IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3571 OF 2019

1. Smt. Usha w/o Umesh Sangve,
age : 31 years, Occu : Household,

2. Kum. Harshada d/o Umesh Sangve,
age : 11 years, Minor,

3. Kum. Ankita d/o Umesh Sangve,
age : 09 years, Minor,

4. Nikhil s/o Umesh Sangve,
age : 07 years, Minor,

5. Adarsh s/o Umesh Sangve,
age : 04 years, Occu : Education,

Nos. 2 to 5 are Minors and U/g of
their natural mother, Appellant No.1
Smt. Usha w/o Umesh Sangve

6. Sharada w/o Baburao Sangve,
Age : 63 years, Occu : Household,
All R/o. Harijawagla,
Taluka Nilanga, District Latur ...APPELLANTS

VERSUS

1. Osman s/o Wajirsaheb Shaikh,
age : 30 years, Occu : Driver,
R/o. Hosur, Tq. Nilanga,
Dist. Latur.

2. Shoukatpasha s/o Chandpasha Shaikh
Deceased Through Lrs.

2-A) Bijanbee w/o Shoukatpasha Shaikh,
age : 30 years, Occu : Household,

2-B) Sumhera d/o Shoukatpasha Shaikh,
age : 12 years, Minor,

2-C) Shifa d/o Shoukatpasha Shaikh,
age : 10 years, Minor
2-B and 2-C are Minors and
U/g of their real mother 2-A.
All R/o. Hosur, Taluka Nilanga,
District Latur.

3. The Branch Manager,
Chola Mandalams MS General Insurance
Co., Ltd., Malika Building,
1st Floor, Block No.4
Vishram Nagar, Hotgi Road,
Solapur, District Solapur.

4. Mohan s/o Vasant Kadam,
age : 28 years, Occu : Agriculture,
R/o. Sawari, Taluka Nilanga,
District Latur.

5. The Branch Manager,
New India Assurance Co., Ltd.,
Tilak Nagar, Latur,
District Latur **...RESPONDENTS**

***

Mr. Balaji B. Yenge a/w Mr. Gastgar Santosh B., Advocate for the Appellants.
Mr. Choudhari Abhijit G., Advocate for Respondent No.3.
Mr. M. B. Sandanshi h/f Mr. Bodade S. R., Advocate for Respondent No.5.

***

CORAM : ABHAY J. MANTRI, J.
DATE : NOVEMBER 03, 2025

JUDGMENT :

1. The Original Claimants, being dissatisfied with the Judgment and Award dated 31st January 2019, passed by the learned Member, Motor Accident Claims Tribunal, Nilanga (for short the ***"Tribunal"***), whereby allowed the petition and awarded the compensation of ₹10,92,500/-, have preferred this appeal for enhancement of the compensation.

2. Heard learned advocate for the appellants and respondent Nos. 3 and 5. None appeared for the rest of the respondents, although they served. Perused the impugned judgment and record.

3. The learned advocate for the appellants vehemently contended that the learned Tribunal has not considered the income of the deceased in its proper perspective and erred in holding that deceased was getting notional income of ₹ 8,000/- per month, however, the deceased has produced the license issued under the Shop Act on record (Exhibit 54), which indicates that deceased was owner of Matoshri Bor-well Agency and he was getting commission for the work of supplying casing pipes, and therefore, he was earning ₹ 50,000/- per month.

4. The learned advocate drew my attention to the license and bills brought on record, and as such, he submitted that the finding recorded by the learned Tribunal is liable to be modified regarding the income of the deceased. However, when asked, he failed to point to any documents in the record showing the deceased's income. However, he fairly admitted that the claimant has no documentary evidence to show the deceased's income. He further argued that the claimants have examined one Shivaji Dattu Kolnure employee, who deposed that he was working with the Matoshri Bor-well and was getting ₹ 10,000/- per month; however, the learned Tribunal erred in discarding his evidence, holding that no authentic proof was produced before the Tribunal, which shows that the Tribunal did not consider his

evidence in proper perspective. The said finding recorded by the learned Tribunal is contrary to the evidence on record; therefore, he urged for enhancement of the compensation.

