IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4516 OF 2023

1. Arefabi Ajij Kureshi,
   Age: 48 years, Occu: Household,

2. Kureshi Sadek Ajij,
   Age: 31 years, Occu: Agriculture,

3. Samir Ajij Kureshi,
   Age: 25 years, Occu: Education,

4. Kureshi Shoheb Ajij,
   Age: 22 years, Occ: Education,

5. Heena Ajij Kureshi,
   Age: 27 years, Occu: Household,

6. Marjina Ajij Kureshi,
   Age: 23 years, Occu: Education,

7. Kureshi Cahandbi Abdul Raheman
   (Dead)

All R/o. Madalmohi, Tq. Georai,
Dist. Beed. **...Appellants**

Versus

1. Abhijit Vasudeo Mirasdar,
   Age: 50 years, Occu: Business,
   R/o:B-8/3, Gururaj Housing Society
   Padmavati, Pune,
   Tq & Dist. Pune.

2. The New India Assurance Co.Ltd,
   Through its Branch Manager,
   Sathe Chowk, Jalna Road,
   Beed, Tq & Dist. Beed **...Respondents**

***

Mr. S. S. Dargad, Advocate for the Appellants
Mr. M. D. Shinde, Advocate for Respondent No. 2

***

CORAM : R.M. JOSHI, J.
DATE : AUGUST 21, 2025

JUDGMENT:

1. This Appeal is preferred under Section 173 of Motor Vehicle Act, 1988 (for short "**the Act**") by original claimants taking exception to the judgment and order dated 27.06.2023 passed in MACP No. 289/2019.

2. By consent of both contesting parties, Appeal is taken up for final hearing at the stage of admission.

3. Parties are referred to by their nomenclature in the original proceedings for the sake of convenience.

4. Claimants are wife, children and mother of Ajij Abdul Raheman Kureshi who died in motor vehicular accident occurred on 30.05.2019. Owner and driver of the offending vehicle as well as insurer were made party to the claim Petition. It is the case of the claimants that on 30.05.2019 deceased was proceeding on his motorcycle bearing no. MH-23-AQ-8054 Madalmohi to Padalsingi at Pathardi Road. When he reached to the

spot of accident, a Maruti Swift Car No. MH-12-FY-5011 came from back side and gave dash to motorcycle of deceased in the negligent manner. In the said accident, deceased sustained serious injuries. Immediately, he was taken to Lotus Hospital and from there he was shifted to Apex Hospital, Aurangabad. He however, unfortunately succumbed to his injuries on 04.06.2019. claimants being widow, children and mother filed claim Petition bearing MACP No. 289/2019 before Tribunal at Beed claiming compensation of Rs. 60 lacs. It is the case of the Claimants that deceased was aged about 45 years at the time of accident and he was working as a Manager at A1 Furniture Shop and earning Rs. 20,400/- per month. It is also claimed that he was cultivating agricultural land and was earning Rs. 1,60,000/- per annum. They further claim medical expenses of Rs. 3 lacs.

5. Owner of the car though appeared before the Tribunal but failed to file written statement. The insurer, however, filed written statement at Exh. 14 and denied the claim and contentions of the claimants.

6. After framing of the issues at Exh. 23, Claimant No. 2 – Sadek Kureshi led his evidence and placed on record first information report, spot panchnama, form AA, post postmortem notes, accidental report, etc. Claimants also examined Atik Pathan, who witnessed the accident to prove the factum of the accident. In addition thereto, evidence of Shaikh Rehman Kadir – CW 3 was led in order to prove the employer and income of deceased. Respondents failed to lead any evidence. Tribunal by judgment and award dated 27.06.2023 directed Respondents to pay sum of Rs. 5,73,000/- along with interest at 7% per annum. Since compensation granted by the Tribunal is found to be inadequate, Claimants/Appellants preferred this Appeal.

7. Learned Counsel for the Claimants/Appellants seeks enhancement of compensation amongst other contentions on following grounds:

(i) Tribunal has failed to taken into consideration the income of the deceased and has erroneously rejected the evidence of the employer with regard to the employment and monthly income of the deceased. He placed reliance on the judgment of Hon’ble Supreme Court in case of ***Amarveer Kaur and Others vs. Reliance General Insurance Company Limited and Others, 2025 DGLS(SC) 640***, to argue that in view of the judgment in case of ***National Insurance Co. Ltd vs. Pranay Sethi, (2017) 16 SCC 680***, future prospects needs to be considered.

(ii) He also relied upon the judgment in case of ***Rajawati @ Rajjo and Others vs. United India Insurance Co. Ltd and Others, 2022 DGLS(SC) 1577***.

(iii) Tribunal has erred in deducting 1/3rd income towards personal expenses of the deceased instead of deducting 1/5th in view of the total seven number of dependents. It is submitted that considering age of the claimants, they need to be treated as dependents upon the deceased. To support this submission, he placed reliance on the judgment in case of ***Seema Rani and Others vs. Oriental Insurance Co. Ltd and Others, 2025 DGLS(SC) 183***.

(iv) Medical bills though original placed on record are not considered. To support his submissions, he placed reliance on the judgment of Coordinate Bench of this Court in case of ***Pratikala Gambir Patil and Others vs. Ramsing Ramswaroop and Others,***

2024 DGLS(Bom.) 3195.

(v) Filial consortium ought to have been paid at Rs. 40,000/- per claimant in view of the judgment of the Hon'ble Supreme Court in case of ***Magma General Insurance Co. Ltd vs. Nanu Ram and Ors, 2018 ALL SCR 2001***.

