2025:BHC-AUG:19257

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2096 OF 2020

1. Kalawati W/o Venkatrao Lande,
   Age: 57 years, Occu.: Household
   R/o. Shirpur, Tq. Palam,
   Dist. Parbhani.

2. Swati W/o. Shivaji Lande,
   Age: 32 years, Occu.: Household,
   R/o. Shirpur, Tq. Palam,
   Dist. Parbhani.

3. Venkati S/o. Shivaji Lande,
   Age: 15 years, Occu.: Education

4. Arti D/o. Shivaji Lande,
   Age: 13 years, Occu.: Education,

5. Shradha D/o. Shivaji Lande,
   Age: 11 years, Occu.: Education,

6. Sakharam S/o. Shivaji Lande,
   Age: 6 years, Occu.: Nil.

(Appellants No.3 to 6 are minors
U/G real Mother i.e. Appellant
No.2 Swati W/o. Shivaji Lande). .... Appellants

VERSUS

1. Anis Ahmed Khan S/o.
   Rayees Ahmed Khan,
   Age: Major, Occu. : Business,
   R/o. Quadrabad Plot at post
   Tq. & Dist. Parbhani.

2. Ifco Tokio Gen. Insurance Co. Ltd.
   Through its Branch Manager, Latur,
   1st Floor, Inani Building above
   Latur Sari Center Old Cloth Lane,
   Latur, Tq. and Dist. Latur. .... Non-Appellants
   (Orig. Respondents)

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Mr. V.M. Maney, Advocate for Appellants
Mr. Swapnil S. Rathi, Advocate for Respondent No.1 – State

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 15 JULY 2025
PRONOUNCED ON : 22 JULY 2025

JUDGMENT:-

1. Original claimants are hereby assailing judgment and award passed by the learned M.A.C.T, Parbhani in M.A.C.P. No.353 of 2015 passed on 17.03.2017.

2. On 28.08.2014, deceased Shivaji was proceeding on motorcycle bearing No. MH-22-L-6913 on Parbhani-Gangakhed road. Near Tad Pangari, offending truck bearing No. MH-29-8035 was parked on the road without any indicators and red reflectors, as a result of which, Shivaji was dashed over the said standing truck and suffered serious injuries. Subsequently he died in the said accident. Consequently, crime was registered against the driver of the offending truck. Appellants, who are mother, wife, sons and daughters of deceased Shivaji, set up an accident claim before the Motor Accident Claims Tribunal, Parbhani to the tune of Rs.8,00,000/-, under section 166 of the Motor Vehicles Act.

3. In the claim petition, notices were issued to respondents No. 1 and 2. The driver of the offending truck (respondent No. 1) contested the claim by filing a written statement and denied the averments made in the claim petition. Respondent no.2-insurance company also appeared and resisted the claim petition by filing written statement. Both, oral as well as documentary evidence, was permitted to be adduced.

4. On appreciation of the same, Tribunal framed issues and after recording evidence and hearing parties, partly allowed the claim petition directing respondent nos.1 and 2 to jointly and severally pay compensation of Rs.7,50,000/- along with interest @ 7% under various heads vide judgment and award dated 17.03.2017.

Dissatisfied with the quantum of compensation, the claimants have preferred present appeal on various grounds.

5. The learned counsel for the appellants primarily confined his arguments to the issue of monthly income of deceased Shivaji, contending that it should have been considered as Rs. 8,000/- instead of Rs. 5,000/-. He was also dissatisfied with the grant of amount towards loss of consortium, which is awarded in lump sum to the tune of Rs.65,000/-. He also expressed

dissatisfaction with the award of only Rs. 10,000/- towards funeral expenses so also for failure to grant compensation for future prospects, and the lump-sum compensation awarded under non-pecuniary heads.

6. Per contra, the learned counsel for respondent 2-insurance company justified and supported the findings and conclusion arrived at by the Tribunal. He would submit that the deceased Shivaji was working as an agricultural labour and claimed to be earning Rs. 8,000/- per month, however, there was no legally acceptable evidence to support the claim. Therefore, learned Tribunal has rightly consider the notional income of deceased Shivaji as Rs.5,000/-. Learned counsel submits that Tribunal has awarded lump sum amount under the heads of consortium and non pecuniary heads, which is just and proper, as the claimants have failed to produce on record any reliable oral and documentary evidence. For all above reasons, he urges to dismiss the appeal.

