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

## FIRST APPEAL NO.1119 OF 2020

1. Bhageshree W/o. Mallikarjun Hasure
   Age: 31 years, Occu.: Household,
   R/o. Deepjyoti Nagar, Latur,
   Tq. & Dist. Latur.

2. Shantabai W/o. Vishwanath Hasure (Died) … Appellants
   (Orig. Claimants)

Versus

1. Mukesh s/o. Venkatrao Algude,
   Age: 38 years, Occu.: Business,
   R/o. Deepjyoti Nagar, Latur,
   Tq. & Dist. Latur.

2. Ravikant S/o. Udhavrao Algude,
   Age: 31 years, Occu. Business,
   R/o. Ganvihar Complex,
   Shyam Nagar, Latur,
   Tq. & Dist. Latur. [Owner of motorcycle]

3. United India Insurance Co. Ltd.,
   Through Branch Manager,
   At present Near Anjani Hotel,
   Ambajogai Road, Latur,
   Tq. & Dist. Latur. … Respondents
   (Ori. Respondents)

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Mr. F.K. Patel, Advocate for Appellant
Ms. Vikrant S. Valse, Advocate for Respondents No.1 and 2 (absent)
Mr. R.F. Totla, Advocate for Respondent No.3

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**CORAM : ABHAY S. WAGHWASE, J.**

**RESERVED ON : 07 JULY, 2025**

**PRONOUNCED ON : 10 JULY, 2025**

**JUDGMENT :-**

1. Dissatisfied by the judgment and award passed by the Motor Accident Claims Tribunal, Latur in M.A.C.P. No.167 of 2011 dated 29.03.2016, the appellant (original claimant) has preferred this appeal.

**BRIEF FACTS GIVING RISE TO THE APPEAL**

2. On 08.01.2011, deceased Mallikarjun (husband of original claimant No.1 Bhageshree) was proceeding on motorcycle bearing No. MH-24-U-5431 along with his relative Mukesh (present respondent no.1) towards Akkalkot. Mukesh was rider; whereas, Mallikarjun was pillion rider. The motorcycle was driven at an excessively high speed. Around 01:30 p.m., Mukesh lost control over the vehicle in the vicinity of village Kakramba on Latur-Tuljapur road, and the motorcycle met with an accident causing grievous injuries to Mallikarjun. He was taken to Yeshodhara Hospital and treated as indoor patient and later on shifted to Government Medical College & Hospital, Latur, where he succumbed to the accidental injuries on 17.01.2011. Crime was registered at Tuljapur Police Station against respondent

No.1 Mukesh for offences punishable under Sections 279, 337, 304-A of the Indian Penal Code.

3. According to claimant, deceased Mallikarjun was running barber shop and was earning over Rs.1,61,925/- per annum. He was the sole bread earner, and on account of his demise, claimant lost said sole source of income apart from love and affection, and also was required to spent on medical expenses. Under such circumstances, the claim was set up to the tune of Rs.8,00,000/-.

4. The claim of the appellant is that, the said accident took place only because of rash and negligent driving of respondent no.1. Respondent No. 2 was the owner of the said motorcycle, which was driven by Respondent No. 1 at the relevant time. The vehicle was insured with Respondent No. 3. Therefore, the claim was set up against Respondents No. 1 to 3, jointly and severally.

5. The claim was contested by the respondents, and after appreciating the evidence on record, the Tribunal allowed the claim, directing Respondents No. 1 to 3 to jointly and severally satisfy the claim. The Tribunal awarded the compensation to the tune of Rs.9,62,670/- along with interest @ 6% p.a.

6. Dissatisfied by the quantum of compensation, the said award is challenged before this Court by filing the instant appeal on numerous grounds spelt out in the appeal memo.

7. The sum and substance of the submissions made by the learned counsel for the appellant/claimant is that, meagre amount has been awarded by way of compensation. According to him, though the claim was found to be satisfactory, the claimant is entitled to just compensation. He pointed out that, under the heads "future prospects" as well as "non-pecuniary damages", inadequate and meagre amount has been granted. That, deceased was a barber. He had a fixed income. He was a skilled labour. He has placed on record income tax returns, but the same are not considered by the Tribunal. Therefore, learned counsel seeks enhancement of the amount under the head of "future prospects" from 30% to 40%, under the head of "loss of consortium" from Rs.10,000/- to 40,000/-, for "funeral expenses", claimant expects rise from Rs.5,000/- to Rs.15,000/- and for "loss of estate" he expects rise to Rs.15,000/- instead of Rs.5,000/-.