8. Learned Counsel for the Insurer opposed the said contentions by pointing out the evidence on record, which according to him, indicates that income of the deceased has not been proved. It is his submission that in absence of any specific pleadings raised by the claimant with regard to the educational qualification etc of the deceased, it cannot be accepted that he was working as a Manager in the shop belonging to Shaikh Rehman Kadir CW 3. He further argued that the eldest son of the deceased seems to be aged 27 years and agriculturist and therefore, he cannot be held to be dependent. On the point of amount of medical bills, it is contended that the medical bills are not proved since the claimant's witness also has not referred and proved the same, leave apart, the author of the bills having proved it. On these amongst other contentions, he seeks dismissal of the Appeal.

9. There is no dispute about the occurrence of the accident and involvement of the offending vehicle therein. Tribunal has held that the accident has occurred due to the negligence of the driver of the car and that the claimants are entitled for compensation. Insurer or owner have not challenged the said judgment. The issue remains, therefore, in respect of enhancement of the compensation.

10. Claimants though have made claim of deceased of receiving salary of Rs. 20,400/- per month and being working as Manager in the A1 Furniture Shop, except for salary certificate, there is no evidence to indicate that in fact such salary was paid to him. There ought to have been more evidence than this to prove actual income. If not I.T. returns at least wage registers or vouchers signed by deceased while receiving salary ought to have been brought on record.

11. As far as the employment of the deceased with the deceased is concerned, the Shop Act license produced by him at Exh. 44 indicates that he is employing about 9 workers. Thus, it must be held that

deceased was working with the said witness. However, question still remains as to the proof of income of the deceased. As rightly pointed out by the Counsel for the Insurer that there is no pleading with regard to the educational qualification and no material to hold that the deceased was working as a Manager. Even if it be so, the minimum wages, which could be paid to the lowest grade of a person working in a shop, needs to be considered. On the basis of notification dated 03.10.2020 issued under the Workmen Compensation Act indicates that the minimum wages at the relevant time i.e., prior to notification was Rs. 8,000/- per month. The Constitution Bench of the Supreme Court in case of **Pranay Sethi** (supra) has held that future prospects ae also required to be considered. Admittedly, deceased was aged about 55 years as per postmortem notes at Exhibit 29 and hence, 10% addition needs to be given to the deceased.

12. In so far as dependency is concerned, perusal of the record indicates that except for the eldest son of the deceased who is aged about 27 yeas, others were taking education and hence, are necessarily required to

be held as dependent upon the deceased. As such, the dependency upon the deceased needs to be considered to the extent of all dependents. It being so, 1/4th amount needs to be deducted towards personal expenses of deceased and amount of compensation is calculated accordingly.

13. As far as the amount of consortium is concerned, in view of the judgment in case of ***Magma General Insurance Co. Ltd*** (supra), consortium Rs. 40,000/- towards per dependent needs to be allowed and it is accordingly granted.

14. In so far as medical bills are concerned, no doubt the Hon'ble Supreme Court in case of ***Rekha Jain and Anr vs. National Insurance Co. Ltd., 2013 AIR(SC) 3458***, has held that the medical bills can be considered by the Tribunal without examination of witnesses. However, claimant had referred to the medical bills and there was no rebuttal from the other side. Thus, in that case medical bills were proved through claimant. It cannot be accepted by way of principle that medical bill even if not proved needs to be considered.

15. The Hon'ble Apex Court in case of **Pranay Sethi** (supra) has held that in case of self employed deceased person an addition of 10% of the income should be granted towards future prospectus. By following the said dictum 10% addition to the future prospectus needs to be considered. Learned Tribunal has granted Rs. 25,000/- towards loss of love and affection and consortium. By following the dictum of Hon'ble Apex Court in case of **Magma General Insurance Co. Ltd** (supra), this Court finds it appropriate to grant Rs. 40,000/- towards filial consortium. Hence, amount of compensation payable is determined as follows:

Sr. No.	**Heads**	**Calculations in Rs.**
1.	Income Rs. 8,000/- per months + 10% addition = Rs.8,800/- Rs. 8,800/- x 12 = Rs. 105,600/-	
2.	Rs. 1,05,600/- divided by 1/4th of the expenses, deceased would have incurred towards maintaining him and his wife and mother (Rs. 1,05,600 – Rs. 26,400/-)	79,200/-
3.	Rs. 79,200 x 11 (age factor)	8,71,200/-
4.	Funeral and Incidental expenses	10,000/-
5.	Loss of estate	10,000/-
6.	Loss of love and affection and consortium (Rs. 40,000 x 7)	2,80,000/-
7.	Hence, the claimants are totally entitled for (8,71,200/- + 10,000/- + 10,000/- + 2,80,000/-)	**11,71,200/-**

16. As a result of above, Appeal stands partly

allowed. Hence, the order:

<u>O R D E R</u>

(a) Appeal is partly allowed. Impugned judgment and award dated 27.06.2023 passed in MACP No. 289/2019 is modified. Total compensation is Rs. 11,71,200/- along with interest at 7% per annum as determined above.

(b) Claimants to pay Court fee on enhanced compensation as per rules.

(c) Rest of judgment and award to remain unchanged.

(d) Amount deposited (along with interest) by insurer is permitted to be withdrawn by Claimants.

(e) No order as to costs.

(f) In view of disposal of Appeal, pending applications, if any, stands disposed of.

(g) The difference of compensation be deposited within a period of six weeks.

(R. M. JOSHI, J.)

Malani