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

FIRST APPEAL NO. 1904 OF 2024

GANGUBAI SHANKAR CHEMATE AND ORS
VERSUS
TARACHAND MHALBA KAWARE AND ORS
...
Mr. Amol Pandurang Khedkar, Advocate for Appellants.
Mr. S. S. Patil, Advocate for Respondent No.3.
...

CORAM : S. G. CHAPALGAONKAR, J.
DATED : 16th APRIL, 2025.

P.C.:-

1. Leave to amend and delete appellant no.2/claimant no.2, who died during pendency of Appeal.

2. The appellants/original claimants filed this Appeal under Section 173 of the Motor Vehicle Act seeking enhancement of compensation, thereby assailing award dated 12.06.2017 passed by Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No.666/2011.

3. In brief the facts giving rise to present Appeal are as under:

In an accident dated 27.05.2011 Shankar Chemate lost his life. According to claimants, they were dependents on his income. He was employed as Cleaner and earning Rs.10,000/- per month. He was aged about 27 years. The respondents contested claim by taking multiple defences. Ultimately, Tribunal after evaluation of evidence, passed award of Rs.9,10,000/- alongwith interest @ 9% per annum from the date of petition till realization in favour of claimants.

4. Mr. Khedkar, learned Advocate appearing for appellants submits that Tribunal passed inadequate award. Although

deceased was employed as cleaner and earning Rs.10,000/- per month, his income is notionally considered @ Rs.3000/- per month, which cannot be countenanced. He would submit that compensation under non-pecuniary heads also needs to be enhanced in tune with law laid down by Supreme Court of India in cases of ***National Insurance Company Limited Vs. Pranay Sethi & Ors.***[1] and ***Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram***[2].

5. Per contra, Mr. Patil, learned Advocate appearing for respondents/Insurance Company justifies award. He would submit that in absence of specific evidence, Tribunal has rightly considered notional income @ Rs.3000/- per month. He would invite attention of this Court to compensation granted under non-pecuniary heads and submit that infact excessive compensation has been awarded.

6. Considering limited controversy involved in Appeal, it is necessary to figure out just compensation in the facts and circumstances of case. The claimants have specifically pleaded that deceased was working as cleaner at the time of accident and he was earning Rs.10,000/- per month. According to respondent no.1 owner of vehicle, deceased was getting net salary of Rs.4000/- per month and daily bhatta of Rs.50/- per day.

7. In that view of the matter, when employer has admitted that deceased was getting salary of Rs.4000/- per month, apart from daily bhatta of Rs.50/- per day, overall earning of deceased from his job as cleaner could have been reasonably considered @ Rs.5000/- per month. Since there were five dependents on income of deceased, 1/4th amount needs to be deducted towards personal and living expenses. The deceased was aged about 27 years, therefore,

1 **(2017) 16 SCC 680.**
2 **2018 (4) TAC 345.**

40% amount needs to be added towards future prospects. The claimants are further entitled for compensation towards non-pecuniary heads like loss of consortium i.e. Rs.40,000/- each, loss of estate of Rs.15,000/- and funeral expenses of Rs.15,000/-. Looking to the age of claimant, multiplier as applied by Tribunal i.e. '17' is appropriate. In that view of the matter, compensation amount can be worked out in tabular form as follows:

Sr. No.	Heads	Amount (Rs.)
1	Annual Income (Rs.5000 x 12)	Rs.60,000/-
2	Addition of 40% towards future prospects (Rs.60,000/- + Rs.24,000/-) =	Rs.84,000/-
3	1/4th deduction towards personal and living expenses. Rs.84,000 / 4 = Rs.21,000/- 84,000 – 21,000/-	Rs.63,000/-
4	Apply multiplier of '17' (Rs.63,000 x 17)	**Rs.10,71,000/-**
5	Rs.40,000/- to each claimant towards loss of consortium (Rs.40,000/- x 5)	**Rs.2,00,000/-**
6	Rs.15,000/- towards funeral expenses	**Rs.15,000/-**
7	Rs.15,000/- towards loss of estate	**Rs.15,000/-**
TOTAL		**Rs.13,01,000/-**

8. Apart from the compensation awarded under Section 171 of Motor Vehicle Act claimants are also entitled for interest on compensation amount. The Tribunal observed in paragraph no.17 that since proceedings are protracted for five years, Insurance Company cannot be taxed for payment of interest. Further in operative part, paragraph no.2 it is specified that if compensation amount is paid within 45 days, then claimants would not be entitled for interest. The interest is awarded only by way of default. From the reasoning part of judgment, it is nowhere discernible that claimants were responsible for protracting claim. If claimants have taken reasonable steps in prosecuting claim, they

cannot be deprived of *pendente lite* interest in terms of Section 171 of Motor Vehicle Act. In result, award to that extent needs to be modified and claimants are required to be awarded interest @ 7.5% per annum from the date of filing claim petition till realization of amount. In result, following order:

ORDER

i. First Appeal is partly allowed.

ii. The judgment and award dated 12.06.2017 passed by Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claims Petition No.666/2011 is modified.

iii. The appellants are held entitled to the compensation of Rs.13,01,000/- (Rs. Thirteen Lakhs One Thousand only) from respondent nos.1 to 3 jointly and severely, (inclusive of amount of 'NFL') alongwith interest at the rate of 7.5% pa. from the date of filing of the claim petition till realization of the amount.

iv. The compensation amount already paid/disbursed as per impugned order shall be appropriated.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2025