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

FIRST APPEAL NO.894 OF 2012

**LAXMAN NAMDEO CHOUDHARI (DEAD) THROUGH LRS
VS
SIRAJ UL-HASAN M. KHAN AND ANOTHER**

Mr. Tushar Shinde, Advocate h/f Mr. C. K. Shinde, Advocate for
the appellant

Mr. Arun G. Kanade, Advocate for the respondent No.2
(through VC)

CORAM : KISHORE C. SANT, J.

RESERVED ON : 09th JULY, 2025

PRONOUNCED ON : 30th JULY, 2025

P. C.

1. This appeal is by the legal heirs of original claimant
in MACP NO. 329/2001 for enhancement in the amount of
compensation awarded by the learned Member, MACT, Jalgaon
by order dated 22-07-2011.

2. Respondent Nos. 1 and 2 are the original
respondents in the claim petition.

3. The facts in short are that the deceased Laxman-original claimant was proceeding towards Varangaon from Ordinance factory on a motorcycle alongwith his friend. On 27-09-1999 at about 07.30 pm a truck bearing No.HR-38-B-4444 dashed the motorcycle of the original claimant. In the accident claimant received serious injuries. Pillion rider Madansingh died on the spot. The claimant was taken to the Rural Hospital, Varangaon. Thereafter, he was shifted to Civil Hospital, Jalgaon. Thereafter, he was admitted in the private hospital. He was also treated by other Doctors. He was required to spend more than an amount of Rs.1 lakh on medical treatment.

4. The claimant therefore, filed MACP No. 329/2001 in the court of learned Member, MACT, Jalgaon. Respondent No.1 owner of the truck did not appear, though served with the summons. The matter proceeded ex-parte against him. Respondent No.2- Insurance Company contested the claim. Their defense is that accident occurred due to fault of the claimant himself. There is no rash and negligent act on the part

of the driver of the truck. The truck was parked at the side of the road. It is the claimant who gave dash to the stationery truck. The claimant is thus, responsible for the accident. They even denied the age, occupation and income of the claimant. They denied expenses incurred by the claimant on the medical treatment as well. The learned tribunal considered that the claimant produced vouchers bills of CT-Scan, hospitalization charges, pathology lab etc. and accepted that evidence, as the respondents did not lead any evidence in that regard. It is further observed that truck was parked in the middle of the road creating obstruction to the traffic. The accident took place in the night time on the highway. It is held that accident took place because of rash and negligent act of the driver of the truck. The court appreciated the evidence of the doctors who treated the claimant.

5. During the pendency of the claim petition original-claimant unfortunately died on 25-05-2006 at that time he was 49 years. The claimant initially had filed a claim petition as

injury claim. In view of the death of the claimant his legal heirs claimed the amount of Rs.7,92,000/- by converting injury claim in to death claim. It is the claim of the legal heirs that deceased died due to injuries received by him in an accident. On this issue, the learned Tribunal, MACT, Jalgaon held that there is no evidence to show that deceased died due to accident and refused to consider the claim as a death claim. The court on this, refused to grant an amount towards future prospects and allowed the claim to the compensation only to the extent of Rs.1,10,000/- including no fault liability at the rate of 7.5% pa interest from the date of application till realization of the entire amount.

6. The legal heirs of the claimant, thus have come to this court.

7. The learned advocate for the appellant submits that the learned tribunal has erred in not treating the claim as death claim. There was evidence to show that the deceased died due to an accident after six and half years of the accident. The

learned tribunal wrongly held that because for some time the deceased joined the services as he became fit & wrongly refused to consider the claim as a death claim. The claimant in fact had to resign as he could not recover well from the accident. It is submitted that the injury certificate of the claimant shows that he had comorbidity. Looking to the per-ponderence of the evidence, it needs to be appreciated that death was due to accident. Even otherwise the court has granted compensation at meager rate when expenses required for medical treatment were much more. The legal heirs thus pray for allowing the appeal.

8. The learned advocate for the Insurance Company vehemently opposed the appeal. He submits that accident took place on 27-09-1999. The claim was filed on 31-08-2001. It is clear from the evidence that it is the deceased who gave dash to the stationary truck and thus he is responsible for the accident. On 09-08-2000 the deceased joined the duty. He died on 25-05-2006. He relies on observations in para No. 7 of the judgment.

