IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2348 OF 2021

1. Smt. Chandrabhaga Dayanand Pawar Patil,
Age 40 Years, Occu: Household,

2. Prajakta d/o Dayanand Pawar Patil,
Age 20 Years, Occu : Education,

3. Amit s/o Dayanand Pawar Patil,
Age 16 Years, Minor, Occu: Education,
U/g of his real mother and guardian
Appellant No.1
Smt. Chandrabhagabai Dayanand Pawar Patil

4. Sumanbai w/o Murlidhar Pawar Patil,
Age 60 Years, Occu: Household,
All R/o Ari, Tq. Shirur Anantpal,
Dist. Latur. **... Appellants**

Versus

1. Amar s/o Sanjay Vyanjane,
Age 35 Years, Occu: Business,
R/o Shirur Anantpal Main Road,
Near Bus Stand Shirur Anantpal,
Tq. Shirur Anantpal, Dist. Latur
(Owner of Jeep No. MH-24-AF-1084)

2. The Branch Manager,
Cholamandalam MS General Insurance
Co. Ltd., Malika Building, 1st Floor,
Block No.4, Vishram Nagar,
Hotgi Road Solapur, Dist. Solapur
(Insurer of Jeep No.MH-24-AF-1084 **... Respondents.**

.....

Mr. S. B. Gastgar, Advocate for Appellants.
Mr. A. S. Usmanpurkar, Advocate for Respondent No.2.

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 01 AUGUST 2025

PRONOUNCED ON : 20 AUGUST 2025

JUDGMENT :

1. Original claimants in M.A.C.P. No.02 of 2016 are dissatisfied by the quantum of compensation awarded by learned tribunal by judgment and order dated 03.02.2021 and have thereby invoked section 173 of Motor Vehicles Act and sought enhanced compensation.

2. Learned counsel for appellants would point out that appellants are heirs of deceased Dayanand Pawar, who met with tragic road accident dated 05.10.2015 while he was incumbent of a jeep bearing No.MH-24-AF-1084. The said jeep driver was rash and negligent and was responsible for giving dash to the truck from backside. It is pointed out that claim petition was set up before tribunal seeking compensation primarily on the ground that deceased was the sole bread earner of the family. He was working as 'Munim' in a food-grain shop of M/s. Shesherao Bamankar and was earning salary of Rs.17,500/- per month. Claimants, wife and children, were solely dependent on his earnings. Therefore, they had sought compensation under various heads.

3. Learned counsel for appellants would point out that, in support of earning and income of deceased, appellants had adduced

evidence of appellant no.1 wife of deceased and CW2 Ramkishan employer, but still learned tribunal has disbelieved such evidence and has considered notional income of Rs.5,000/-. He further pointed out that, apart from service income, deceased was also getting agricultural income and the same is also not considered. It is pointed out that, even as per the Employee's Compensation Act, daily wages worker is also receiving Rs.8,000/-. Therefore, the same ought to have been considered.

4. It is further pointed out that, learned tribunal erred in applying the multiplier of employee as 14 by considering the age of deceased as 45 which is reflected in the post mortem report. Learned counsel emphasized that, in fact deceased was 30 years of age at the time of accident and there was proof in the form of leaving certificate which ought to have been considered. Even medical expenses granted are meager and for all above reasons, enhancement is sought.

5. Learned counsel for respondent no.2 insurance company supported the judgment and award of tribunal. He would submit that, there was no cogent and reliable evidence about service and no details were furnished by so called employer. Learned counsel also justifies consideration of notional income in absence of very concrete evidence and urges to dismiss the appeal for want of merits.

6. After hearing submissions of both sides, there is no dispute that present appellants are heirs of deceased Dayanand, who met death on account of road traffic accident dated 05.10.2015. Before this court in appeal, even learned counsel for respondent no.2 insurance company has not challenged the part of rash and negligence attributed to the driver of the jeep of which deceased Dayanand was incumbent. The only point which is agitated here is quantum. Claimants are primarily dissatisfied for non consideration of salary certificate, evidence of so called employer and secondly non consideration of medical expenses and multiplier put to use by tribunal.

