IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1741 OF 2017

1. Ushabai Janrao Patil
Age 35 years, Occupation Household,

2. Deepak Janrao Patil
Age 17 years, Occupation Education

3. Sunita Janrao Patil
Age 15 years, Occupation Education

4. Dasharath Janrao Patil
Age 13 years, Occupation Education
(Appellant no.1 is for herself and mother hence Natural guardian of other appellants)

All R/o Rajur, Post- Aingaon,
Tal. Bodwad. … Appellants
[Ori. Claimant]

Versus

1. Ashok Rambhau Sunaskar
Age 45 years, Occupation Business,
R/o Harankhed, Tal. Bodwad,
Dist. Jalgaon.

2. The United India Insurance Company Ltd.,
Through the Divisional Manager,
Mansingh Market, Railway Station Road,
Jalgaon.

[3. Sachin Samadhan Sunaskar
Age 35 years, Occupation Driver,
R/o Harankhed, Tal. Bodwad,
Dist. Jalgaon]
Deleted name of Respondent no.3 as per order dated 29.09.2023. … Respondents

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Mr. M. M. Bhokarikar, Advocate for the Appellants.
Mr. S. N. Suryawanshi, Advocate for Respondent No.1.
Mr. A. B. Gatne, Advocate for Respondent No.2.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 12.12.2025
Pronounced on : 19.12.2025

JUDGMENT :

1. Dissatisfied by the quantum of compensation awarded by learned Motor Accident Claims Tribunal, Jalgaon in Motor Accident Claim Petition No. 114 of 2009, on account of claim petition at the instance of heirs of deceased Janrao, who suffered accidental death on 02.12.2008, the present appeal has been preferred.

2. Claim was set up by heirs of late Janrao Patil on the premise that on 02.12.2008, while Janrao was proceeding to conduct his business of selling bakery products on his bicycle from Rajurgaon towards Anegaon, he suffered dash of rickshaw bearing no. MH-19-AE 2378 coming from opposite direction and suffered fatal injuries and succumbed to the same. Hence, by invoking Section 166 of the Motor Vehicles Act, 1988, claim of Rs.7,50,000/-was urged for with interest. The claim was resisted by respondent no.2 therein-Insurance Company vide Exhibit 16. On appreciation of oral and documentary

evidence, by order dated 10.03.2017, claim was partly allowed, i.e. to the tune of Rs.6,03,000/- with 7.5% rate of interest.

Dissatisfied by the quantum, and for non consideration of compensation under other heads, claimants have preferred instant appeal.

3. According to learned counsel for the claimants, deceased was around 39 years of age and was conducting business of selling bakery products. That, learned Tribunal had rightly held negligence on the part of rickshaw driver. However, according to him, while ascertaining compensation, learned Tribunal has considered barely Rs.4,000/- as notional income. That, in fact, considering the nature of business, according to him, it ought to have been considered as Rs.6,000/- and thereafter calculations ought to have been made. That, in view of dependency, 1/4th ought to have been deducted and in view of above age of deceased, multiplier of 15 ought to have been applied. But, according to him, learned Tribunal has failed to consider the same. He also pointed out that, apart from not granting compensation under the head of consortium, learned Tribunal has also failed to consider 40% rise towards future prospects. For all above reasons, he seeks enhancement by modifying the award.

4. In answer to above, learned counsel for the Insurance Company would justify the judgment and award pointing out that there is correct appreciation, more particularly in view of the pleadings of the parties. He pointed out that, claimants themselves had quoted age of deceased as 44 years. Moreover, as there was no distinct proof of age of deceased, it is his submission that, postmortem [PM] report was the right document to be relied and the same has been relied by the Tribunal also. Therefore, according to him, in view of the age reflected in PM report as 45, multiplier applicable is of 13 and the same has been rightly applied.

5. As regards to ground of entitlement for 40% rise towards future prospects, he strongly opposed by pointing out that here, admittedly deceased was selling bakery products and as such was self employed. According to him, in view of judgment of Hon'ble Apex Court in the case of ***Sarla Verma and others v. Delhi Transport Corporation and others*** MANU/SC0606/2009, only when there is evidence about prospects for rise in income, only in those exceptional cases, future prospects can be considered and not otherwise. Lastly, he justified and supported the findings and conclusion reached by Tribunal. He placed on record judgment of this Court in ***New India Assurance Co. Ltd. v. Alpa Rajesh*** Shah reported in 2014 (1) Bom.C.R. 755.

6. After hearing above submissions and on going through the record, here, claimants, who are heirs of deceased Janrao, are taking exception to the judgment and award of trial court primarily on three grounds i.e. failing to consider age of deceased to be below 40 years and thereafter applying appropriate multiplicand; secondly, considering mere notional income to the tune of Rs.4000/- and not Rs.6000/- and thirdly, non consideration of future prospects of deceased.

Multiplier

7. As regards to first objection is concerned, as pointed out by learned counsel for the respondent-Insurance Company, it is emerging that in the claim petition, age of deceased apparently reflects as 44 years. Copy of PM report, which is also a part of record, shows age of deceased as 45 years. Even in cross, wife of deceased has admitted age of her husband to be 45 years. Therefore, there is overwhelming evidence on the point of age of deceased as 45 years. For said age group (41 to 45 years), in view of ***Sarla Verma*** (supra), **multiplier of 14 would apply**. However, Tribunal has applied the multiplier of 13 which is applicable to age group of 46 to 50 years. Therefore interference in this regard has become imperative.