9. In CMA/1482/2007 and MP No.1/2007 Madras High Court in para No. 38 held that considering the provision of section 50 of the CPC if the claimant dies during pendency of the proceeding due to accident, his legal heirs would be entitled to claim compensation. The court would be justified in awarding the compensation. Thus, in that case the learned tribunal had awarded the compensation considering the claim as death claim. Only there was error in calculations. Said calculations were corrected by the court. However, the appeal of the insurance company was rejected.

10. Having heard the parties the main question is as to whether claim can be treated to be a death claim. This court has gone through the papers provided by the parties. From the record it is seen that the injury certificate is proved by the Doctor. It is also seen that the claimant had joined the duty for some time and thereafter resigned. Though the age, occupation and income are denied by the respondent, they could not produce anything in support of their case.

11. So far as negligence is concerned, there is evidence to show that the truck was parked in the middle of the National Highway. This is certainly an act of negligence on the part of the truck driver. It is not denied that said truck was insured with the present respondent No. 2.

12. So far as issue as to whether the deceased died due to an accident is concerned, the learned Tribunal, MACT considered that there is no record to indicate that deceased died due to injury or seizure disorder. It has come on record that after few years of the accident, the claimant was required to resign as he was not in a position to do the work. After resignation he suffered paralytic attack and was bed-ridden. In 2005 the deceased was admitted to the hospital for seizure disorder. It is in the evidence of the Doctor that said Seizure disorder occurred due to head injury. The Doctor PW-2 is Neurologist. This Doctor clearly deposed that the seizure disorder occurs due to head injury. The court further discussed that said doctor did not

enquire with the deceased whether he had received any injury in the meantime. The court though recorded that it is most likely that such seizure disorder may be due to head injury. However, recorded that there is nothing on record to indicate that he died due to seizure disorder.

13. The court thereafter refused to grant future prospects holding that future prospects can be granted only in the case of death claim and not in the case of injury claim. Looking to the scheme of the act that it is a piece of beneficial legislation. The court ought to have considered that death is caused due to injury arising out of the accident. Though for brief period the claimant joined the duties, it is matter of record that within few months he was required to resign as he could not perform his duties because of health condition. Thus, this court held that claim ought to have been treated as death claim and considering the income of the claimant future prospects also ought to have been added. The learned court granted compensation only looking to the medical expenses. The court

has wrongly refused to grant other expenses. It has come on record that salary of the deceased was Rs.9210/-. As this court has taken this claim as death claim, this court quantify the compensation as below.

14. The deceased was earning to Rs.9210/-. Said amount needs to be multiplied by 12. The annual income would come to Rs.1,10,520/-. After deducting 1/3rd, the amount would come to Rs.73,680/-. In view of judgment in the case of National Insurance Co. Ltd. Vs Pranay Sethi and others¹ future prospects would be 30% as the deceased was salaried person. Thus by adding 30% the amount comes to Rs.95,784/-. By applying multiplier of 13, the amount would come to Rs.12,45,192/-. Thus the awarded amount needs to be enhanced. So far as the loss of consortium is concerned, the learned court ought to have considered the consortium towards love and affection for all the claimants amount to be Rs.1,20,000/- in view of Magma General Insurance Co. Ltd.

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15. Thus considering overall evidence and the arguments this court finds the amount ought to be as per following calculations:

Sr. No.	Particulars	Amount
1.	Annual Income 9210 x 12 = Rs.1,10,520/-	Rs.1,10,520/-
2.	1/3 deduction i.e. 73,680/-	Rs.73,680/-
3.	30% future prospects	Rs.95,784/-
4.	Rs.13 x 95,784/- = 12,45,192/-	Rs.12,45,192/-
5.	Loss of Consortium	Rs.1,20,000/-
6.	Loss of Estate	Rs.15,000/-
8.	Medical expenses	Already granted
	Total	Rs.13,80,192/-

16. In view of above following order is passed:

ORDER

a] The appeal is partly allowed.

b] The appellants are held entitled to receive total Rs.13,80,192/- excluding amount already awarded alongwith interest @ 7.5% on unpaid amount from

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the date of filing of the petition. The amount be deposited in the office of this court within twelve weeks. After amount is deposited the appellants are entitled to withdraw the same without requiring any formal application.

c] The amount stands modified accordingly.

d] With this, appeal stands disposed off.

[KISHORE C. SANT, J.]

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