



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3465 OF 2022

1. Parveen Bee Wd/o Shaikh Feroz,
Age : 31 years, Occu. : Household,
R/o. Pathan Mohalla, Ambad,
Tq. Ambad, Dist. Jalna
2. Hajra Fatema d/o. Shaikh Mohammad Feroz,
Age : 10 years, Occu : Education,
U/G of Appellant No.1,
R/o. As above.
3. Shaikh Habib S/o. Mohammad Feroz,
Age: 7 years, Occu. : Education,
U/G of Appellant No.1,
R/o. As above.
4. Shaikh Shamshoddin S/o. Shaikh Habiboddin,
Age : 61 years, Occu. : Nil.,
R/o. Pathan Mohalla, Ambad,
Tq. Ambad, Dist. Jalna
5. Saida Begum W/o. Shamshuddin Shaikh,
Age : 54 years, Occu. : Nil,
R/o. Pathan Mohalla, Ambad,
Tq. Ambad, Dist. Jalna.

... Appellants
(Orig. Claimants)

Versus

1. United India Insurance Co. Ltd.
Through its Branch Manager,
Usmanpura, Aurangabad.
2. Rahul s/o. Pralhadrao Malode,
Age : 36 years, Occu. : Owner & Driver,
R/o. House No.14, Near MSEB Office,
Paithan, Tq. Paithan, Dist. Aurangabad.
Mobile No. : 9767051006.

... Respondents

.....
Mr. Shaikh Kayyum Najir, Advocate for Appellants.
Mr. Mohit R. Deshmukh, Advocate for Respondent No.1.
.....

WITH

FIRST APPEAL NO. 3556 OF 2022

1. Anisa Begum wd/o. Ayaj Khan,
Age : 34 years, Occu. : Household,
R/o. Pathan Mohalla, Ambad,
Tq. Ambad, Dist. Jalna.
2. Anam d/o. Ayaj Khan Pathan,
Age : 15 years, Occu. : Education,
U/G of Appellant No.1.
R/o. As above.
3. Anshara d/o. Ayaj Khan Pathan,
Age : 10 years, Occu. : Education,
U/G of Appellant No.1,
R/o. As above.
4. Mahemood Khan S/o. Ashraf Khan Pathan,
Age : 75 years, Occu. : Nil,
R/o. Pathan Mohalla, Ambad,
Tq. Ambad, Dist. Jalna.
5. Shakila Begum w/o. Mahemood Khan Pathan,
Age : 70 years, Occu. : Nil.,
R/o. Pathan Mohalla, Ambad,
Tq. Ambad, Dist. Jalna. ... Appellants

Versus

1. United India Insurance Co. Ltd.,
Through its Branch Manager,
Usmanpura, Aurangabad.
2. Rahul S/o. Pralhadrao Malode,
Age : 36 years, Occu. : Owner & Driver,
R/o. House No.14, Near MSEB Office,
Paithan, Tq. Paithan, Dist. Aurangabad
Mobile : 9767051006. ... Respondents

.....
Mr. Shaikh Kayyum Najir, Advocate for Appellants.
Mr. Mohit R. Deshmukh, Advocate for Respondent No.1.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 23 JULY 2025

PRONOUNCED ON : 30 JULY 2025

JUDGMENT :

1. Both appeals are arising out of judgment and order dated 23.08.2022 passed by learned Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. Nos. 299 of 2018 and 300 of 2018, original claimants, who are appellants herein are seeking enhancement of compensation.

BRIEF FACTS IN THE APPEAL NO.3465 OF 2022

2. Appellant's case is that, on 29.11.2017 deceased Mohammad Feroz Shaikh Shamshuddin was traveling on his Passion Pro motorcycle to go to Ambad. When he was in the vicinity of Lalwadi Phata, a Vista car coming from his backside in excessively high speed and being driven in rash and negligent manner, gave dash to the motorcycle causing serious head injury and on being shifted to the hospital, he was declared dead. On report, crime was registered against respondent no.2 for offence under sections 279, 337, 338, 304A and 427 of Indian Penal Code at Ambad Police Station.

3. Appellants (original claimants) set up a case that, at

the time of accident, deceased Mohd. Feroz was 33 years of age and was rendering service in Matsodari Cable Network and was earning Rs.10,000/- per month. He was the sole bread earner and source of income for his family, which claimants, his heirs have lost permanently and thereby claim of total Rs.25,00,000/- by way of compensation was asserted under various heads.

4. Insurance Company and respondent driver and owner of Vista car contested the claim denying negligence, claim to be exorbitant and excess and unsubstantiated. Learned tribunal by judgment and award dated 23.08.2022 recorded a finding that claimants proved that deceased Feroz died in motorcycle accident dated 29.11.2017 due to rash and negligence driving of offending vehicle vista car driven and owned by original respondent no.1 and insured by respondent no.2 and also held claimants to be entitled awarded compensation to the tune of Rs.13,74,600 with @ 7.5% interest per annum and directed it to be paid by respondent nos.1 and 2 jointly and severally.

