



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 61 OF 2017**

The New India Assurance Co. Ltd
a company duly registered under the
Companies Act, 1956
wholly owned by the Government of India
through its Manager,
Having its Branch office at Coscar Corner,
1st Floor, Hotel Bardez, Mapusa Goa.

... Appellant***Versus***

- 1) Mr. Krishna Sakharam Baing,
S/o Late Sakharam Baing,
Aged 58 years and his wife;
- 2) Mrs. Kavita Krishna Baing,
D/o Late Gangaram Raoji Khamkar,
Aged 52 years,
Both resident of Flat no. 202,
Awing Muskarat Co-operative Society,
Babre Kar Nagar, Kandiwali (w) Mumbai.
- 3) Mr. Vasu Morajkar,
(Rider of Hero Honda Motorcycle bearing
registration No. GA03 J-9114)
S/o Narayan Morajkar,
Major of age,
R/o House no 482,
20 point Program, Indira Nagar,
Dhanava, Thivim, Bardez- Goa.
- 4) Narayan Morajkar,
(owner of Hero Honda Motorcycle

Bearing registration No. GA03 J 9114)
Major in age,
R/o house no 482, 20 Point Program,
Indira Nagar, Dhanava,
Thivim, Bardez Goa.

...Respondents

Mr. Amey Kakodkar with Mr. Pankaj Shirodkar, Advocates for the Appellant.

Mr. Vinod Daniel with Mr. Nachiket Naik, Advocates for the Respondents.

CORAM : NIVEDITA P. MEHTA, J.

RESERVED ON : 8TH AUGUST, 2025

PRONOUNCED ON : 12TH SEPTEMBER, 2025

JUDGMENT:

1. This appeal was initially disposed of vide Oral Judgment dated 17th March, 2022, passed by this Court. The said oral judgement dated 17th March, 2022 was challenged before Hon'ble Supreme Court in Civil Appeal No. 252 of 2025, and the Hon'ble Supreme Court vide Order dated 08th January, 2025 has remanded the matter back to this Court.
2. Accordingly, this appeal is again taken up for final disposal.
3. Heard learned Counsel Mr. Amey Kakodkar for the Appellant-Insurance Company and the learned Counsel Mr.

Vinoj Daniel for Respondent Nos. 1 and 2-the Claimants. Mr. Salil Saudagar for Respondent Nos. 3 and 4.

4. The present Appeal is preferred against the Judgment and Award dated 25.10.2016, passed by the Motor Accidents Claims Tribunal (hereinafter referred as Tribunal), granting compensation of ₹91,05,000/- (Rupees Ninety One Lakhs Five Thousand only) with interest at the rate of 9% per annum from the date of filing claim petition till its realisation from all the Respondents jointly and severally.

5. The brief facts of the case are that on 15.07.2013, the deceased, Girish Baing, was riding a Honda Dio scooter bearing registration No. GA-03-J-2926. Accompanying him at a short distance were his friend, Sunny Monteiro, who was riding a Bullet motorcycle, and his cousin brother, Jason Pereira, who was seated as a pillion passenger behind the deceased. They were proceeding from Thivim towards Karaswada. At approximately 18:45 hours, near Chaitanya Vyasya Bhavan, Madel Thivim, the rider of a Hero Honda Passion Pro motorcycle bearing registration No. GA-03-J-9114 (Respondent No. 3) was travelling in the opposite direction, from Karaswada towards Thivim, at a high speed. In the course of overtaking an oncoming bus, the rider of the Hero Honda Passion Pro motorcycle moved from his left side to the right, colliding with the Honda Dio scooter ridden by the deceased. As a consequence of the collision, both the deceased and the rider of the Hero Honda Passion Pro motorcycle fell onto the road and sustained injuries. They were subsequently taken to the hospital for medical

treatment. The deceased, Girish Baing, succumbed to his injuries while undergoing treatment.

6. The Respondent Nos. 1 and 2, the parents of the deceased, filed the claim for compensation of ₹75,00,000/- along with ₹10,000/- towards loss of consortium, ₹50,000/-, towards funeral and medical expenses incurred, as they were dependent on their son, the deceased, who was aged 25 years.

