



This order is modified as per speaking order dtd. 17.03.2025.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

35 FIRST APPEAL NO. 1860 OF 2024

1. Sarika Vikas Gaikwad,
2. Rutvik Vikas Gaikwad,
3. Kartik Vikas Gaikwad,
4. Sou. Janabai Laxman Gaikwad,
5. Laxman Narayan Gaikwad.Appellants/
Org. Claimants

Versus

1. Rahul Gangadhar Mohare,
2. The Branch Manager,
Cholamandalam M. S. General Insurance
Co. Ltd., Branch Office, Opp. Central Jail,
Aurangabad road, Osmanabad.Respondents

Mr. Prasanna Shankarrao Chavan, Advocate for Appellants.

Mr. Abhijit G. Choudhari, Advocate for Respondent No.2.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 3rd MARCH 2025

P.C.:-

. Appellants/Original Claimants filed this appeal seeking enhancement of compensation against the judgment and award dated 22nd December 2022 passed by Motor Accident Claims Tribunal, Osmanabad in MACP No.7 of 2021.

2. It is the contention of Claimants that Deceased-Vikas was proceeding on his motorcycle by following traffic rules, suddenly offending tipper, which was proceeding ahead, took a turn without giving signals or indicators, so also applied breaks. In result, the motorcycle of Vikas collided on rear tyre of tipper. Eventually, he suffered fatal injuries. The incident was immediately reported to Karkamb Police Station and was registered vide C.R. No.367 of 2020 against tipper driver. The deceased was employed with Sugar Factory as Electrician and was getting salary of Rs.10,000/- per month, so also, he was holding agricultural land with fruit bearing trees. He was supervising the same. On account of untimely death of Vikas, Claimants suffered loss of future earning and dependency. The claim was contested by Respondent-Insurance Company alleging contributory negligence of the deceased, so also, averments regarding loss of dependency, occupation and income of deceased were denied. The Tribunal after evaluation of evidence allowed claim and passed an award for Rs.14,55,000/- along with interest @ 7% per annum from the date of filing of claim petition. The Tribunal recorded finding of 30% contributory negligence against deceased, therefore, deducted 30% amount from excess compensation of Rs.20,77,800/-.

3. Mr. Chavan, learned Advocate appearing for the Appellants submits that findings recorded by Tribunal on the point of contributory

negligence of deceased is perverse. According to him, there was no reason to discard evidence as to income of the deceased, which has been duly proved by placing documents from the employment. He submits that Motor Accident Claims Tribunal has to decide claim on the basis of preponderance of probabilities and in summary manner. The evidence beyond doubt is not required, so as to establish issue of negligence. Mr. Chavan would further submit that although Tribunal observed about agriculture holding of deceased, nothing is awarded towards loss of supervision. He, therefore, seeks enhancement of compensation.

4. Per contra, Mr. Abhijit Chaudhary, learned Advocate appearing for Respondent No.2-Insurance Company submits that Claimants have based their case on police papers. The contents thereof need to be read as a whole. According to him, Tribunal has rightly concluded that deceased contributed to the extent of 30% in cause of accident. Similarly in absence of examination of employee from accounts department of Sugar Factory, Tribunal has rightly considered income @ Rs.9,000/- per month. Mr. Chaudhary would submit that when deceased was employed as Electrician in Sugar Factory, it cannot be said that he was cultivating agricultural land. According to him, there is no evidence as to the loss of agriculture income for want of supervision of deceased.

5. Having considered submissions advanced, three points require consideration in this appeal, which read as under:-

(i) Whether the finding on the point of negligence as recorded by Tribunal requires modification?

(ii) Whether the Tribunal is justified in taking notional income of deceased @ Rs.9,000/- per month in wake of evidence recorded by Claimants from employer?

(iii) Whether Tribunal could have considered loss of supervision of agricultural land and granted compensation for that purpose?