Notional Income

8. The second ground of challenge is considering mere notional income of Rs.4000/- and not Rs.6,000/-. Here, as pointed out, there is no distinct evidence on behalf of claimants regarding alleged business of sell of bakery products by the deceased. As pointed out, in para 9 of the judgment of Tribunal, wife has admitted in her cross that main occupation of her husband and source of income was labour work. This is contrary to the case set up that, deceased earned by conducting business of sell of bakery products. Therefore, in absence of evidence on actual occupation and earnings, consideration of Rs.4,000/- as notional income by Tribunal cannot be faulted at.

Future Prospects

9. As regards to ground of non consideration of future prospects is concerned, learned counsel for Insurance Company has placed on record judgment of this Court in ***Alpa Rajesh Shah*** (supra) wherein, observations of the Hon'ble Apex Court in the case of ***Reshma Kumari and other v. Madan Mohan and another*** [Civil Appeal No. 4646 of 2009 decided on 02.04.2013] reported in 2013 (3) Bom.C.R. 19(SC), are reproduced that unless there is distinct evidence suggesting potential or prospects of rise in income, only in such circumstances, in cases of person who are self employed, future prospects can be

considered. Here, as stated above, firstly, there is no evidence that deceased conducted business of sell of bakery products. On the contrary, wife of deceased herself has admitted that he was earning by doing labour work. Therefore, with such quality of evidence, no case was made out for grant of distinct compensation under future prospects.

Conventional heads

10. As regards compensation under the heads 'loss of consortium', 'loss of love and affection' and 'funeral expenses', the same is awarded by the Tribunal by referring the decision of the Hon'ble Apex Court in the case of ***Rajesh and others v. Rajbir Singh and others*** [2013 ACJ 1403 (SC)]. As pointed out by the learned counsel for the respondent Insurance Company, in ***National Insurance Company v. Pranay Sethi and others*** MANU/SC/1366/2017 the said decision in ***Rajesh*** is held as not binding precedent by the Hon'ble Apex Court as it has not taken note of earlier decision in ***Reshma Kumari*** (supra).

11. In view of the above as well as the ratio laid down by the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. V. Nanu Ram and others*** MANU/SC/1012/2018, the amount of Rs.50,000/- awarded by the Tribunal to petitioner no.1 towards loss

of consortium needs to be reduced to Rs.40,000/-. However, petitioner nos. 2 to 4 also need to be awarded Rs.40,000/- each towards parental consortium. Therefore, total compensation under the head 'loss of consortium' would be Rs.1,60,000/-

12. The amount of Rs.60,000/- has been awarded by the Tribunal to claimant nos. 2 to 4 towards loss of love and affection. However, it has been observed by the Hon'ble Apex Court in the case of ***United India Insurance Company Limited v. Satinder Kaur alias Satwinder Kaur and others*** (2021) 11 SCC 780 that, awarding compensation towards loss of love and affection as a separate head is not justified. The observation of the Hon'ble Apex Court on this aspect in para 34 and 35 are reproduced as under :

> *"34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in* ***Pranay Sethi*** *[(2017) 16 SCC 680], has recognised only three conventional heads under which compensation can be awarded viz. Loss of estate, loss of consortium and funeral expenses. In* ***Magma General*** *[(2018) 18 SCC 130], this Court gave a comprehensive interpretation to consortium to include spousal*

consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

35. <u>The Tribunals and the High Courts are directed</u> to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification award compensation towards loss of love and affection as a separate head."

In view of the above directions of the Hon'ble Apex Court, the petitioner nos. 2 to 4 will not be entitled for separate compensation towards loss of love and affection.

13. Compensation of Rs.25,000/- towards funeral expenses needs to be reduced to Rs.15,000/-.

14. The Tribunal has not awarded any amount under the conventional head 'loss of estate'. As per the ratio laid down in ***Pranay Sethi*** (supra), the claimants are entitled for Rs.15,000/- towards the same.

15. Resultantly, the computation of compensation would be as under :

Sr. No.	Heads	Amount (Rs.)
1	Loss of dependency 3000 X 12 X **14 multiplier**	Rs.5,04,000/-
2	Loss of consortium to petitioner no.1 and parental consortium to petitioner nos. 2 to 4 (**Rs.40,000/- each**)	Rs.1,60,000/-
3	Funeral expenses	Rs.15,000/-
5	Loss of Estate **(not awarded by Tribunal)**	**Rs.15,000/-**
5	Total compensation	**Rs.6,94,000/-**
6	Compensation awarded by the Tribunal	Rs.6,03,000/-
7	Enhanced compensation (6,94,000 – 6,03,000)	**Rs.91,000/-**

Hence, following order is passed :

ORDER

I. The First Appeal is partly allowed with proportionate costs.

II. Impugned judgment and award dated 10.03.2017 passed by the Chairman, Motor Accident Claims Tribunal, Jalgaon in M.A.C.P. No. 114 of 2009 is modified.

III. Respondent No.2-insurance company to pay enhanced compensation of Rs.91,000/- to the claimant-appellant no.1 within 12 weeks from today along with interest @ 7.5% per annum from the date of filing of the claim petition till realization.

IV. Modified award be prepared accordingly.

V. Claimant-appellant no.1 to pay court fees on the enhanced compensation as per rules.

VI. On deposit of the amount by the Insurance Company, claimant-appellant no.1 is permitted to withdraw the same.

[ABHAY S. WAGHWASE, J.]

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