8. Per contra, learned counsel for Respondent No. 3 strongly opposed on the ground that, the Tribunal has properly

appreciated the evidence on record. Though deceased was said to be a barber, only one year's income tax returns for the period of 2010-2011 were placed on record, that too after the death. Therefore, according to him, the Tribunal has correctly applied the notional income and no fault can be found in the same. He also justified grant of 30% for future prospects. He also refutes the claim about entitlement to receive enhanced amount under the heads of loss of estate, loss of consortium and funeral expenses and finally urges to dismiss the appeal for want of merits.

9. Heard both sides at length. Perused the evidence as well as the impugned judgment and award.

10. On re-appreciation of the evidence and on perusal of the impugned judgment, here it is noticed that, there is no dispute as regards to occupation and age of deceased. Learned counsel for appellant would submit that, the claimant had submitted the income tax returns of the deceased for the year 2010–2011, but the same were not considered. However, as noted by the Tribunal, since the balance-sheet substantiating the income was not placed on record, single year's income tax returns were not considered. Therefore, under such circumstances, there is no

infirmity on the part of the Tribunal in taking recourse to notional income, i.e. Rs.5000/- per month, which seems to be just and reasonable.

11. So far as future prospects is concerned, the Tribunal has considered 30% as future prospects. Yes, in view of ***National Insurance Company Limited vs. Pranay Sethi and others*** 2017 (16) SCC 680, it ought to have been 40%. Therefore, enhancement to that extent is required.

12. As regards to dissatisfaction on the point of quantum under conventional heads, the Tribunal has awarded Rs.10,000/- towards loss of consortium, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of estate, which appears to be on the lower side, and the same is required to be enhanced. Therefore, the award passed by the Tribunal needs to be modified to that extent. The rest of the award seems to be justified.

13. In view of the ratio laid down in ***Pranay Sethi and others*** (supra), claimants are entitled for Rs. 40,000/- plus 30% (Rs. 12,000/-) which comes to **Rs. 52,000/-** towards consortium. Rs. 15,000/- plus 30% (Rs.4,500/-), which comes to **Rs.19,500/-**

towards loss of estate and Rs.15,000/- plus 30% (Rs.4,500/-), which comes to **Rs.19,500/-** towards funeral expenses.

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

| Sr. No. | Heads | Amount (Rs.) |
|---|---|---|
| 1. | Annual Income Rs.60,000 + future prospects @ 40% i.e. Rs. 24,000/- | Rs. 84,000/- |
| 2. | Less 1/3 deduction towards personal expenses.<br>(Rs. 84000 – Rs. 28000) | Rs. 56,000/- |
| 4. | Multiplier of 15 (56,000 X 15) | Rs.8,40,000/- |
| 5 | Medical expenses<br>(as awarded by Tribunal) | Rs.1,62,670/- |
| 5. | Non-pecuniary Losses:-<br>Loss consortium = Rs.52,000/-<br>Loss of Estate = Rs.19,500/-<br>Funeral Expenses = Rs.19,500/- | Rs.91,000/- |
| 6. | **Total compensation to be paid**<br>(i.e. 8,40,000 + 1,62,670 + 91,000) | **Rs.10,93,670/-** |
| 7. | **Compensation awarded by Tribunal** | **Rs.9,62,670/-** |
| 8. | **Total Enhanced Compensation**<br>**( 10,93,670 – 9,62,000)** | **Rs.1,31,000/-** |

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

**ORDER**

(i) Appeal is partly allowed with proportionate costs.

(ii) Impugned judgment and award dated 29.03.2016, passed by Principal District Judge and Ex-Officio Member of M.A.C.T., Latur in M.A.C.P. No.167 of 2011 is modified.

(iii) Respondent no.3-insurance company to pay enhanced compensation of Rs.**1,31,000/-** to the claimant within 12 weeks from today along with interest @ 6% per annum from the date of registration of claim petition till its realization.

(iv) Modified award be prepared accordingly.

(v) Claimant to pay court fees on enhanced compensation as per rules.

(vi) On deposit of the amount by the Insurance Company, appellant/claimant is permitted to withdraw the same.

**ABHAY S. WAGHWASE,**
**JUDGE**

S P Rane