6. Insofar as first point as to the finding of contributory negligence recorded by Tribunal is concerned, Tribunal held that deceased was following offending vehicle and he dashed from the rear side. The Tribunal records that in the aforesaid background, the contributory negligence of the deceased and tipper driver can be assumed. It is difficult to countenance with the observations of the Tribunal. There cannot be presumption of contributory negligence. It has to be established by leading cogent evidence. In present case, FIR has been admitted in evidence by consent of parties. The FIR itself records that tipper driver took turn without giving signal or blowing indicator. In result, the motorcycle of deceased collided on rear wheel

of tipper. It is pertinent to note that the tipper driver has not stepped into witness box to rebut contents of FIR. In that view of the matter, the presumption drawn by Tribunal regarding contributory negligence of deceased cannot be countenanced. Recently, Supreme Court of India in case of *Prabhavathi & Ors. Vs. Managing Director of Bangalore Metropolitan Transfer Corporation* (Civil Appeal Nos.3465-3466 of 2025) decided on 28th February 2025, held that contributory negligence cannot be presumed on main allegation of high speed of driving without direct or corroborative evidence. The fact as to contributory negligence must be established through direct or corroborative evidence. While observing so, Supreme Court relied upon earlier judgment in case of *Jiju Kuruvila & Ors. Vs. Kunjujamma Mohan & Ors.*¹. Taking into account aforesaid observations and factual scenario discerned from FIR and spot Panchanama, it can be observed that tipper driver was sole responsible for the accident. Further, adverse inference will have to be drawn against him, as he failed to step into witness box and explained the circumstances leading to the accident.

7. In that view of the matter, this Court holds that accident occurred due to sole negligence on the part of tipper driver.

8. Insofar as income of deceased is concerned, Claimants relied

1 (2013) 9 SCC 166

upon evidence of Dinkar Ambure, Clerk from Pandurang Sugar Factory, where deceased was employed as Electrician. The said witness placed on record the authority letter issued to him by Sugar Factory. Apart from that, he placed on record cheque payment vouchers, extract of final payment register of November 2020. The aforesaid evidence would show that an average earning of deceased was Rs.10,000/- per month. The Claimants have pleaded his income as Rs.10,000/- per month. In light of this material, there was no reason to consider notional income of deceased @ Rs.9,000/- per month. This Court, therefore, holds that Claimants have proved income of deceased @ Rs.10,000/- per month from his employment.

9. Insofar as the loss of supervision of agriculture holding, Claimants have placed on record 7/12 extracts depicting that the deceased was holding agriculture land with Orchard of Pomegranate. It is true that, deceased was employed in Sugar Factory, therefore, he could not have personally cultivated the land, but fact remains that Claimant Nos.4 and 5 are old age persons. Claimant Nos.2 and 3 are minor sons. Therefore, it can be presumed that deceased must be supervising agricultural land. In absence of any material as regards to actual production from agriculture land, it would be appropriate to consider loss of supervision @ Rs.1,000/- per month and @ Rs.12,000/- per annum. The gamut of aforesaid discussion is that

deceased was earning total amount of Rs.11,000/- per month. The dependency of the Claimants will have to be assessed on the basis of aforesaid income. The liability to pay compensation will have to be fixed entirely against Respondents.

10. In that view of the matter, award needs to be modified as per the following calculations shown in tabular form:-

Sr No.	Particulars	Amount in Rs.
1.	Monthly salary of the deceased.	11,000/-
2.	Annual loss of earning Rs.11,000/- (Monthly Salary) Rs. 11000 x 12 =	1,32,000/-
3.	Addition of 40% towards future prospects (Rs. 1,32,000+ 52,800=	1,84,800/-
4.	Less: 1/4 deduction towards personal and living expenses. Rs. 1,84,800 – 46,200 =	1,38,600/-
5.	Applying Multiplier of “17” (Rs. 1,38,600 x 17)	23,56,200/-
6.	Consortium & Funeral Expenses.	1,50,000/-
7.	Total	25,06,200/-
8.	Tribunal granted	14,55,000/-
9.	Enhancement	10,51,200/-

11. In that view of the matter, the appeal needs to be partly allowed and the award passed by the Tribunal needs to be partly modified. Hence, following order:-

ORDER

(i). In result, first appeal is partly allowed.

(ii). Judgment and award passed by Motor Accident Claims

Tribunal, Osmanabad in MACT No.7 of 2021 is modified. The Claimants are held entitled for total compensation of Rs.25,06,200/- from Respondent Nos.1 and 2, who shall be jointly and liable to pay the same along with interest @ 7% per annum from the date of filing the claim petition, till realisation.

(iii) The compensation amount paid/deposited by Respondents in tune with the award passed by the Tribunal shall be appropriated.

(iv) Rest of the award passed by the Tribunal shall apply mutatis mutandis to the modified award passed under this order. The deficit Court fees shall be paid. The modified award be drawn accordingly.

(S. G. CHAPALGAONKAR, J.)

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