7. The Appellant/original Respondent No. 3, in his written statement, contended that at the time of the accident, the deceased was under the influence of liquor. He dashed with the Hero Honda Passion Pro motorcycle driven by Respondent No. 3/original Respondent No. 1 and thus, contributed to the accident. The Respondent No. 1 was not having a valid licence at the time of the accident. There is a breach of policy condition, and therefore, the insurance company is liable to pay compensation as calculated by the learned Tribunal.

8. The Respondent Nos. 3 and 4/ original Respondent Nos. 1 and 2, driver and owner of the offending vehicle, contended by filing a reply that the Respondent No. 1 had a valid licence at the time of the accident. It was further contended that the Respondent No.1 was not at fault when the accident occurred, and they are not liable to pay compensation.

9. The learned Tribunal, after taking into consideration the documents as well as evidence, granted compensation of ₹91,05,000/- along with interest at the rate of 9% from the date of filing of the claim petition i.e. 14.08.2015 till the date of

realisation. The Appellant-insurance company deposited a sum of ₹1,05,67,420/- on 02.08.2017 before the Registry of this Court, and the claimants i.e. Respondent Nos. 1 and 2 have withdrawn a sum of ₹85,88,154/- as per the order dated 07.03.2022 of this Court.

10. The Appellant argues that the deceased was driving Dio scooter under the influence of liquor and dashed the Hero Honda Passion Pro vehicle coming from the opposite direction. Thus, the deceased contributed to the accident. The deceased has violated the Rules of Road Regulations, 1989 under the Motor Vehicles Act, 1988 framed by the Central Government, the Rule of Road i.e. to keep left and he drove the vehicle in the middle of the road and caused the accident by giving dash to Hero Honda Passion Pro motorcycle coming from the opposite direction. The per month income of US \$1242 was calculated by the learned Tribunal which is incorrect. In the light of his abovesaid submissions, he prayed for quashing and setting aside the Judgment and Award dated 25.10.2016 of the learned Tribunal. The Appellant relied on the Judgments reported in (i) ***Sabino Tolentino Fernandes & anr. V/s Rohidas N. Naik & anr.***¹, (ii) ***Mr. Somnath Suresh Mogal V/s Maharashtra State Regional Transport Corporation in FA No. 2414 of 2019***, passed by the Aurangabad Bench, (iii) ***Municipal Corporation of Greater Bombay V/s Laxman Iyer and***

¹ 2014 SCC OnLine Bom 5098

another², in support of his contentions regarding contributory negligence.

11. The Counsel for the claimants i.e. Respondent Nos. 1 and 2 argued that the learned Tribunal wrongly quantified the compensation by ignoring earning towards future prospects of the deceased. If the future prospects are added to the annual income, then the claimants would be entitled for a compensation of ₹1,23,39,476/- (Rupees One Crore Twenty Three Lakhs Thirty Nine Thousand Four Hundred and Seventy Six only). The learned Counsel for the claimants relied on the Judgment reported in ***Babu K. & anr V/s Union of India***³, (ii) ***Bangalore Metropolitan Transport Corporation V/s Padma & ors***⁴, (iii) ***K. Anusha & ors V/s Regional Manager Shriram General Insurance Company Ltd.***⁵, (iv) ***Shyam Prasad Nagalla & ors V/s Andra Pradesh State Borad Transport Corporation and ors.***⁶ and (v) ***Sunita and ors V/s Rajasthan State Road Transport Corporation & ors.***⁷, in support of his submissions.

12. The learned Counsel for the Respondent Nos.3 and 4 adopted the arguments advanced by the Appellant-Insurance company.

