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

**<u>FIRST APPEAL NO. 515 OF 2017</u>
WITH
CIVIL APPLICATION NO. 1870 OF 2025**

1. Savita W/o Suresh Landge,
Age : 42 Years, Occ. Household

2. Raju S/o Suresh Landge,
Age : 18 Years, Occ. Eduation

3. Sachin S/o Suresh Landge,
Age : 15 Years, Occ. Education,
under guardian of Appellant
No.1.

4. Sitaram Kisan Landge,
Age : 74 Years, Occ. Nil

5. Sumanbai W/o Sitaram Landge,
Age : 69 Years, Occ. Nil,

All resident of Undangaon Tq. Sillod,
District. Aurangabad. ..Appellants
(Original Claimants)

VERSUS

1. Tanaji s/o Trimbak Bansode,
Age : 24 Years, Occ. Driver,
R/o. Undangaon Tq. Sillod Dist.
Aurangabad.

2. Lalit W/o Rajendra Kandelwal,
Age : Major, Occ. Driver,
R/o. Undangaon Tq. Sillod Dist.
Aurangbad.

3. The New India Assurance Co. Ltd.,
Through its Branch Manager,
Branch Office at Adalat Road,
Aurangabad. .. Respondents
(Original Respondents)

...

Shri. Sandeep B. Rajebhosale, Advocate for the Appellants
Shri. A.D. More, Advocate for Respondent No.2 (Absent)
Shri. A.S. Usmanpurkar, Advocate for Respondent No.3

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CORAM : **SANDIPKUMAR C. MORE, J.**
RESERVED ON : 17th FEBRUARY, 2025
PRONOUNCED ON : 18th FEBRUARY, 2025

JUDGMENT :-

1. The appellants, who are the original claimants in Motor Accident Claim Petition No. 644 of 2014, have challenged the judgment and award dated 17.10.2016, passed by the learned Member, Motor Accident Claims Tribunal, Aurangabad (for short, 'the Tribunal) in the said claim petition for enhancement of compensation.

2. The learned counsel for the appellants/claimants submits that, the learned Tribunal has wrongly assessed the monthly income of the deceased as Rs. 4500/- per month. Further, the learned Tribunal also did not consider future prospects as per the recent observations of the Hon'ble Apex Court. According to him, the learned Tribunal granted consortium only to appellant No.1-wife of the deceased, and therefore, the entire compensation is to be recalculated in the light of recent judgments of Hon'ble Apex Court in the cases of ***National Insurance Company Limited Vs. Pranay Sethi and others (2017) 16 SCC 680*** and ***Magma General***

<u>Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others (2018) 18 SC 130</u>. He relied on the following judgments :-

(i) ***Royal Sundaram Alliance Insurance Company Ltd. <u>Versus Smt. Varsha Rajendra Pache and others 2018(2)</u> ALL MR 852***

(ii) ***<u>Janabai W/o Dinkarrao Ghorpade and others Vs. ICICI Lambord Insurance Company Limited (2022) 10 Supreme Court Cases 512</u>***

3. On the contrary, the learned counsel for respondent No.3/ Insurance Company supported the impugned judgment and pointed out that the monthly income was properly assessed by the learned Tribunal. According to him, if the compensation under the heads of future prospects and consortium is granted, then there should not be any interest on the said amount.

4. Heard rival submissions and also perused the impugned judgment along with the record and proceedings of the original claim petition and also considered the citations relied upon by the rival parties.

5. From the record, it reveals that, though the appellants /claimants claimed that the deceased Suresh Sitaram Landage

was earning Rs. 6,000/- per month, being the Cleaner of the offending vehicle i.e. Tempo bearing Registration No. MH-20-W-5936, but they did not produce any documentary evidence in support of the same. The death of Suresh in the accident occurred on 21.12.2012 is not disputed. Moreover, the involvement of offending vehicle, which is insured with respondent No.3/Insurance Company, is also not in dispute. So far as monthly income of the deceased is concerned, the learned Tribunal considered minimum wages prescribed by the Government. However, the driver and owner, who are the present respondent Nos. 1 and 2 of the offending vehicle, have clearly admitted in their respective written statements that Suresh was Cleaner on the offending vehicle and getting salary of Rs. 6,000/- per month. In view of such admission on the part of owner of offending vehicle, the monthly income of deceased can safely be taken to Rs. 6,000/-. Even otherwise also, considering the fact that accident took place in the year 2012, the prevailing rate of minimum wages was definitely to the tune of Rs. 200/- per day for skilled person. Further, the learned Tribunal has not granted consortium to all the claimants, but only claimant No.1 and that too of Rs. 25,000/-.

