



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

FIRST APPEAL NO. 4602 OF 2023

1. Amrapali wd/o Anil @ Popat Kamble,
Age : 35 Years, Occu. Household,
2. Sweety D/o. Anil @ Popat Kamble,
Age : 17 Years, Occu. Education,
3. Neha D/o Anil @ Popat Kamble,
Age : 13 Years, Occu. Education,

Appellant No.2 and 3 is under Guardian
of Appellant No.1.

4. Sarubai wd/o Nagoji Kamble,
Age : 67 Years, Occu. Nil,

All above R/o Uday Colony, Bhoiwada,
Mill Corner, Aurangabad, Aurangabad.

5. Nagoji s/o Bapuji Kamble (Dead)

.... APPELLANTS

(Appellant No.1 to 4 – Ori. Claimants)

V E R S U S

1. Sumit S/o. Baburao Kadam,
Age : 40, Occu. Business,
R/o Plot No.8, Sangeeta Colony,
Near Nandanvan Colony,
Aurangabad.
2. New India Assurance Company
Limited, Through Manager,
office At : 2nd Floor,
Ajay Engineering Compound,
Above TVS Showroom,
Adalat Road, Near Kranti Chowk,
Aurangabad.

RESPONDENTS

(Res.No.1 to 2 – Ori. Respondents)

Shri Shaikh Kayyum Najir, Advocate for appellants.

Ms. Mangal R. Chavan, Advocate for respondent No.1.

Shri Anand Dale, Advocate h/f Shri Swapnil S. Rathi, Advocate for
respondent No.2.

CORAM: ROHIT W. JOSHI, J.

DATED : 04/04/2025.

JUDGMENT :

1. The present appeal is filed under Section 173 of the Motor Vehicles Act, 1988 by the original petitioner seeking enhancement in the amount of compensation awarded by the learned Member, Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No.9/2020. One Anil @ Popat Nagoji Kamble died in a road accident on 18/09/2014. The Appellant No.1 is the widow, Appellant Nos.2 and 3 are daughters and Appellant No.4 is the mother of the deceased Anil Kamble. They are the original petitioner Nos.1 to 4. It will be pertinent to state that father of the deceased Anil Kamble was also joined as Petitioner No.5 in the claim petition, however, he expired while the claim petition was pending. The respondent No.1 is the owner of the offending vehicle and respondent No.2 is the Insurance Company with whom the said vehicle was insured at the time of accident.

2. The learned Tribunal has granted compensation of Rs.16,20,200/- (Rs.Sixteen Lakhs Twenty Thousand Two Hundred Only) to the petitioners. The compensation is computed by taking monthly income of the deceased @ Rs.7,000/- (Rs.Seven Thousand Only). This figure of Rs.7,000/- (Rs.Seven Thousand Only) is derived on the basis of statement of employer of deceased recorded by the police authority which is at Exh.69.

3. The contention of the appellants is that the deceased was drawing monthly salary of Rs.13,000/- (Rs.Thirteen Thousand Only). They seek enhancement in the amount of compensation awarded on the said count. Shri Shaikh Kayyum Najir, learned advocate for the appellants contends that Rs.13,000/- (Rs.Thirteen Thousand Only) per month is reasonable amount of salary which was payable to a driver in the year 2014 when the deceased who was employed as a driver met with the fatal accident. He also contends that consortium ought to have been paid to the father who was arrayed as Petitioner No.1 in the claim petition, although he died prior to final adjudication of the claim petition.

4. Per contra, Shri Anand Dale, Advocate h/f Shri Swapnil Rath, learned advocate for the respondent No.2 contends that there is no evidence on record to suggest that the deceased was drawing income of Rs.13,000/- (Rupees Thirteen Thousand Only) per month at the time of his demise. He, therefore, contends that the appeal should be dismissed.

5. On hearing rival submissions, following points arise for my consideration :-

- i] What should be the compensation awarded to the appellants on account of demise of deceased Anil Kamble in road accident under the head of loss of financial dependence ?
- ii] Is consortium payable for deceased father, the Petitioner No.5, who was alive as on the date of demise of his son and has died after filing of the claim petition ?

As to Point No.1 :-

6. The learned advocate for the respondent No.2 is right in his submission that the appellants / petitioners have failed to establish that the deceased Anil Kamble was drawing income of Rs.13,000/- (Rupees Thirteen Thousand Only) per month at the time of his demise. The learned Tribunal has considered his monthly income @ Rs.7,000/- (Rupees Seven Thousand Only) per month on the basis of statement of employer of Anil Kamble recorded by the police authority during the course of investigation. It needs to be mentioned that relevant notification issued under the Minimum Wages Act, 1948 prescribing minimum wages for drivers from 01/07/2014 to 31/12/2014 was placed on record before the learned Tribunal. The said document is referred in the Judgment by the learned Tribunal.

7. The deceased was survived by 5 dependents and as such, 1/4th deduction needs to be made towards personal expenses. Since he was 32 years old at the time of his demise, multiplier of 16 will have to be applied. Likewise, having regard to the age and the fact that he has no fixed source of income, 40% addition needs to be made towards future prospects.

8. In my considered opinion, learned Tribunal ought to have computed the compensation under the head of loss of financial dependence by taking salary of the deceased Anil Kamble at Rs.8,613.75

(Rs.Eight Thousand Six Hundred Thirteen and Seventy Five Paisa) per month as per Minimum Wages Notification. In view of the above, the compensation payable under the head of loss of financial dependence is calculated as under :-

Annual Income	1,03,365.00
1/4 th deduction for personal consumption	25,841.25
Annual loss of financial dependence	77,523.75
Total loss of financial dependence by applying the multiplier of 16	12,40,380.00
40% amount towards future prospects	4,96,152.00
Total loss of financial dependence	17,36,532.00

As to Point No.2 :-

9. The father of the deceased was arrayed as Petitioner No.5. However, he expired while claim petition was pending. The father of the deceased was entitled to payment of compensation towards loss of consortium. A sum of Rs.40,000/- (Rs. Forty Thousand Only) was payable to him under this head. However, the learned Tribunal has granted compensation against loss of consortium only for the Petitioner Nos.1 to 4 and therefore, additional amount of Rs.40,000/- (Rs. Forty Thousand Only) needs to be added towards consortium payable to deceased Petitioner No.3.

10. In view of the above discussion, the total amount of compensation payable to the petitioners comes to Rs.17,76,532/- (Rs.Seventeen Lakhs Seventy Six Thousand Five Hundred Thirty Two Only).

11. In view of the above, the appeal is partly allowed in the following terms :-

ORDER

The Judgment and award dated 29/08/2023 passed by the learned Member, Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No.9/2020 is modified by deleting the figure Rs.16,20,200/- (Rs.Sixteen Lakhs Twenty Thousand Two Hundred Only) in Clause [2] and [5] of the operative order and award, substituting the same with the figure Rs.17,36,532/- (Rs. Seventeen Lakhs Thirty Six Thousand Five Hundred Thirty Two Only).

[ROHIT W. JOSHI, J.]

Choulwar