



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1695 OF 2011

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|----|--|---|------------------------------|
| 1. | Smt. Surekha W/o. Sudam Ubale, | } | |
| | Age : 30 years, Occu. : Nil, | } | |
| | R/o. Gajanan Colony, Aurangabad. | } | |
| 2. | Master Sumit S/o. Sudam Ubale, | } | |
| | Age : 3 years, Occu. : Student, | } | |
| | R/o. As Above. | } | |
| | Under guardian Appellant No.1. | } | ... Appellants. |
| | | | [Orig. Claimants] |
| | Versus | | |
| 1. | Ramkrishna S/o. Laxman Ghule, | } | |
| | Age : Major, Occu. : Business, | } | |
| | R/o. Takali, Tq. Kaij, | } | |
| | Dist. Beed. | } | |
| 2. | The New India Assurance Co. | } | |
| | Through its Branch Manager, | } | |
| | Branch Office at Ajay Eng. Works, | } | |
| | Compound Adalat Road, Aurangabad. | } | |
| 3. | Sk. Abdul Jamil S/o. Sk. Abdul Razzak, | } | Dismissed as against |
| | Age : Major, Occu. : Driver, | } | R/3 as per Registrar's Court |
| | R/o. Dahipuri, Tq. Ambad, | } | order dated 31.07.2012 |
| | Dist. Jalna. | } | ... Respondents. |

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Mr. R. V. Gore, Advocate for Appellants
Mr. M. R. Deshmukh, Advocate for Respondent No.2
Respondent No.1 served.

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 04 NOVEMBER 2025

JUDGMENT :

1. Original claimants, who are wife and son of deceased Sudam Ubale, and who had filed M.A.C.P. No. 303 of 2007 under section 166 of Motor Vehicle Act, 1988 seeking compensation on account of road traffic accidental death of Sudam, are dissatisfied by the improper consideration of salary, error on the part of tribunal in applying the multiplier, non consideration of compensation under the heads of future prospects, grant of meager amount under funeral expenses and mental suffering and pain.

2. According to learned counsel for appellants, on 23.01.2007, deceased Sudam Bhanudas Ubale was proceeding on his motorcycle bearing No.MH-20-AC-2598. His motorcycle was given dash by one truck bearing No. MH-23-4609 which was being driven in rash and negligent manner, and therefore, upon investigation crime was registered against truck driver in CIDCO police station bearing No.I-28 of 2007. That, Sudam succumbed to the multiple injuries. He further pointed out that, wife and minor son of deceased Sudam sought compensation under section 166 of M.V. Act to the tune of Rs.10,00,000/-. That, at the time of death, deceased was working as Peon in a School and earning Rs.6494/- per month. Salary slip Exh.55 was placed on record. According to him, however, said cogent and reliable evidence has been overlooked and not appreciated correctly by the tribunal as only basic salary is considered

and not net salary. That, in fact, in view of Exh.55 tribunal ought to have considered earnings of deceased to the tune of Rs.6494/-.

3. He further pointed out that, even learned tribunal has wrongly applied multiplier of 14 for deriving compensation instead of 15. According to him, thereby entire compensation amount is wrongly computed. He further pointed out that, learned tribunal also failed to award future prospects and even mere Rs.5,000/- and Rs.2,000/- are granted under the head of loss of consortium and funeral expenses, respectively. According to learned counsel, there is improper appreciation of evidence as well as settled law and hence he seeks indulgence at the hands of this court.

4. Learned counsel for insurance company Shri Deshmukh supported the judgment to the extent of consideration of salary to the tune of Rs.5375/- which is the net salary and according to him, which is takeaway salary after necessary deduction. However, learned counsel Shri Deshmukh was fair enough in pointing out that multiplier adopted ought to have been 15 and not 14. On court query, he fairly submitted that, learned tribunal has awarded meager amount of Rs.5,000/- under the head of loss of consortium and he thereby urges to grant suitable amount under the said head by taking into account the year of the accident.

5. Thus, what is urged before this court is that, there is firstly non consideration of gross salary. Secondly, use of wrong multiplier and thirdly failure to grant amount under future prospects and meager amount granted towards loss of consortium and funeral expenses.

6. There does not seem to be any controversy about any rashness and negligence on the part of truck driver. Now, thrust of argument of learned counsel is that when Exh.55 reflects salary as Rs.6494/-, learned tribunal ought not to have considered salary only to be Rs.5375/-.

In view of above submissions, the impugned judgment is revisited and it is noticed that the learned tribunal in its judgment dated 22.04.2008 has answered point nos.1 and 2 in affirmative, and has dwelled upon entitlement of compensation and accordingly analysis is done in paragraph nos. 10 and 11. Evidence of Headmaster Vijendra Jadhav (PW2) has been appreciated along with Exh.55. What seems to have been done is that net salary or actual take-home salary of Rs.5375/- has been taken into account, i.e. after considering deductions towards GPF, Professional Tax and LIC.

However, bearing in mind the ratio laid by the Hon'ble Supreme Court in the case of ***Manasvi Jain v. Delhi Transport Corporation***, MANU/SC/0355/2014, the learned tribunal has erred in considering the net salary after deductions towards General Provident Fund as well as LIC, which is not permissible. As per salary certificate Exh.55, gross salary of deceased was Rs.6494/- and after considering deduction towards Professional Tax i.e. Rs.175/- his monthly income comes to Rs.6319/-.

7. As regards to other point about wrong multiplier is concerned, in absence of age proof, age reflected in the Post Mortem report is required to be taken into account and the same is 37 years. Admittedly, in view of the judgment in the case of ***Sarla Verma and Ors. Vs. Delhi Transport Corporation and Ors., (2009) 6 SCC 121***, considering such age, multiplier which ought to have been applied is 15 and not 14 as has been done by learned tribunal.

Further, learned tribunal also seems to have awarded less amount of Rs.5,000/- towards loss of consortium. Therefore, both claimants are also entitled to higher amount than that awarded, i.e. to the tune of Rs.20,000/- each, under the head of loss of consortium. Likewise, no amount seems to have been awarded towards loss of future

prospects and therefore, claimants are indeed entitled for the same. Even learned tribunal seems to have awarded mere Rs.2,000/- for funeral expenses and this figure is also apparently on the lower side and this court interferes to that extent also and grants Rs.5,000/- towards funeral expenses.

8. In view of the aforesaid discussion, claimants are entitled for following compensation.

Sr. No.	Heads	Amount (Rs.)
1.	Annual Income (Rs.6319 x 12)	75,828/-
2.	Future Prospects 50% i.e. 37,914 (75,828 + 37,914)	1,13,742/-
3.	Less 1/3 rd deduction towards personal expenses. (Rs. 1,13,742 – Rs 37,914)	75,828/-
4.	Multiplier of 15 (75,828 X 15) (Loss of dependency)	11,37,420/-
5.	Loss of consortium (Rs.20,000/- each x 2)	40,000/-
6.	Funeral Expenses	5,000/-
7.	Total compensation to be paid	11,82,420/-
8.	Compensation awarded by Tribunal	6,09,000/-
9.	Total Enhanced Compensation (i.e. Rs.11,82,420 – 6,09,000)	5,73,420/-

. In the result, following order is passed :-

ORDER

- (i) Appeal is partly allowed with proportionate costs.
- (ii) Impugned judgment and award dated 22.04.2008, passed by the learned Ad-hoc District Judge-3 Aurangabad in M.A.C.P. No.303 of 2007 is modified.
- (iii) Respondent no.2 - insurance company to pay enhanced compensation of Rs.5,73,420/- to claimants within 12 weeks from today along with interest @ 7.5% per annum from the date of registration of claim petition till its realization.
- (iv) Modified award be prepared accordingly.
- (v) Claimants to pay court fees on enhanced compensation as per rules.
- (vi) On deposit of the amount by Insurance Company, appellants/claimants are permitted to withdraw the same.

(ABHAY S. WAGHWASE, J.)