2025:BHC-AUG:18915

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 504 OF 2020

Manik S/o. Narhari Dande,
Age : 52 years, Occu. : Labour,
R/o. Azad Chowk, Latur, Tq. Latur,
Dist. Latur. ... Appellant
(Orig. Claimant)

Versus

1. Alhaj Riyaz Mohammad,
Age : 37 years, Occu. : Driver,
R/o. 5-1-114, Osmanpura,
Jagtiyal, Karim Nagar,
Andhra Pradesh

2. Jalil Mohammad Khajamiya,
Age : Major, Occu. : Business,
R/o. H. No. 7-7-132, Mukrampura,
Jagtiyal, Karim Nagar,
Andhra Pradesh

3. The Branch Manager,
Cholamandalam M. S.
Ganeral Insurance Co. Ltd.
CTS No. 14356, 3rd Floor, Oberai Tower,
Near Amarpreet Hotel, Jalna Road,
Aurangabad.
Tq. & Dist. Aurangabad. ... Respondents.

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Mr. N. D. Kendre, Advocate for Appellant.
Mr. Rahul Deshmukh, Advocate for Respondent Nos.1 and 2.
Mr. A. S. Usmanpurkar, Advocate for Respondent No.3.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 08 JULY 2025

PRONOUNCED ON : 21 JULY 2025

JUDGMENT :

1. Original claimant has preferred instant appeal, getting dissatisfied by the judgment and order passed by learned Motor Accident Claims Tribunal, Latur dated 02.04.2019 in M.A.C.P. No. 262 of 2014. Parties are referred to as per their status in the trial court.

BRIEF FACTS

2. Deceased Sitabai was crossing the road on 18.02.2014 while she was returning back from hospital. One Eicher Tempo bearing No.AP-15-TB-9610 came in rash and negligent manner in high speed and gave dash to deceased Sitabai, causing her grievous injuries, to which she succumbed. Crime was also registered against driver of the Eicher Tempo. Present appellant set up accident claim bearing M.A.C.P. No.262 of 2014 seeking compensation of Rs.4,41,000/- under various heads. However restricted the claim to Rs.1,00,000/-. Compensation was sought from respondent nos.1 to 3 jointly and severally. Claim petition was resisted by respondents. After appreciating the evidence adduced by claimant, learned Tribunal awarded compensation to the tune of Rs.75,000/- with interest @7.5% per annum.

Feeling aggrieved by the same, instant appeal has been preferred on various grounds mentioned in the appeal memo.

3. Heard. Primary contentions of learned counsel for appellant is that, deceased Sitabai was working as housemaid and was earning Rs.6,000/- per month. Her legal heir i.e. claimant has sustained paralytic stroke and was rendered work less and was completely depending upon the income of Sitabai. However, due to her demise in accident, he loss her permanent source of income. Learned counsel pointed out that, even learned Tribunal did not grant any amount under the head non pecuniary damages and even did not award compensation for loss of consortium.

4. Learned counsel for respondent - Insurance Company strongly resisted and supported the award passed by learned trial Court. However, he fairly conceded that amount of loss of consortium not being apparently granted, he has no objection for grant of the same.

5. In the trial court, though, complaint is filed by her grandson, he is not examined. Claimant adduced his evidence at Exh.26 and reiterated the contents of complaint. He has also placed on record copy of complaint and spot panchanama. Studying the same, no difficulty in holding that while deceased Sitabai was crossing the road, she was given dash from backside.

Needless to say that there was rash and negligent driving on the part of tempo driver.

6. As regards to entitlement of compensation is concerned, claimant had restricted claim of Rs.1,00,000/-. Case set up is that deceased Sitabai was the sole earning member, worked as a housemaid. Though claimant has claimed that deceased Sitabai was earning Rs.6,000/-. However, there being no distinct, either oral or documentary evidence in that regard, learned Tribunal appears to have considered notional income as Rs.1,500/- per month. But, this court considers the said amount to be meager one as even housemaids earned approximately over Rs.3,000 to Rs.4,000/- per month by rendering service in couple of houses. Therefore, in the opinion of this court, it would be just and proper to consider notional income of Rs.4,000/- per month, instead of Rs.1,500/-. According to claimants, he is disabled due to paralysis and has also placed on record MRI reports and disability certificate at Exhs.34 and 35 respectively. However, it is pertinent to note that, in the Cause title, claimant has given his occupation as labour. Therefore, this is contrary to the assertion that he has been disabled from conducting any work for earning.

Claimant is sole dependent. Therefore, deducting the amount towards personal expenses of deceased, half amount as conceded by the learned counsel for respondent Insurance Company, is required to be granted. Apparently no amount seems to have been awarded under the head of loss consortium.

7. In view of the ratio laid down in ***National Insurance Company Limited vs. Pranay Sethi and others, 2017 (16) SCC 680***, claimant is entitled for Rs. 40,000/- plus 20% (Rs.8,000/-) which comes to Rs. 48,000/- towards consortium.

8. In view of the aforesaid discussion, claimant is entitled for following compensation.

Sr. No.	Heads	Amount (Rs.)
1.	Annual Income Rs.4,000 X 12 = 48,000/- (½ deduction towards personal expenses i.e.48,000 – 24,000=24,000/-)	24,000/-
2.	Multiplier of 5 (24,000 X 5)	1,20,000/-
3.	Non-pecuniary Losses:- (i) Loss of Estate *(as awarded by tribunal)* (ii) Funeral expenses *(as awarded by tribunal)* (iii) Loss of consortium	 15,000/- 15000/- 48,000/-
4.	**Total compensation to be paid**	**1,98,000/-**
5.	Compensation awarded by Tribunal	75,000/-
6.	**Total Enhanced Compensation (i.e. Rs.198,000 – 75,000)**	**1,23,000/-**

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

ORDER

(i) Appeal is partly allowed with proportionate costs.

(ii) Impugned judgment and award dated 02.04.2019, passed by District Judge – 4 and Ex-Officio Member of Motor Accident Claims Tribunal, Latur in M.A.C.P. No.262 of 2014 is modified.

(iii) Respondent no.3 - Insurance Company to pay enhanced compensation of Rs.1,23,000/- to claimant 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) Claimant to pay court fees on enhanced compensation as per rules.

(vi) On deposit of the amount by Insurance Company, appellant/claimant is permitted to withdraw the same.

(ABHAY S. WAGHWASE, J.)

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