13. Having heard the learned Counsel for the respected parties and going through the pleadings, oral and documentary evidence

² (2003) 8 Supreme Court Cases 731

³ 2017, SCC, OnLine, Kerala, 10117

⁴ (2009) 3 Supreme Court Cases 285

⁵ (2021) SCC OnLine SC 3339

⁶ 2025 SCC Online SC 282

⁷ (2020) 13 Supreme Court Cases 486.

filed on record, it appears to this Court that undisputedly, there was an accident, where Hero Honda Passion Pro motorcycle bearing registration No. GA-03-J-9114 driven by the Respondent No. 3 herein and the Dio scooter bearing registration No. GA-03-J-2926 driven by the deceased, was involved. At the time of the accident, the deceased was proceeding from Thivim to Karaswada and the Respondent No. 3 was proceeding towards Karaswada to Thivim. It is the case of the claimants that the Respondent No. 3, driver of the Hero Honda Passion Pro, rashly and negligently gave dash to the Dio scooter of the deceased due to which he suffered grievous injuries and was hospitalized, where he succumbed to his injuries. The jurisdictional police station registered crime against Respondent No. 3 under Section 279 and 304 of IPC. Autopsy of dead body of the deceased was done at the hospital. Autopsy report is filed on record. As per the learned Counsel for the Appellant, the deceased was driving his vehicle under the influence of liquor and he relied on the Autopsy report wherein it is mentioned in column No. 21 Abdomen (e) stomach and its contents with condition of walls and mucosa, remark of the medical officer states smell of Alcohol present.

14. The eye witness Jason to the incident deposed the manner in which the accident occurred. He testified in his evidence that he was a pillion rider on the Bullet which was proceeding behind the Dio scooter driven by the deceased and the distance between both vehicles was not more than 10 meters. As per this witness, Respondent No. 3 was riding Hero Honda Passion Pro motorcycle, overtook a bus in a fast speed and in the said process

he came on the wrong side of the road and dashed Dio scooter driven by the deceased. From the said evidence, it can be reasonably inferred that the Respondent No. 3 was riding his vehicle in rash and negligent manner, which led to registration of a crime with the concerned police station for having driven his motorcycle dangerously. Thus, the arguments of the Appellant that the deceased contributed to the accident pales into insignificance.

15. The Hon'ble Apex Court in the case of ***Sajeena Ikhbal and ors V/s Mini Babu George & ors***⁸, held that the claimants have to merely establish their case on the touchstone of preponderance of probability, and the standard of proof beyond a reasonable doubt cannot be applied in motor accident cases.

16. It is the contention of the Appellant that Jason Pereira is an interested witness as the deceased was driving the Dio scooter owned by his mother and therefore his evidence cannot be relied upon. In the investigation, crime registered against the Respondent No. 3, Jason Pereira is one of the eye witness, who has witnessed the manner in which the accident occurred. Same witness has deposed before the learned Tribunal and categorically stated in evidence that the accident occurred due to rash and negligent driving of Respondent No. 3.

17. From the aforesaid material, it can be inferred that the deceased was not driving his scooter under the influence of

⁸ 2024 SSC Online SC 2883

liquor. The mere smell of alcohol in the stomach is not sufficient to conclude that the deceased was under the influence of liquor at the time of the accident.

18. Learned Counsel Mr. V. Daniel for respondent no. 1 and 2 has relied upon ruling of **Babu K. and another vs. Union of India**⁹, where the High Court of Kerala has observed with reference to Section 185 of the Motor Vehicles Act, that at least there should be presence of exceeding 30 mg of alcohol per 100 ml of blood detected by a breath analyser and that mere consumption of alcohol or alcohol contained drink alone will not bring a person within the sweep of Section 185 of Motor Vehicles Act. In this case, there is no blood test report at all.

19. Further, it is submitted by learned Counsel Mr. V. Daniel for respondent nos. 1 and 2, that no plea was taken before the learned Tribunal that the deceased was driving under the influence of alcohol. It is correct that no such plea is there in the written statement filed by the appellant before the learned Tribunal.

20. In this regard, reliance is placed by learned Counsel Mr. V. Daniel for respondent no. 1 and 2 on the ruling of **Bangalore Metropolitan Transport Corporation Vs. Padma & Ors**¹⁰ where it is confirmed by the Hon'ble Supreme Court that any absence of pleading and evidence as regards pointing out any accident occurred on account of deceased being in an

⁹ (2017) SCC Online Ker 10117

¹⁰ (2009) 3 SCC 285,

intoxicated state of mind, such plea cannot be taken for the first time before the High Court.

