



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

FIRST APPEAL NO.784 OF 2017

1. Smt. Sunita Dattu Borse
Age-30 Years, Occu. - Household
2. Chi. Rahul Dattu Borse
Age-15 Years, Occu. - Education
3. Ku. Shubhangi Dattu Borse
Age-12 Years, Occu. Education
4. Ku. Lalita Dattu Borse
Age-11 Years, Occu. Education
5. Ku. Moni @ Monali Dattu Borse
Age-10 Years, Occu. Education

Applicant no. 1 for herself and natural guardian
for the applicant no. 2 to 5 being her children

6. Shri. Shankar Rama Borse
Age-54 Years, Occupation - Agriculture
7. Sau. Kausalyabai Shankar Borse
Age-53 Years, Occupation - Household

All R/o Pahur Kasabe, Taluka Jamner,
Dist. Jalgaon

... Appellants
(Ori. Claimants)

Versus

1. Shri. Bansilal Chhagan Pardeshi
Age-34 Years, Occu. - Driver
R/o-Pahur Peth, Tal. Jamner, Dist. Jalgaon
2. Shri. Sandeep Jijabrao Patil
Age-23 Years, Occupation - Business
R/o Fagane, Tal. And Dist. Dhule
At present at Rajwad, Tal. Parola,
Dist. Jalgaon
3. The United India Insurance Company Ltd.
Through Manager Mansingh Market,

2nd Floor, Near Railway Station,
Jalgaon, Dist. Jalgaon

... Respondents

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Shri. Madhav M. Bhokarikar, Advocate for the Appellants
Shri. Suraj R. Bagal, Advocate for Respondent No.3

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CORAM : NEERAJ P. DHOTE, J.
DATE : 12.08.2025

ORAL JUDGMENT :

. This Appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'M.V. Act') is preferred by the Original Claimants in Motor Accident Claim Petition No.70/2010 (hereinafter referred to as the 'Claim Petition'), decided by the learned Motor Accident Claims Tribunal, Jalgaon (for short, 'Tribunal') by Judgment and Award dated 10.12.2015, seeking further enhancement in the compensation.

2. The facts, in brief, giving rise to the present Appeal are as follows:

2.1. The Appellants, who are the Widow, Children and the Parents of Dattu Shankar Borse (hereinafter referred to as 'the Deceased'), filed the above referred Claim Petition that the Deceased met with motor vehicular accident on 05.11.2009 while he was traveling on his Motorcycle bearing No.MH-19/AG-5963 from his field towards home at Pahur and the Bolero Pick-up Jeep bearing No. MH-18/M-7670, gave dash to his motorcycle while overtaking the bullock-cart which resulted in fatal injuries to the Deceased, to which he succumbed. The Deceased was 29 years of age and earning Rs.15,000/- (Rs. Fifteen Thousand) Per Month from the agriculture, milk business and poultry farm. The

Appellants claimed compensation of Rs.10,00,000/- (Rs. Ten Lakh) with interest at the rate of 12% Per Annum. The Claim Petition was opposed by the Respondent No.3 – Insurance Company by filing Written-statement. The Claim Petition proceeded *ex parte* against the Respondent Nos.1 and 2.

2.2. The Claimants led their evidence. No evidence was led by the Respondents. By the Judgment and Award dated 10.12.2015, the Claim Petition came to be allowed with proportionate costs and compensation of Rs.17,00,000/- (Rs. Seventeen Lakh) inclusive of compensation towards 'No Fault Liability' with simple interest @ 7.5 per cent Per Annum from the date of Petition came to be granted.

3. It is submitted by the learned Advocate for the Appellants that the learned Tribunal considered notional income of the Deceased on a lower side. The Appellants brought on record 7/12 extract to show that the Deceased was cultivating irrigated land. The Deceased was earning Rs.20,000/- (Rs. Twenty Thousand) Per Month from agriculture, milk business and poultry farm and therefore, the monthly income of the Deceased be enhanced. He further submitted that, the compensation towards the conventional heads, such as, Loss of Estate, Funeral Expenses and Consortium need to be granted in view of settled position under the law in *National Insurance Company Ltd Vs. Pranay Sethi and Others, (2017) 16 SCC 680* and *United India Insurance Co. Ltd. vs*

Satinder Kaur @ Satwinder Kaur And Ors. AIRONLINE 2020 SC 620.

He further submitted that the interest granted by the learned Tribunal was on lower side and it be enhanced to 9%. He further submitted that in view of the Notification dated 31.05.2010 issued by the Ministry of Law and Labour Employment, Rs.8,000/- (Rs. Eight Thousand) Per Month was notified as the monthly wages and the same be considered as the monthly income of the Deceased. He also relied on the Judgment in *Sheela Devi and Ors vs. Cholamandalam MS General Insurance Co. Ltd and Ors, MANU/SC/1765/2022*. He submitted that the Appeal be allowed.

