposited Rs.3,50,000/- before tribunal after pronouncement of impugned award. Out of that appellant was permitted to withdraw Rs.2,07,820/-. The balance of Rs.1,42,180/- was invested in Bank of Baroda, branch at

Shrirampur,Dist.Ahmednagar. Appellant is entitled to receive difference of (Rs.7,26,084 - Rs.3,50,000)= Rs.3,76,084/- and for this enhanced amount she is entitled to receive interest @ 6% per annum from 18.07.1995 till realization of the amount. Needless to mention that she is entitled to receive the invested amount with accrued interest. Thus, present appeal succeeds and appellant shall be disbursed the compensation as determined by this Court. Hence, I pass following order :

ORDER

a) First Appeal is allowed.

b) The judgment and award dated 28.01.2003 passed by learned Member of M.A.C.T,Kopargaon in M.A.C.P No.54 of 2002 stands modified by enhancing compensation from Rs.3,50,000/- (Rupees Three Lacs Fifty Thousand Only) to Rs.7,26,084/- (Rupees Seven Lacs Twenty Six Thousand Eighty Four Only) with interest @ 6% annum from date of filing the petition i.e from 18.07.1995 till realization of the amount.

c) The rest of the operative part of the impugned judgment and award of the tribunal is maintained and confirmed.

d) Appellant shall be disbursed Rs.1,42,180/- (Rupees one lacs forty two thousasnd one hundred eighty only) as invested in Bank of Baroda, branch at Shrirampur, Dist. Ahmednagar, with accrued interest.

e)The appellant shall be disbursed balance amount of Rs.3,76,084/- (Rupees Three Lacs Seventy Six Thousand Eighty Four only) alongwith interest at 6% per annum from the date of filing of petition i.e 18.07.1995 till realization.

f) Award be drawn accordingly.

g) Civil Application stands disposed of.

[SHAILESH P. BRAHME, J.]

vsj