



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

958 FIRST APPEAL NO. 3093 OF 2021

- 1) Jyoti W/o Natha Pandhare
Age : 30 years, Occu.: Household.
- 2) Nikita d/o Natha Pandhare
Age: 11 years, Occu.: Education.
- 3) Nutan d/o Natha Pandhare
Age: 09 years, Occu.: Education.
- 4) Akashada d/o Natha Pandhare
Age: 10 years, Occu.: Education.
- 5) Harischandra s/o Shripati Pandhare
Age: 60 years, Occu.: Nil.
- 6) Parigabai w/o Harischandra Pandhare
Age; 60 years, Occu.: Nil.
- 7) Aayush s/o Natha Pandhare
Age: 01 years, Occu.: Nil.

Appellant No.02 to 04 & 07 minor U/g.
of mother i.e. Applicant No.01.
All R/o Nakshatrawadi,
Tq. & Dist.Aurangabad.

....Appellants
(Orig. Claimants)

Versus

- 1) Vishal S/o Pralhad Bhaskar
Age: Major, Occu.: Driver/owner,
R/o. Fatiyabad, Post.Maliwada,
Tq.Gangapur, Dist.Aurangabad.
- 2) The Divisional Manager,
The New India Assurance Company Ltd.,
Adalat Road, Aurangabad,
Dist.Aurangabad.

.....Respondents

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Mr. Pramod C.Mayure, Advocate for Appellants.
Mr.K.F. Shingare, Advocate for Respondent no.1.
Mr. Mohit R.Deshmukh, Advocate for Respondent no.2.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 10 SEPTEMBER, 2025

PRONOUNCED ON : 20 SEPTEMBER, 2025

JUDGMENT :-

1. Original claimants in Motor Accident Claims Petition No.437 of 2019 are aggrieved by the quantum of compensation on account of accidental death of husband of claimant no.1 and thereby preferred instant appeal for enhancement of compensation.
2. Learned counsel for appellants/claimants would submit that on 20-04-2019, husband of claimant no.1 Jyoti, namely Natha Harischandra Pandhare, was proceeding on Motorcycle towards Chitegaon from Nakshatrawadi and when his Motorcycle had reached in the vicinity of Allana Company on Aurangabad to Paithan road, one Eicher Truck bearing no.MH20 DE-3686, which was coming from opposite direction, gave severe dash to the Motorcycle causing grievous injuries in which Natha died. It is pointed out that crime was registered against Eicher Truck Driver. That, wife, children

and parents of deceased Natha together set up an accidental claim against respondent no.1 Driver/owner of Eicher Truck and respondent no.2 its insurer. Learned counsel pointed out that there was rash driving and negligence on the part of Truck Driver and therefore, both respondents are liable to pay the compensation.

3. Learned counsel further pointed out that deceased Natha was working as an Operator in Badve Engineering Private Limited. That, his salary slip was placed on record by examining employee of the company, however, learned trial Court discarded such evidence and rather granted notional income. According to him, even notional income is on lower side. That, as per recent law as well as in view of Notification / Gazette of State of Maharashtra under the Minimum Wages Act, skilled Operator is entitled for consideration of salary to the tune of Rs.15,000/- per month, however, the same has not been considered by the learned Tribunal. He further pointed out that even in view of recent judgments of Hon'ble Apex Court, when each of the claimant was entitled for consortium distinctly, learned Tribunal has merely awarded joint consortium that too of Rs.40,000/-. For above reasons, impugned judgment is sought to be set aside by allowing appeal.

4. Learned counsel for respondent no.2/Insurance Company resisted the above appeal by supporting the findings and conclusion reached at by the learned Tribunal. He pointed out that there was no evidence on behalf of claimants regarding alleged employment of deceased as an Operator in Badve Engineering Private Limited. He pointed out that no employee of said company was examined, rather witness examined was employee of another Enterprises, which had no nexus with alleged Badve Engineering Private Limited, where deceased allegedly worked. He also pointed out that, there was no documentary evidence to show that fixed salary being received by deceased or it being credited in the account of deceased as is claimed. However, learned counsel for respondent no.2/Insurance Company fairly conceded that learned Tribunal ought to have granted consortium to each of the dependent distinctly and not jointly. For above reasons, he seeks indulgence of this Court to that extent only and urges to maintain the order as regards to compensation granted by the learned Tribunal on the basis of notional income.

5. Heard extensively. Perused the papers.

6. In support of the claim, wife of deceased has adduced her evidence at exh.28 and she has also adduced evidence of one Ramesh Gulabrao Saste at Exh.50 and documentary evidence was also placed on record viz. FIR, spot panchanama, inquest panchanama, post mortem report, driving licence, fitness certificate of vehicle, insurance policy etc. Respondent does not seem to have adduced any evidence either documentary or oral.