4. It is submitted by the learned Advocate for Respondent No.3 - Insurance Company that, the Appellants got more compensation than what they were entitled for. As there was no proof of income of the Deceased, the learned Tribunal has considered Rs.7,000/- (Rs. Seven Thousand) Per Month as the notional income which itself was on the higher side. Though 7/12 extract was brought on record, the Deceased had two (2) Brothers and Parents and therefore, his share in the income from the agriculture was 1/5th. In absence of any concrete evidence towards the income of the Deceased, no interference was warranted in the notional income of the Deceased considered by the learned Tribunal. He fairly submitted that the compensation under the conventional heads, such as, Consortium, Loss of Estate and Funeral Expenses be considered as per the settled position under the law in the light of the

above referred Judgments. He further submitted that the addition of 50% towards the future income by the learned Tribunal needs to be reduced in consonance with the settled position under the law and it should be 40%. He submitted that there was no scope of enhancement and the Appeal be dismissed.

5. This Appeal is by the Orig. Claimants for enhancement in the compensation awarded by the learned Tribunal. The evidence on record goes to show that, according to the Claimants the Deceased was earning Rs.15,000/- (Rs. Fifteen Thousand) Per Month by cultivating irrigated agricultural land and also from milk business and poultry farm. In the Cross-examination, the Claimant No.1, who examined herself as the Witness in support of the Claim Petition admitted that, she had not brought on record the documents to show that the Deceased was in the business of milk and poultry farm. She further admitted that agricultural land was in the name of her Father-in-law i.e. father of the Deceased, and there was no agricultural land in the name of the Deceased. From perusal of the record of the Claim Petition, except the bare contention of the Claimants, there was no document or concrete evidence to show the earnings of the Deceased. However, the learned Tribunal considered the monthly income of the Deceased as Rs.7,000/- (Rs. Seven Thousand). The Appellants case that the Deceased was earning Rs.15,000/- (Rs. Fifteen Thousand) Per Month is not corroborated by the documentary evidence and hence, no interference is called for in the quantum of

monthly income of the Deceased considered by the learned Tribunal. The learned Advocate for the Respondent No.3 relied on the common Judgment of this Court in First Appeal Nos.3160 of 2016 and 3161 of 2016 wherein the accident was of 06.03.2015 and per month notional income was considered Rs.5,000/- (Rs. Five Thousand) Per Month. Admittedly, Respondent No.3 has not challenged the Judgment passed by the learned Tribunal. Therefore, the said Judgment would be of no assistance to the Respondent No.3.

6. As regards the compensation towards the conventional heads, such as, Consortium, Loss of Estate and Loss of Funeral Expenses, the same will have to be included in the amount of compensation in the light of the above referred judgments cited by the Appellants. Thus, the Appellants would be entitled for the compensation under the heads Consortium at the rate of Rs.40,000/- (Rs. Forty Thousand) each, towards Spousal Consortium, Parental Compensation and Filial as per the Judgment in *Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others*, (2018) 18 SCC 130. The amount of Rs.15,000/- (Rs. Fifteen Thousand) shall be included towards Loss of Estate and Funeral Expenses each.

7. In *Sheela Devi and Ors (supra)* the Deceased was the motor mechanic and was considered as a skilled workman. In the case at hand, there is no evidence that the Deceased was covered by the said

Notification issued under the Employees' Compensation Act, 1923 by the Central Government, therefore, the same would not be of any assistance to the Appellants.

8. The learned Tribunal considered 50% of the monthly income towards the future prospects. Considering the above referred Judgment relied upon by the learned Advocate for the Appellants, the addition towards future prospects will have to be 40% of the established income.

9. The Claim Petition was filed on 17.02.2010. As far as the interest is concerned, the learned Tribunal granted interest @ 7.5 % per annum from the date of the Application till realisation of the amount. The accident was of November - 2009. The interest rates of the Banks keep on fluctuating. The interest rate granted by the learned Tribunal is reasonable and appropriate and needs no interference. In light of the above discussion, the compensation is worked out as follows:

Particulars	Amount
Monthly income of the Deceased considered by Ld. Tribunal	Rs.7,000/-
Addition of 40% towards future expenses	+ <u>Rs.2800/-</u> Rs.9800/-
Deduction towards personal and living expenses	Rs.9800/- ÷ 5 = Rs.1960/-
Per Month income of the Deceased	Rs.9800/- - <u>Rs.1960/-</u> Rs.7840/-

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Yearly income of the
Deceased

Rs.7840/- x 12
= 94,080/-

Multiplier of 17

Rs.94,080/- x 17
= 15,99,360/-

Rs.15,99,360/-

Towards Consortium (Rs.40,000/- x 7)

Rs.2,80,000/-

Towards Funeral Expenses

Rs.15,000/-

Towards Loss of Estate

Rs.15,000/-

Total Compensation payable to the Claimants/
Appellants :

Rs.19,09,360/-

10. In view of the above calculations, the following order is passed.

ORDER

- (i) The Appeal is partly allowed with proportionate costs.
- (ii) The compensation awarded by the learned Tribunal is modified to Rs.19,09,360/- (Rs. Nineteen Lakh Nine Thousand Three Hundred Sixty) inclusive of 'No Fault Liability' compensation.
- (iii) Rests of the operative Order / Award of the learned Tribunal remains the same.

[NEERAJ P. DHOTE]
JUDGE

GGP