5. In support of his submissions, he has relied on the judgment of the Supreme Court in the case of ***National Insurance Company Limited v. Pranay Sethi and Ors.,*** and submitted that in view of the law laid down in the said judgment, the claimants are entitled to enhancement of the compensation. He further submitted that the learned Tribunal has erred in deducting 5% compensation towards contributory negligence, as the deceased didn't wear a headgear (helmet); therefore, he urged that the said finding be set aside, as the question of negligence due to non-wearing of a helmet is immaterial.

6. On the other hand, learned advocates for the respondents Nos. 3 and 5 do not dispute the law laid down in ***National Insurance Company Limited Vs. Pranay Sethi and Ors.*** They have pointed out paragraph Nos. 14 to 16 of the impugned judgment and submitted that the learned Tribunal has rightly discussed in detail the earnings of the deceased and held that the deceased was entitled to notional income of ₹ 8,000/- per month and accordingly calculated the compensation; therefore, no interference is required in the impugned judgment in that regard. Hence, they urged the dismissal of the appeal.

7. Having heard the learned advocates for the parties, and perusal of the impugned order and record, as well as judgment in ***Pranay Sethi's*** case,

the following points arise for consideration:-

(i) *What was the income of the deceased or notional income as considered by the Tribunal, is just and proper?*

(ii) *Whether the deduction of compensation to the extent of 5% towards contributory negligence, as the deceased did not wear the helmet/headgear, is just and proper?*

(iii) *Whether any interference is required in the impugned judgment and award?*

Point No. (i)

Short Question arises, what was the income of the deceased, or Notional income as considered by the Tribunal, is just and proper?

8. It is pertinent to note that in the accident, the deceased died; accordingly, the claimants, being his wife, children, and mother, have filed the claim petition. According to them, the deceased was a businessman. His business was registered in the name of "*Matoshri Bor-well Agency*" at Nilanga, District Latur, and he was earning ₹ 50,000/- per month from the said business. However, on perusal of the evidence, it appears that during the cross-examination, the claimant No.1 – Usha has categorically deposed that the deceased didn't possess any machines. But he used to rent machines and didn't pay income tax. She didn't have the document showing that he was earning ₹ 6,00,000/-p.a. She further categorically admitted that no bank account was opened in the name of her husband or in the name of 'Matoshri Bor-well'.

9. Similarly, perused the testimony of PW-2, Shivaji Dattu Kolnure, who deposed that he was working with the deceased as a manager from

2012 to 2015. However, during his cross-examination, he categorically admitted that he didn't have any document to show that he worked with the deceased as a manager, that the deceased was receiving a commission of ₹ 2 per foot, or that he was earning ₹ 70 per foot from the casing pipe. He further admitted that no audit had been carried out and that the deceased had not paid any tax. He also deposed that no account was opened in the name of Matoshri Borwell, nor were any co-workers working with the said company. No register was produced on record, nor was one maintained of payments made to them.

10. I have also gone through the documents on record. The claimants have produced a Shop and Establishment License on record, which indicates that the deceased was the proprietor of the said 'Matoshri Bor-well Agency.' The claimants also produced a leave and license agreement/unregistered lease deed of a Shop, indicating that the deceased had taken a shop on rent and was paying rent of ₹ 3,000/- per month to the licensor (Exhibit 55). Exhibit 56 contains some estimates issued by Goodwill Enterprises in the name of Matoshri Borwell. Those estimates denote that the deceased was purchasing the pipes and casing from Goodwill Enterprises.

11. The claimants also produced the Leader Account Book of Matoshri Bor-well, Nilanga (Exhibit 57), *Wahi Khate Utara* (Exhibit 58). All these documents indicate that the deceased was engaged in the business of

Matoshri Bor-well and in supplying pipes and casing to the owner of the boring machines. Also, he had taken a shop on rent and was paying an amount of ₹ 3,000/- per month. Indeed, the claimants failed to produce any documents on record to show the deceased's income; therefore, the learned Tribunal held that his notional income be taken as ₹ 8,000/- per month and, having regard to the said income, awarded the compensation.

12. It further emerges from the record that the deceased was doing business in Harijawagla village, Taluka Nilanga; therefore, the fact can be taken into consideration that, being a villager, he might not have maintained the account book showing his income. Similarly, he was not filing the income tax returns and had not opened a bank account in his name. The learned Tribunal, in paragraphs Nos. 14 to 16, dealt with the deceased's income in detail and held that the notional income was ₹8,000/- per month.