7. On going through the evidence of PW1 Jyoti, it is emerging that she has reiterated averments raised in the claim petition. She does not seem to be eye witness, however, there are Police papers, more particularly, FIR and spot panchanama, which on scrutiny show that Driver of Eicher Truck, which is offending vehicle, has left its correct side and had gone to extreme right side of the road, which was meant for vehicle proceeding in the direction in which deceased Natha was proceeding on Motorcycle i.e. in the opposite direction. Therefore, on the basis of spot panchanama, apparently fault lies on the part the Driver of the offending vehicle. Resultantly, even this Court is of the considered opinion that there is negligence on the part Driver of offending vehicle and in view of inquest panchanama and post mortem report, there is no hesitation to hold that deceased

Natha died in a road traffic accident.

8. It seems to be the case of claimants that deceased Natha, who was 34 years of age, was working as an Operator in Badve Engineering Private Limited as a skilled worker and he was earning salary of Rs.16,605/- per month. According to claimants, deceased was the only earning member of family and his salary was the only source of income and they have lost the same due to accidental death of Natha. PW2 Ramesh is examined at exh.50, however, as pointed out by the learned counsel for the respondents, this witness though deposed about employment and salary of deceased Natha in Badve Engineering Private Limited, this witness does not seem to be an employee of Badve Engineering Private Limited, which is the company wherein deceased was allegedly engaged as an Operator. Therefore, even if this witness has placed documents on record, in view above position, his evidence cannot be relied to accept the case of the claimants that deceased was earning Rs.16,605/- per month. Apart from this, in view of answers given by PW2 Ramesh in cross-examination, his evidence cannot be straightaway accepted for consideration of income of deceased.

9. Learned counsel for appellants/claimants has taken objection

to even consideration of quantum of Rs.8,000/- per month as notional income, as according to him, even as per recent law and Notification / Gazette under the Minimum Wages Act, income of deceased was liable to be considered as Rs.15,000/- per month. His specific contention is that, the said Notification, which has been relied by the learned Tribunal, is with regard to unskilled worker, however, in the present case, deceased was a skilled worker and he was working as an Operator.

10. As stated above, there is no distinct documentary or oral evidence showing deceased to be a skilled worker. Mere, oral submission cannot be considered for holding deceased to be a skilled worker. Therefore, no fault can be found in the notional income as considered and held by the learned Tribunal. There is no reason to find fault in the same.

11. As pointed out by the learned counsel for the appellants and as fairly conceded by the learned counsel for respondent no.2/ Insurance Company, it is seen that, under the head of consortium, learned Tribunal has awarded only Rs.40,000/- jointly instead of awarding distinctly to each of the claimants.

In view of ratio laid down in the case of *National Insurance*

Company Limited v. Pranay Sethi and Others, 2017 (16) SCC 680 and *Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram and Others, (2018) 18 SCC 130*, claimants are entitled for Rs.40,000/- each under the head consortium. Apart from this, claimants are also entitled for 10% increase in consortium for each three years from the date of award of Tribunal. In the case in hand, there are total seven claimants/dependents, therefore, total consortium amount comes to Rs.2,80,000/- (Rs.40,000/- x 7). The learned Tribunal has already awarded Rs.40,000/- towards Consortium. Therefore, amount, which needs to be now paid to the claimants comes to Rs.2,40,000/- (Rs.2,80,000 – Rs.40,000) plus 10% increase on said amount i.e. Rs.24,000/-. Therefore, this Court is of the considered opinion that appellants – claimants are entitled for enhanced compensation of Rs.2,64,000/- (Rs.2,40,000 + Rs.24,000) alongwith interest @ 7.5% from the date of registration of claim petition till its realization. Accordingly, following order is passed. :

ORDER

- (i) First Appeal is partly allowed.

(ii) Impugned judgment and award dated 10-08-2021 passed by the learned Member, Motor Accident Claims Tribunal, Aurangabad, in M.A.C.P No.437 of 2019 is modified.

(iii) Respondent no.2/Insurance Company to pay enhanced compensation amount of **Rs.2,64,000/-** to appellants – 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) Rest of the award of the learned Tribunal is maintained.

(v) Modified award be prepared accordingly.

(vi) Claimants to pay court fees on enhanced compensation as per Rules.

(vii) On deposit of the amount by respondent no.2/ Insurance Company, appellants – claimants are permitted to withdraw the same as per apportionment mentioned by the learned Tribunal in its Judgment and order.

(ABHAY S. WAGHWASE)
JUDGE