IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**FIRST APPEAL NO.2390 OF 2020**

1. Smt. Pushpa Santosh Mundada,
Age : 35 years, Occu. : Household,

2. Rukhmabai Govind Mundada,
Age : 55 years, Occu. : Household,

3. Chi. Mahesh Santosh Mundada,
Age : 12 years, Occu. : Education,

4. Ku. Harshali Santosh Mundada,
Age : 10 years, Occu. : Education,

5. Chi. Monu Santosh Mundada,
Age : 8 years, Occu. : Education,

Applicant No.1 is for herself and the Natural Guardian as mother of No.3 to 5, all are r/o Mauje Mehru, G. 101, MIDC, Jalgaon, Dist. Jalgaon ... **Appellants**
(Orig.Claimants)

**Versus**

1. Shri Surjeet Singh,
Age : Major, Occu. : Business,
Vehicle owner, R/o. Kurad, Tahsil Sangad,
Tal and Dist. Kota, Rajasthan.

2. The Divisional Manager,
The New India Assurance Company Ltd.
Reg. HO – New India Assurance Building,
87, Mahatma Gandhi Road, Fort, Mumbai.
Through New India Assurance Company Ltd.
Mandore Market, Dadhiwala Bunglow,
Mehrum Road, At and Post Jalgaon. ... **Respondents.**

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Mr. M M. Bhokarikar, Advocate for Appellants.
Mr. M. M. Ambhore, Advocate for Respondent No.2.
Respondent No.1 served through paper publication.

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**CORAM : ABHAY S. WAGHWASE, J.**
**RESERVED ON : 11 JULY 2025**
**PRONOUNCED ON : 22 JULY 2025**

**JUDGMENT :**

1. Original claimants, who are legal heirs of deceased Santosh Govindram Mundara, who met death on account of road traffic accident dated 22.05.2005, have preferred instant appeal, getting dissatisfied by the judgment and order passed by learned Motor Accident Claims Tribunal, Jalgaon dated 11.01.2012 in M.A.C.P. No. 80 of 2005. (Parties are referred to as per their status in the trial court.)

2. In short case set up by claimants is that, deceased Santosh, who was traveling in Maruti Car from Aurangabad to Jalgaon for business purpose along with his friends, met with an accident on account dash given by truck owned by respondent no.1 and the said vehicle insured by respondent no.2, in which he suffered injuries and succumbed to the same. It is assertion of the claimants that deceased was sole source of earning. Deceased was Industrialist cum Businessman and earned around over Rs. 80,000/- per month. He was income tax payer and as such tax returns are placed at Exh.44. That, there would have been rise in the income and as such they set up claim of Rs.1,00,000/- per annum towards loss of income.

Appellant no.1 is the widow and wife of deceased Santosh, appellant no.2 is the mother of deceased, who is said to be also depending on him; appellant nos.3 to 5 are children. Age of deceased Santosh was given as 30 years at the time of accident and as such under various heads claim was set up to the tune of Rs.18,00,000/-.

3. Learned Tribunal after issuing notice, appreciated the evidence of claimant no.2, copy of FIR, spot panchanama, P.M. report, driving licence of offending vehicle, school identity card. R.C. particulars of vehicle, partnership deed, salary slip and income tax return.

Present respondent Insurance Company insurer of the truck alone resisted the claim.

After appreciating the respective cases, by judgment and order dated 11.01.2012, learned Tribunal has directed compensation to the tune of Rs.6,47,000/- at the rate of 7.5% interest and it to be paid jointly and severally by respondent nos.1 and 2.

4. In this appeal, case set up is grant of lower compensation on the ground that income tax returns are not considered. Instead of considering compensation of Rs.1,00,000/- per annum only 50% is

considered. That, learned Tribunal granted loss of consortium to only widow and not to mother and children. That, there were five claimants, and therefore, deduction is also improper. That, no amount is awarded for future prospects and meager amount is granted under the head of funeral expenses. Learned counsel has placed written notes of arguments on record along with calculations.

5. Learned counsel for Insurance Company resisted on the ground that it has come on record that, industries which were alleged to be source of income, are still functioning and as such, there was no loss of income. Income considered by Tribunal is just and proper. However, he conceded that, in view of judgment of Hon'ble Apex Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and others***, 2017 (16) SCC 680 and ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and Others***, (2018) 18 SCC 130, amount towards consortium, loss of estate and future prospects are not granted and he has no objection for granting compensation under such heads.

6. Re-analyzed the evidence. In support of case of deceased Santosh to be an Industrialist and partners in three firms, documentary evidence is placed on record, very mother of claimant, who has stepped into witness box, has admitted that the industries

are still functioning. Therefore, practically there is no loss of income. Learned Tribunal has considered the income tax papers and by giving detail explanation in para 9 has reached to the finding that income of deceased was to the tune of Rs.80,420/-. Even in written notes para 3 claimants have considered and asserted such annual income.

7. As pointed and even fairly admitted by learned counsel for Insurance Company, learned Tribunal has not considered compensation under the head of consortium to mother and children. No amount is awarded towards future prospects as directed in the case of ***Pranay Shethi*** *(Supra)*. Similarly, appellants are also entitled for reasonable compensation under the head of loss of estate and funeral expenses.

. 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. 2,00,000 /- plus 40% (Rs.80,000/-) which comes to Rs.2,80,000/- towards consortium and loss of love and affection. Rs. 15,000/- plus 40% (Rs.6,000/-), which comes to Rs.21,000/- towards loss of estate and Rs.15,000/- plus 40% (Rs. 6,000/-), which comes to Rs.21,000/- towards funeral expenses.

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

| | Head | Compensation Amount |
|---|---|---|
| 1 | Annual Income | Rs.50,000/- |
| 2. | Future Prospects 40%<br>i.e. 20,000 (50,000 + 20,000) | Rs.70,000/- |
| 2 | (-) 1/4 deduction towards<br>personal expenses<br>(70,000 – 17,500/-) | Rs.52,500/- |
| 3 | Multiplier 17<br>(52,500 x 17 ) | Rs.8,92,500/- |
| 4 | Non pecuniary damages<br><br>Loss of consortium Rs.2,80,000/-<br><br>Funeral Expenses - Rs.21,000/-<br><br>Loss of Estate - Rs.21,000/- | Rs. 3,22,000/- |
| 5 | **Total compensation awarded** | **Rs. 12,14,500/-** |
| 6 | (-) Compensation awarded by M.A.C.T. | Rs. 6,47,000/ |
| **7** | **Enhanced Compensation** | **Rs. 5,67,500/-** |

. In the result, following order is passed :-

**ORDER**

(i) Appeal is partly allowed with proportionate costs.

(ii) Impugned judgment and award dated 11.01.2012, passed by the Member of M.A.C.T., Jalgaon in M.A.C.P. No.80 of 2005 is modified.

(iii) Respondent no.2 - insurance company to pay enhanced compensation of Rs.5,67,500/- 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*