5. Dissatisfied by the quantum of maintenance, present appeal has been filed on various grounds raised in appeal memo. Heard learned counsel for appellants. He would submit that, claimant was working as Supervisor and earning Rs.10,000/- per

month. However, learned tribunal only considered Rs.6,000/- per month as notional income. That, no amount is granted under loss of consortium and future prospects. Therefore, indulgence of this court is urged for in enhancing compensation.

6. Learned counsel for Insurance Company supported the judgment and award by pointing out that there was no oral and documentary evidence in support of so called service of deceased Feroz. That, therefore learned tribunal was left with no other alternative, but to consider notional income. That, learned tribunal has correctly awarded amounts under various heads and hence, urges to dismiss the appeal.

BRIEF FACTS IN THE APPEAL NO. 3556 OF 2022

7. Heirs of deceased Ayaz Khan Mahmood Khan Pathan filed M.A.C.P. No.299 of 2018 setting up a case that, on 29.11.2017 Ayaz Khan was a pillion driver of the motorcycle driven by deceased Feroz and they were proceedings towards Ambad. When they had reached, Lalwadi Phata, offending vehicle Vista car came from backside and gave severe dash to the motorcycle causing fatal injuries to Ayaz, who, while undergoing treatment succumbed. It is their case that, crime was registered against Vista car driver.

8. It is their further contention that, deceased Ayaz, who was 35 years of age, was working as Supervisor with Unity Land Developers and earned Rs.10,000 per month and his income was sole source of income for the family, which they have permanently loss on account of accidental death of Ayaz and thereby under various heads they set up a case of Rs.25,00,000/- and prayed that the compensation should be directed to be paid by original respondent no.1 owner and driver of Vista Car.

9. Above claim was also resisted by respondent nos.1 and 2 denying negligence, income and age etc.

10. Learned tribunal, after appreciating the oral and documentary evidence, was pleased to partly allow the judgment and order directing respondent nos.1 and 2 to jointly pay Rs.12,99,000 along with interest @ 7.5% per annum

Dissatisfied by the above award, instant appeal has been filed on various grounds raised in appeal memo.

11. Both, deceased Feroz and deceased Ayaz seem to be traveling on one motorcycle as rider and pillion rider. While their motorcycle was in the vicinity of Lalwadi Phata, vehicle owned and driven by respondent no.2 gave dash to the motorcycle from rear

side causing severe injuries to both, who later on succumbed to the same and hence, heirs of each of the deceased have preferred M.A.C.P. Nos. 299 and 300 of 2018, which are dealt and decided by learned tribunal on same day i.e. on 23.08.2022.

12. Heirs of deceased Feroz has asserted that, he worked in Matsodari Cable Network and earned Rs.10,000/- per month. But, admittedly, there is no oral and documentary evidence in that regard.

Similarly, even heirs of deceased Ayaz too set up a claim that, deceased worked as Supervisor with Unity Land Developers and earned Rs.10,000/- per month, but again no oral or documentary evidence in that direction was placed before tribunal.

13. Resultantly, learned tribunal was left with no other alternative, but to consider notional income. After appreciating the police papers, learned tribunal has attributed negligence to the original respondent no.1, who indisputably insured by respondent Insurance Company.

14. In appeal, there is no serious challenge to the above findings by the present appellants. Only grievance set up is that tribunal has not granted loss of consortium and loss of future

income. Learned counsel for Insurance Company would point out to the table drawn by the tribunal in its judgment in paragraph 17 and pointed out that, apart from considering notional income as Rs.6,000, amount is granted for future prospects as well as loss of consortium to wife and parents.

15. Tribunal has granted loss towards consortium to wife and children Rs.44,000/- each. However, same benefits ought to have been extended to the parents also i.e. present appellant nos. 4 and 5 in both appeals.

16. Therefore, in addition to the quantum awarded by the tribunal, parents are also entitled for Rs.40,000/- each plus 10% (Rs.4,000/-), which comes to Rs. 44,000/- each towards consortium, in both appeals.

17. In the result, First Appeal Nos. 3465 of 2022 and 3556 of 2022 preferred by the original claimants are partly allowed with proportionate costs as under :-

Order in First Appeal No. 3465 of 2022

(I) Impugned judgment and award dated 23.08.2022, passed by Member of M.A.C.T., Aurangabad in M.A.C.P. No.300 of 2018 is modified :

(a) Respondent no.1 - Insurance Company to pay enhanced compensation of Rs.88,000/- to parents i.e. original claimant nos.4 and 5 within 12 weeks from today along with interest @ 7.5% per annum from the date of registration of claim petition till its realization.

Order in First Appeal No. 3556 of 2022

(II) Impugned judgment and award dated 23.08.2022, passed by Member of M.A.C.T., Aurangabad in M.A.C.P. No.299 of 2018 is modified :

(a) Respondent no.1 - Insurance Company to pay enhanced compensation of Rs.88,000/- to parents i.e. original claimant nos.4 and 5 within 12 weeks from today along with interest @ 7.5% per annum from the date of registration of claim petition till its realization.

(III) Modified award be prepared accordingly.

(IV) Rest of the award is maintained.

(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.)