21. Thus, the deceased was driving under the influence of liquor is not substantiated from the material on record. The eyewitness account indicates complicity of Respondent No. 3 in the accident. Therefore, the argument that the deceased contributed to the accident by driving his vehicle from the middle of the road is not established.

22. The role of the learned Tribunal is to award just compensation. In that respect the Hon'ble Apex Court in **Sunita & ors**(supra) observed in paragraph No. 22, which read thus:

“22. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.”

23. In the Judgment of the learned Tribunal, there is reference of loss of dependency/income, loss of love and affection to both the claimants, loss of estate, loss of expectation of life, funeral and obsequies expenses and litigation expenses. Interest awarded is 9%. However, amongst the head under which the compensation is awarded, what is conspicuously absent is the head of the future prospects. The Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. V/s Pranay Sethi***¹¹, has held that the grant of compensation on account of future prospects is available to the victim who was self-employed or on salary. In the case of ***Sarla Verma and ors. V/s Delhi Transport Corporation and ors.***¹², two guidelines were laid down in respect of future prospects in relation to the deceased who had permanent job i.e. 50% of the actual salary. The second guideline was awarding a 40% of the established income towards self-employed or on a fixed salary. In the case of ***Pranay Sethi*** (supra), 40% increase was granted to the deceased, though he was not a permanent employee. The deceased was employed on a contractual basis as Seamen and was earning monthly wages/salary in US \$. Thus, in this matter, it is 40% of the actual salary.

24. It is well settled that the Motor Vehicle Act, 1988, is a beneficial piece of legislation, and therefore, while dealing with compensation, once the actual occurrence of the accident has been established, the learned Tribunal's role would be to award just and fair compensation. Moreover, as laid by the Hon'ble

¹¹ (2017) 16 SSC 680

¹² (2009) 6 Supreme Court Cases 121

Supreme Court, strict rules of evidence as applicable in a criminal trial are not applicable in motor accident compensation cases. In an Appeal from the Award of the learned Tribunal, this Court can enhance the compensation awarded by the learned Tribunal, even if it is not sought by the claimants, by filing a cross-appeal.

25. It is relevant to note that ruling of ***National Insurance Co. Ltd vs. Pranay Sethi (Supra)*** was invoked in the appeal pertaining to the claim petition with regard to accident of the year 2005 by Allahabad High Court in the ruling of ***Smt. Shanti And 4 Others vs. Anil Awasthi @ Anil Kumar Awasthi***. Therefore, under the same principle, ruling of ***National Insurance Co. Ltd vs. Pranay Sethi (Supra)*** can be invoked in the present case pertaining to the accident which took place in the year 2013.

26. The learned Counsel Mr. V. Daniel for respondent no. 1 and 2 has given Chart of conversion rate, showing conversion of US Dollars to Indian Rupee and as on 14.08.2015 it is shown as ₹63.7386.

27. The learned Tribunal has recorded the monthly salary of ₹80,000/-, considering the monthly salary of \$1242 . As per the above chart, it does appear that figure arrived at by the learned Tribunal is close to the conversion rate submitted for the Respondent Nos. 1 and 2 before this Court ie. ₹65/- x \$1242= ₹ 80,730/-. Thus, ₹80,000/- as fixed by the learned Tribunal is proximate figure.

28. The accident in question took place in July 2013, and the last pay slip of the deceased person prior to the accident is of April 2013, which show monthly salary of \$1296.53. The learned Tribunal has also recorded the monthly salary of the deceased as \$1,242. This figure of \$1242 is also proximate to the figure as per the exchange rate as on date of filing of the appeal.

29. This figure of \$1242/- is not otherwise disputed by the claimant. Thus, by accepting salary of \$1242/- per month and the conversion rate of ₹65/-, it is quite clear that the learned Tribunal has not committed any perversity in recording the income of ₹80,000/- per month. The learned Counsel Mr. V. Daniel for Respondent nos. 1 and 2 has relied upon ruling of the Hon'ble Supreme Court cited as ***Shyam Prasad Nagalla and Others (supra)*** where the Hon'ble Supreme Court has clearly confirmed the position of law that the date of filing of claim petition is the proper date for fixing rate of exchange for computing compensation.