7. Therefore, in view of such limited scope, documents on record are re-appreciated.

8. Evidence of CW1, who is wife, is only on the point of husband to be serving with CW2 Ramkishan and earning Rs.17,500/- per month. CW2 Ramkishan, who is examined at Exh.39 has testified as under :-

> *"Cross-examination by Advocate S.G. Doijode on behalf of Non-Applicant No. 2:*
>
> *2. My village is Shirur Anantpal. The deceased was a*

resident of a neighbouring village. Today, I do not have a market committee license with me. Most farmers supply their agricultural produce to me at Shirur Anantpal. We also used to purchase produce from the deceased. The deceased and I were in a collaboration for a long time. No document is prepared which shows that the deceased was employed for me for three years. It is not true to say that, I am falsely stating that the deceased was working for me as a Munim and Manager and that I was paying him a salary of Rs. 17,500/-. I used to pay him his salary in cash. It is not true to say that, the salary entries for the deceased mentioned in Exhibit No. 43 do not match with the salary certificate. Today, I have not brought any record with me which shows that how many persons are working in my Commission Agency. Today, I don't have the attendance sheet with me which shows that the deceased was working for me. It is not true to say that, I am falsely stating that the deceased was working for me and that I was paying him a salary. It is not true to say that, I am giving false testimony today. It is not true to say that, I have submitted a false salary certificate to ensure maximum compensation for the relatives of the decease. I have falsely filed the pay slip of the decease and my Commission Agency Documents. I file Income Tax (IT) returns. While filing IT returns, it is necessary to show profit and loss. I will submit the IT return document within eight days mentioning the salary paid to the decease. Accounts need to be verified by a Chartered Accountant (CA). The Exhibit No. 43 submitted by me today does not bear the verification signature of a CA. It is not true that, I am giving false testimony today."

(As translated by Senior Translator, High Court of Bombay Bench at Aurangabad)

9. After considering the answers given by this witness, more particularly in cross, even in the considered opinion of this

court, in absence of any cogent, reliable and documentary evidence about service and continuous salary, it would not be proper to accept the testimony of CW2 Ramkishan to consider and fix the salary. Therefore, learned tribunal was justified in considering notional income. However, in the considered opinion of this court, learned tribunal has considered only Rs.5,000/- per month as notional income and this apparently seems to be on the lower side. Therefore, the same is required to be modified as Rs.8,000/- per month. Rest of the amount granted under the head of medical expenses seem to be justified in view of nature of evidence on record. Even learned tribunal was justified in considering the age of deceased.

10. However, in the considered opinion of this court, learned tribunal has granted amount towards loss of consortium only Rs.40,000/- to all claimants. In view of the ratio laid down in ***Pranay Sethi*** *(supra)* ***and Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and Others, (2018) 18 SCC 130***, claimants are entitled for Rs.40,000/- each, i.e. 1,60,000 /- plus 10% (Rs.16,000/-) which comes to Rs.1,76,000/- towards consortium.

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

Sr. No.	Heads	Amount (Rs.)
1.	**Income Rs.8,000 x 12 = 96,000/-** **Rs.96,000 X 14 years**	**13,44,000/-**
2.	Less ¼	3,36,000/-
3.	Loss of dependency	10,08,000/-
4.	Hospitalization Charges & Medical Bills (Rs.1,31,000/- + 91,746/- as awarded by tribunal)	2,22,746/-
5.	Loss of consortium	1,76,000/-
6.	Loss of estate	15,000/-
7.	Funeral Expenses	15,000/-
4.	**Total compensation to be paid**	**14,36,746/-**
5.	Compensation awarded by Tribunal	9,22,746/-
6.	**Total Enhanced Compensation** **(i.e. Rs.14,36,746 – 9,22,746)**	**5,14,000/-**

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

ORDER

(i) Appeal is partly allowed with proportionate costs.

(ii) Impugned judgment and award dated 03.02.2021, passed by Member, M.A.C.T., Nilanga, District Latur in M.A.C.P. No.02 of 2016 is modified.

(iii) Respondent no.2 - Insurance Company to pay enhanced compensation of Rs.5,14,000/- to claimants 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) 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.

(ABHAY S. WAGHWASE, J.)

Tandale