7. Heard the learned counsel for appellants/claimants and learned counsel for respondent no.2/insurance company. Though served, none appears for respondent No.1. Perused the impugned judgment and award.

8. It is seen that, in the claim petition, there is no serious contest on the issue that deceased Shivaji met with accidental death while proceeding on motorcycle bearing no. MH-22-L-6913 and it being collided with truck bearing no. MH-29-8035 parked on the road. There is no dispute even about deceased Shivaji to have succumbed to the injuries suffered in the said accident. Learned counsel for the insurance company tired to resist affirmative findings recorded by the Tribunal holding driver of offending truck to be negligent in parking the truck without any indicator or reflector. Further, this Court came across with the findings of the Tribunal in paragraphs no. 19 and 21 holding the act of the driver of the offending vehicle to be rash and negligent and in paragraph no. 22, it has been observed that, the alleged accident took place only due to the said rash and negligent act. Therefore, no fault can be found in the findings of the Tribunal that there was negligence on the part of truck driver in parking the truck on the road without indicator or reflector and leaving the said vehicle in the such condition. Consequently, the only issue which is contested by the appellant is quantum of compensation.

9. Before the Tribunal, case is set up by the claimants that deceased Shivaji was working in the field of one Ramrao as an agricultural labour and he was receiving Rs.8,000/- per month as salary. Though Ramrao is made to step into the witness box, he could not produce any documentary evidence suggesting such payments being made. Therefore, the Tribunal was left with no any alternative but to consider notional income of deceased Shivaji as Rs. 5,000/- per month. However, in the considered opinion of this Court, the same should be Rs.6,000/- per month. Even as regards to age is concerned, though there is no documentary evidence, in such circumstances, the only material which can be visited is postmortem report, and in the instant case, postmortem report of deceased Shivaji shows that at the time of accident his age was 40 years as considered by the Tribunal. Therefore, Tribunal has properly applied the multiplayer available to such age group as 15.

10. In the present case, computations and calculations made by the learned Tribunal are reflected in paragraph 33 of the impugned judgment. Apparently, no amount has been awarded under the head of future prospects. So also, no amount has been awarded under the heads of loss of estate. Tribunal has erred in

awarding amount of Rs.10,000/- towards funeral expenses and lump sum amounts under the heard of consortium and mental shock as well as under non-pecuniary heads.

11. 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, claimants are entitled for Rs. 40,000/- each, i.e. 2,40,000/- plus 20% (Rs. 48,000/-) which comes to Rs. 2,88,000/- towards loss of consortium and love and affection. Rs. 15,000/- plus 20% (Rs.3,000/-), which comes to Rs.18,000/- towards loss of estate and Rs.15,000/- plus 20% (Rs.3,000/-), which comes to Rs.18,000/- towards funeral expenses.

12. Claimants are also entitled for future prospects. Considering that the age of deceased at the time of accident was 40 years, 40% needs to be awarded towards future prospectus in view of ratio in ***Magma General Insurance Co. Ltd.*** (supra).

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

Sr. No.	**Heads**	**Amount (Rs.)**
1.	Annual Income Rs.6,000 X 12 = 72,000/-	72,000/-
2.	Future Prospects 40% i.e. 28,800 (72,000 + 28,800)	1,00,800/-
	¼ deduction towards personal expenses i.e.1,00,800 – 25,200 =54,000/-)	75,600/-
3.	Multiplier of 15 (75,600 X 15)	11,34,000/-
4.	Non-pecuniary Losses:- (i) Loss of Estate (ii) Funeral expenses (iii) Loss of consortium and love and affection	 18,000/- 18,000/- 2,88,000/-
4.	**Total compensation to be paid**	**14,58,000-**
5.	Compensation awarded by Tribunal	7,50,000/-
6.	**Total Enhanced Compensation** **(i.e. Rs.14,58,000 – 7,50,000)**	**7,08,000/-**

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

ORDER

(i) Impugned judgment and award dated 17.03.2017, passed by Adhoc District Judge – 1 and Ex-Officio Member of Motor Accident Claims Tribunal, Parbhani in M.A.C.P. No.353 of 2015 is modified.

(ii) Respondent no.2 - Insurance Company to pay enhanced compensation of Rs.7,08,000/- to claimants within 12 weeks from today along with interest @ 7% per annum from the date of registration of claim petition till its realization.

(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.

(vi) First appeal is allowed in above terms.

ABHAY S. WAGHWASE
JUDGE

S P Rane