6. In the case of ***Magma General Insurance Company Limnited Vs. Nanu Ram @ Chuhru Ram and others (2018) 18 SCC 130,*** the Hon'ble Apex Court has brought concept of 'spousal consortium', 'parental consortium' and 'filial consortium' which is Rs. 40,000/- per claimant. Moreover, concept of future prospects as observed by the Hon'ble Apex Court in the case of ***National Insurane Company Limited Vs Pranay Sethi and others (2017) 16 SCC 680*** is also not taken into consideration by the learned Tribunal. It is now settled that the judgments in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** and ***Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others*** are having its applicability in the pending cases as well as in the pending appeals. Therefore, in the light of observations in the aforesaid judgments, just and fair compensation has to be calculated afresh.

7. Monthly income of the deceased is taken as Rs. 6000/-. After deducting 1/4th from the same towards the personal expenses of the deceased, had he been alive, it comes to Rs. 1500/- per month. As such, monthly income comes to Rs. 4500/-. In view of judgment of the Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others,*** additional 40% of the aforesaid monthly

income i.e. Rs. 1800/- needs to be added as future prospects, since the deceased was aged about 34 years at the time of accident. Thus, the total monthly income of the deceased comes to Rs. 6300/- (Rs. 4500 + Rs. 1800/-), proper multiplier which is to be applied here as per the observations of Hon'ble Apex Court in the case of ***Sarla Verma 2009(2) T.A.C. 677 (S.C.)*** is of 15. Thus, the loss of dependency is calculated as follows :-

Loss of dependency would be Rs. 6300x12x15= Rs. 11,34,000/-.

8. Further, the consortium per claimant @ Rs. 40,000/- is to be added and, therefore, considering the number of claimants, the compensation under the head of consortium comes to Rs. 2,00,000/-. Further, an addition of Rs. 30,000/- on account of loss of estate and funeral expenses needs to be done. Thus, the total compensation in the instant matter is computed as below :-

Rs. 11,34,000+ 2,00,000+ 30000 = 13,64,000/-.

9. It is to be noted that the learned Tribunal has awarded compensation of Rs. 7,32,500/- and, therefore, the amount of enhanced compensation comes to Rs. 6,31,500 (13,64,000 minus 7,32,500/-), for which the appellants/claimants are

entitled.

10. The learned counsel for respondent No.3/Insurance Company submits that, there should not be any interest on the enhanced amount of compensation. He relied on the judgments of this Court in the cases of are as follows :-

(i) ***Principal seat of this Court in Kalpana Madhu Gavali and others Vs. Maharashtra State Road Transport Corporation First Appeal No. 1579 of 2006 date 21.9.23***

(ii) ***Aurangabad Bench of this Court in Suman and others Vs. The Branch Manager, Bajaj Allianz Insurance Co. and others First Appeal No. 1381 of 2017 dt. 22.11.2021***

(iii) ***Wahida Abdul Rauf Chaus and Others Vs. Sharad Namdeo Thange and others First Appeal No. 849 of 2011 decided on 18.10.2022***.

(iv) ***This Bench in Vijaykumar Ganpatrao Tambare Vs. Satish Manik Gite First Appeal No. 1912 of 2009 Decided on 17.12.2021.***

(v) ***Latabai W/o Avinash Chavan Vs. Shivaji Shriram Shewale in First Appeal No. 2805 of 2009 decided on 9th December, 2021.***

11. This Court in the case of ***Latabai Avinash Chavan and others Vs. Shivaji Shriram Shewale and another in First Appeal No. 2805 of 2009,*** has excluded only the amount of consortium and funeral expenses and loss of estate. Therefore, it would be proper to exclude the amount as calculated in this matter under the aforesaid heads i.e. Rs. 2,30,000/- from the applicability of *pendente lite* interest i.e. from the date of petition till its realization. As such, the following order is passed :-

ORDER

(I) The appeal is allowed.

(ii) The amount of compensation awarded by the learned Tribunal is enhanced from Rs. 7,32,500/- to Rs. 13,64,000/-. (Rs. Thirteen Lakhs Sixty Four Thousand)

(ii) The respondents are directed to pay jointly and severally the enhanced amount of compensation to the appellants/claimants along with the interest @ 6% p.a. from the date of petition till its realization.

(iii) The amount of compensation which is already deposited by respondent No.3/Insurance Company shall be deducted from the total amount of compensation.

(iv) It is made clear that no interest *pendente lite* (i.e. from the date of petition till its realization) is awarded on the amount of Rs. 2,30,000/- (Rs. Two Lakh Thirty Thousand) granted under the heads of consortium, loss of estate and funeral expenses.

(v) The appellants shall pay deficit Court fees, if any, within four weeks after it is computed by office.

(vi) Award be drawn up accordingly.

Pending Civil Application stands disposed of.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni