IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1109 OF 2022

1. Shantabai Wd/o. Maroti Dhotre,
   Age: 40 years, Occu.: Household,

2. Ramdas S/o. Maroti Dhotre,
   Age: 23 years, Occu.: Education

3. Rohidas S/o. Maroti Dhote,
   Age: 20 years, Occu. : Education

4. Sonubai W/o. Digambar Dhotre, (Died) … Appellants
   (Orig. Claimants)

Versus

1. Balvindarsingh S/o. Jagatsingh Sandhu,
   Age: 40 years, Occu.: Business,
   R/o. Plot No.49, Nandigram Society,
   Nanded, Tq. and Dist. Nanded.

2. United India Insurance Com. Ltd.,
   Through its Divisional Manager,
   Off/At Guru Complex, G.G. Road,
   Nanded, Tq. & Dist. Nanded …. Respondents
   (Orig. Respondents)

……

Mr. Vaibhav B. Dhage, Advocate for Appellants
Mr. S.V. Kulkarni, Advocate for Respondent No.2

……

CORAM	**:**	**ABHAY S. WAGHWASE, J.**
RESERVED ON	**:**	**11 AUGUST, 2025**
PRONOUNCED ON	**:**	**19 AUGUST 2025**

JUDGMENT :-

1. The original claimants in M.A.C.P. No. 300 of 2016, decided by the Member, M.A.C.P., Nanded, are aggrieved by the meagre quantum of compensation awarded, as well as the non-consideration of the shares of original claimants Nos. 2 and 3, i.e., the sons of the deceased Maroti

FACTS GIVING RISE TO THE PRESENT APPEAL ARE AS UNDER:

2. On 29.03.2016, deceased Maroti was proceeding on his motorcycle bearing No.MH-17-X4633 and his brother Masu was the pillion rider. There was a diversion on the road near Maltekdi Bridge, Nanded. When the motorcycle was in the vicinity of Dr. Ambedkar Bhawan, a truck bearing registration No. MH-26-AD-1797, coming from the opposite direction in a rash and negligent manner and at high speed, gave dash to the motorcycle, causing fatal injuries to Maroti. Crime was registered against the truck driver vide Crime No.62 of 2016 for the offences punishable under Section 279, 304-A, 337 of the Indian Penal Code and Section 134, 177 of Motor Vehicles Act.

3. The present appellants/original claimants filed Claim Petition No. 300 of 2016, contending that the accident occurred due to the rash and negligent driving of the truck driver. It is further contended

that, at the time of the accident, the deceased was 43 years of age, working as a Supervisor in a private construction company, earning a salary of Rs.15,000/- per month, and was the sole source of income for the family. On account of the accidental death, they have lost their source of income and have therefore claimed compensation under various heads to the tune of Rs.25,00,000/- from respondents No. 1 and 2, jointly and severally.

4. Though respondent No. 1 appeared, he failed to file his written statement. Hence, the claim petition proceeded without the written statement of respondent No. 1. Respondent No. 2, the insurance company, filed a written statement at Exhibit-18, taking the stand that the deceased himself was rash and negligent. The second ground of objection was that the driver of the offending truck was not holding a valid driving licence, which amounted to breach of the insurance policy. Lastly, it was contended that the insurer of the motorcycle was not made a party to the claim petition. Therefore, the insurance company sought dismissal of the claim petition against it.

5. The Tribunal, vide judgment and award dated 19.01.2022, granted compensation to the tune ofRs.6,55,000/- with interest at 7% per annum to Claimant No. 1 (wife) and Claimant No. 4, Sonubai (mother of the deceased)

Feeling aggrieved by above judgment and award, claimants have preferred the instant appeal on various grounds spelt out in the appeal memo.

6. The learned counsel for the appellant submitted that the rashness and negligence on the part of the truck driver were duly demonstrated before the Tribunal. That, it was also demonstrated before the Tribunal that deceased was 43 years of the age; however, the Tribunal failed to consider the same and considered the age of deceased as 50 years. That, the tribunal has also failed to consider that the deceased was working as a supervisor and earning salary of Rs.15,000/- per month. However, the same is not considered and rather notional income is considered only to the tune of Rs.6,000/- per month. That, the Tribunal awarded compensation only to Claimants No. 1 and 4, and failed to consider that Claimants No. 2 and 3 were also dependents of the deceased. Therefore, on both counts, the learned counsel prays for enhancement of compensation including claimants No. 2 and 3.

7. Per contra, learned counsel for respondent No.2/insurance company supported the impugned judgment and award passed by the Tribunal, contending that every aspect put forth before the Tribunal has been correctly appreciated, and therefore, the impugned judgment

and award, being legally justified, should not be interfered with.

8. Heard both the sides. Perused the papers and impugned judgment and award.

9. It is seen that in the claim petition there is no dispute regarding the fact that the deceased, Maroti, met with accidental death while proceeding on the motorcycle bearing No. MH-17-X-4633, which was dashed by the truck bearing No. MH-26-AD-1797. There is no dispute that the deceased, Maroti, succumbed to the injuries sustained in the said accident. This Court came across with the findings of the Tribunal in paragraphs no. 15 to 20. In paragraph 16, the Tribunal observed that the alleged accident occurred solely due to the rash and negligent driving of the truck. Furthermore, it held that there was no need to add the insurance company of the motorcycle as a party, and therefore, the claim petition is not bad for non-joinder of necessary parties. In paragraph 17, the Tribunal has rightly discussed the defence raised by the insurance company that the driver of the offending truck was not holding a valid and effective driving licence at the time of the accident, which constituted a breach of the terms and conditions of the insurance policy, and held that the insurance company is bound to comply with the contract of indemnity it had with respondent No. 1, the owner of the truck.

10. Consequently, the issues contested by the appellant are firstly, the quantum of compensation and secondly, that the share of Claimants Nos. 2 and 3 was not considered while awarding compensation to Claimants Nos. 1 and 4.

11. Before the Tribunal, the claimants set up the case that the deceased, Maroti, was working as a supervisor at Jyoti Construction Company, Beed, and was receiving a salary of Rs.15,000/- per month. Though Claimant No. 2, Ramdas (son of the deceased), was made to step into the witness box, he could not produce any documentary evidence to prove the said fact. Therefore, the Tribunal was left with no alternative but to consider the notional income of the deceased, Maroti, as Rs. 6,000/- per month and this apparently seems to be on the lower side. However, the same is required to be modified as Rs.7,000/- per month. Even as regards to age is concerned, though there is no documentary evidence, the only material that can be relied upon in such circumstances is the postmortem report. In the instant case, the postmortem report of the deceased, Maroti, indicates that at the time of the accident, he was 45 years old. However, the Tribunal assumed the age of the deceased to be about 50 years solely because the age of the elder son was shown as 23 years in the title clause of the claim petition, and accordingly applied a multiplier of 13.

Therefore, in the opinion of this Court, the Tribunal erred in considering the age of the deceased, Maroti, as well as the multiplier applicable to such age group. In view of ratio laid down in ***Sarla Verma (SMT) and Others Vs. Delhi Transport Corporation and Another,*** (2009) 6 SCC 121, the correct multiplayer in the instant case is 14.

12. Now, coming to the ground that the Tribunal did not consider the share of Claimants Nos. 2 and 3 while awarding compensation, it is noted that the Tribunal observed the dependency of Claimants Nos. 2 and 3 in paragraph 21. Merely because Claimants Nos. 2 and 3 were shown as 23 and 20 years of age respectively in the title clause of the claim petition, they were not considered as dependents of the deceased. Therefore, in the opinion of this Court, the Tribunal erred in not considering their entitlement and, consequently, erred in deducting one-half of the amount towards personal expenses.

13. In view of the ratio laid down in ***National Insurance Company Limited vs. Pranay Sethi and Others***, 2017 (16) SCC 680, and ***Magma General Insurance Co. Ltd.***, 2018 (18) SCC 130, each claimant is entitle for Rs. 40,000/- towards consortium. In the instant appeal claimant No.4 is no more. Therefore, now claimant Nos.1 to 3 are entitled for Rs.40,000/- each towards consortium, i.e. Rs.1,20,000

plus 10% (Rs.12,000/-) which comes to **Rs.1,32,000/-**. Considering that the deceased was 45 years old at the time of the accident, 30% should be awarded towards future prospects instead of 25%.

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

Sr. No.	Heads	Amount (Rs.)
1.	Annual Income Rs.**7,000** X 12 = 84,000/-	84,000/-
2.	Future Prospects **30%** i.e. 25,200 (84,000 + 25,200)	1,09,200/-
3.	**1/3** deduction towards personal expenses (i.e.1,09,200 – 36,400)	72,800/-
3.	Multiplier of **14** (72,800 X 14)	10,19,200/-
4.	Non-pecuniary Losses:- (i) Loss of Estate (as awarded by the Tribunal) (ii) Funeral expenses (as awarded by the Tribunal) (iii) Loss of consortium and love and affection	 15,000/- 15,000/- 1,32,000/-
4.	**Total compensation to be paid**	**11,81,200/-**
5.	Compensation awarded by Tribunal	6,55,000/-
6.	**Total Enhanced Compensation (i.e. Rs.11,81,000 – 6,55,000)**	**5,26,200/-**

15. In the result, following order is passed :-

ORDER

(i) First appeal is allowed with proportional costs.

(ii) Impugned judgment and award dated 19.01.2022 passed by Adhoc District Judge–1 and Ex-Officio Member of Motor Accident Claims Tribunal, Nanded in M.A.C.P. No.300 of 2016 is modified.

(iii) Respondent no.2 - Insurance Company to pay enhanced compensation of Rs.**5,26,200/**- to the claimants within 12 weeks from today along with interest @ 7% per annum from the date of registration of claim petition till its realization. The insurance company is directed to deposit the amount of enhanced compensation in this Court.

(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,
JUDGE

S P Rane