13. Having considered the above discussion and the fact that the deceased was doing the business of supplying the bore-well pipes and casing to the owner of the Bore-well machines. Therefore, in my view, it would be appropriate to consider his notional income as ₹ 10,000/- per month instead of ₹ 8,000/-. Hence, the finding recorded by the learned Tribunal that his notional income be taken as ₹ 8,000/- per month is required to be interfered with and modified as Rs. 10,000/- per month. Accordingly, it would be relevant to assess the claimants' entitlement to compensation, as per the law laid down in ***National Insurance Company Limited Vs. Pranay Sethi***

and Ors. Thus, I answer this point accordingly.

Point No. (ii):-

14. It further appears that the learned Tribunal while deducting 5% towards the contributory negligence of the deceased as deceased had not wear the helmet, however, the said finding seems to be contrary to the settled position of law that while determining the question of negligence of the parties to the accident, it has to be seen that who was at fault to the said accident and non-wearing of the helmet cannot be said to a cause of the accident nor it can be said as point for negligence on the part of the rider of the motorcycle or it can not be said that it would have contributed to the accident in any way. No doubt, it was the rider's bounden duty to wear it. At the most, it can be said that failure to wear a helmet would result in the registration of offences under the provisions of the Motor Vehicles Act. It cannot be said that non-wearing of the helmet would be considered as negligence of the deceased to cause the accident, and therefore, said finding is liable to be set aside in the appeal. The deduction made by the learned Tribunal to the extent of 5% towards the deceased's contributory negligence is liable to be quashed. *Hence, I answer* ***point No. 2 in the negative.***

Point No.(iii):-

15. In view of the above, it would be appropriate to assess the claimants' entitlement to compensation, as per the law laid down in ***National Insurance Company Limited Vs. Pranay Sethi and Ors.*** Thus, the calculations

would go like this -

Particulars		Amount in ₹
Income 10,000 x 12	=	1,20,000
Future Prospects 40%	+	48,000
1,68,000 x 15	=	25,20,000
Less ¼	-	6,30,000 (25,20,000-6,30,000=18,90,000)
Loss of dependency	=	**18,90,000/-**
Loss of consortium (amount of ₹40,000/- be increased by every 3 years by 10% from 2017 till its realization)	+	2,90,400 (48,400 x 6)
Loss of estate (amount of ₹ 15,000/- be increased by every 3 years by 10% from 2017 till its realization)	+	18,150
Funeral Expenses (amount of ₹15,000/- will be increased by every 3 years by 10% from 2017 till its realization)	+	18,150
Total		**22,16,700/-**

16. The appellants are entitled to an amount of ₹ **22,16,700**/- (Twenty Two Lakhs Sixteen Thousand and Seven Hundred only) instead of ₹ ***10,92,500***/- from the respondent Nos. 1 to 3 with an interest @ 7% p.a. from the date of the petition till its realisation. As such, interference is required in the impugned judgment and Award in the appeal. Hence, I answer point No. 3 in the ***affirmative as above***.

17. Consequently, the appeal is allowed. The impugned Judgment and Award dated 31st January 2019, passed by the learned Member, Motor

Accident Claims Tribunal, Nilanga, is hereby modified as under :

(i) The appellants are entitled to compensation of ***₹22,16,700/-*** instead of **₹ 10,92,500/-.**

(ii) Respondent Nos. 1 to 3 are jointly and severally liable to pay the said enhanced compensation along with accrued proportionate interest thereon. (The amount already paid by the respondent – Insurance Company should be adjusted in the above compensation for the purpose of interest calculation as well.)

(iii) The appellant No.1 shall be paid 50% of the compensation amount along with accrued proportionate interest, and appellant Nos. 2 to 6 shall be paid 10% each of the compensation amount along with accrued proportionate interest thereon.

(iv) The amount of appellant Nos. 2 to 5 be kept in a fixed deposit in any Nationalised Bank, till they attain majority.

18. The claimants have to pay Court Fees on the enhanced amount within a period of ten (10) weeks, and after deposit of the Court Fees, the decree will be prepared.

19. The remaining order passed by the learned Tribunal in respect of other aspects remains as it is, except as expressly observed above.

20. The record and proceedings be sent back to the Tribunal.

(ABHAY J. MANTRI, J.)