30. However, it is seen that the learned Tribunal has awarded excessive amount under that is sum of ₹2,00,000/- under the head Loss of love and affection, ₹1,00,000/- under loss of estate, and has also separately awarded ₹1,00,000/- as loss of expectation of life, and ₹50,000/- under funeral expenditure.

31. In the ruling of **National Insurance Co. Ltd vs Pranay Sethi (Supra)** decided by the Hon'ble Supreme Court in the year 2017, the specific sum is mentioned under conventional heads. ie. ₹ 15,000/- for the loss of estate, ₹40,000/- loss of

consortium and ₹15,000/-, funeral expenses, subject to increase.

32. Therefore, the Award needs to be modified accordingly and also by adding compensation towards future prospect. Accordingly, fresh chart of compensation is as under:

Sr. No	Description	Amount
i	Annual income of the deceased	₹80,000/- x 12 = ₹9,60,000/-
ii	Total Annual Income = Annual Income + Future Prospects (Annual Income x 40%)	₹9,60,000/- + ₹3,84,000/- = ₹13,44,000/-
iii	Annual Dependency = Annual Income – 50% deduction towards personal expenses	₹13,44,000 - ₹6,72,000/- = ₹ 6,72,000/-
iv	Total dependency = Annual Dependency x Applied Multiplier	₹6,72,000/- x 18 = ₹ 1,20,96,000/-
v	Claimant entitlement towards conventional Heads = Loss of Estate + Funeral Expenses + Dependents Consortium	₹15,000/- + ₹15,000/- + (₹ 40,000 x 2) = ₹1,10,000/-
vi	Litigation cost	₹15,000/-

The total compensation would therefore work out to a figure as under:

$$\text{₹}1,20,96,000/- + \text{₹}1,10,000/- + \text{₹}15,000/- = \text{₹}1,22,21,000/-$$

33. The learned Tribunal has added new heads that is Loss of love and affection, and loss of expectation of life ie. ₹2,00,000/- and ₹1,00,000/-. Thus, ₹3,00,000/- needs to be deducted from total amount awarded.

34. In addition, under the head of Loss of Estate ₹1,00,000/- is awarded, which is excessive. ₹15,000/- needs to be maintained, and thus ₹85,000/- is excess amount. Similarly, under the head Funeral cost ₹50,000/- was awarded. From this ₹15,000/- has to be maintained and accordingly ₹35,000/- is the excess amount.

35. In short, ₹2,00,000/- + ₹1,00,000/- + ₹85,000/- + ₹35,000/- = ₹4,20,000/- is the total excess amount under the above heads.

36. Thus, the total amount of ₹1,22,21,000/- is the appropriate and just amount of compensation, and from the just compensation amount, above excess amount of ₹4,20,000/- has to be deducted as follows:

$$\text{₹}1,22,21,000/- - \text{₹}4,20,000/- = \text{₹}1,18,01,000/-$$

37. Thus, the figure **₹1,18,01,000/-** is the final amount which the claimants are entitled to and the Appellant herein and Respondent Nos. 3 and 4 are accordingly directed to pay the balance amount with 9% interest from the date of filing of claim

petition till today after deducting the amount already deposited before this Court.

38. The claimants will be entitled to withdraw the balance amount deposited with the Registry of this Court, together with interest after furnishing the necessary identity documents and bank details. The Registry will ensure that the amounts are directly remitted to the claimant's bank account

39. The Appellant and Respondent nos.3 and 4 are now directed to deposit the additional compensation amount now determined within a period of eight weeks from today, after due intimation to the learned Counsel for the claimants. Once this is done, the claimant will be entitled to withdraw this additional amount on the above terms.

40. Award be drawn accordingly.

41. In view of the above, the present appeal stands disposed of accordingly.

NIVEDITA P. MEHTA, J.