IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1205 OF 2006

National Insurance Co.Ltd.
Through its Regional Office No.2
Sterling Cinema Building VT Bombay ...Appellant

Versus

1. Anuradha Vishvanath Chatla
Widow of the deceased

2. Mahendra Vishvanath Chatla
Aged 17, Minor Son of the deceased.

3. Chandrashekhar, Vishvanath Chatla
Aged 15, minor son of the deceased

4. Naresh Vishvanath Chatla,
Aged 13, Minor Son of the deceased.

All through their next friend and Guardian Mother Respondent No.1. All residing at 1485 Daji Peth Solapur, At present Samarth Nagar Solapur

Original Applicants.

5. Bhagwat Gena Dhande
Driver of the vehicle residing at Dhande Wadi,
Taluka Karjat District Ahmednagar.
Original Opp Party No.1

6. Rajendra Singh Laxman Singh Rajput
Owner of the Vehicle, residing at 606 Sahakar Nagar
Pune 4.
Original Opp Party No.2.

7. The New India Assurance Co. Ltd.
Branch at Hutatma Smriti Mandir Complex,
Park Chowk Solapur.
Original Opp Party No.4.

...Respondents

SAJAKALI LIYAKAT JAMADAR Digitally signed by SAJAKALI LIYAKAT JAMADAR Date: 2025.09.29 19:39:42 +0530

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Mr. Atharva R. B. a/w Ms. Poonam Mittal for Appellant.

Mr. Onkar Somvanshi (Through V.C.) i/by Mr. Tejas Deshmukh Advocate for Respondents.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd SEPTEMBER 2025

ORAL JUDGMENT :

1. This appeal is preferred by the Appellant - Insurance Company against the Judgment and order passed by the Motor Accident Claims Tribunal, Solapur (for short 'the Tribunal').

2. It is contention of learned counsel for the Appellant - Insurance Company that the Tribunal has considered average income of the deceased on the basis of income tax return produced on record. The 5th income tax return was filed after five years of death of the deceased, but this fact is not considered by the Tribunal. the Tribunal should have considered yearly income of the deceased on the basis of average income of four years which comes to Rs.6,82,157/-. Learned counsel further submitted that the accident occurred due to negligence of the deceased, but the Tribunal has considered 60% negligence on the driver of offending vehicles which is erroneous. It should be 100% on the deceased. Hence, requested to allow the appeal.

3. It is contention of learned counsel for Respondent-claimant that the Tribunal has passed well reasoned order. Learned counsel for the Respondent-claimant further submitted that the average income of four years of deceased can be considered. Learned counsel further submitted that the Tribunal has deducted 1/3rd amount for personal expenses. It should be ¼ and consortium amount be awarded and requested to dismiss the appeal.

4. I have heard both the learned counsels, perused the impugned Judgment and order passed by the Tribunal. It is prosecution's case that on 11th June, 1997, the deceased Vishwanath was driving his Ceilo car on Pune to Solapur road. At that relevant time, he was driving the vehicle in a moderate speed observing all the traffic rules and regulations. At the relevant time, the offending milk tanker came from opposite direction in rash and negligent manner and gave dash to the car of the deceased. Due to dash, the occupants of car injured and deceased died while taking treatment. The offence was registered against the driver of offending vehicle. To prove the negligence of driver of the milk tanker, claimant No.1 examined herself and other withesses. Considering the evidence on record, the Tribunal has considered 60 % negligence of driver of milk tanker and 40% of the deceased. The driver of milk tanker did not step into

witness box to prove the negligence of the deceased. Moreover, the FIR was registered against the driver of milk tanker. Hence, I do not find merit in the contention of learned counsel for the Appellant - Insurance Company that accident occurred due to sole negligence of the deceased. While considering yearly income of the deceased, the Tribunal has considered income tax returns of the deceased produced on record. It appears that the last income tax returns of the decease was filed after five years of his death and the income of the said income tax returns is considered by the Tribunal which is erroneous. The average income of four years comes to Rs.6,82,157/-. Hence, I am considering this income as yearly income of the deceased.

5. While awarding compensation, the Tribunal has deducted 1/3rd amount for personal expenses. There are four claimants. It should be ¼. Hence, I am considering ¼ amount for personal expenses. the Tribunal has awarded consortium amount on lower side. As per the view of the Hon'ble Apex Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram 2018 ACJ2782 (SC),** each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

6. Considering Above calculation, the claimants are entitled for following compensation:

Particulars	Amount
Annual Income (Average income of 4 years)	6,82,157/-
¼ th Deduction towards personal expenses (4 dependents) (Tribunal deducted 1/3rd)	1,70,539/-
3/4th remaining amount to Family members	5,11,618/-
Multiplier 15 (Age – 40 years)	5,11,618 X 15 76,74,270/-
40% deduction towards liability of deceased	46,04,562/-
Loss of consortium (4 dependents)	48000 X 4 1,92,000/-
Loss of estate	18,000/-
Funeral expenses	18,000/-
Actual total amount	48,32,562/-
Less Awarded by Tribunal	43,00,000/-
Total enhanced amount	5,32,562/-

7. In view of the above, I pass following order:

ORDER

i. The Appeal is partly allowed;

ii. The claimants are entitled for enhanced amount of Rs.5,32,562/- at the rate of 7% per annum from the date of filing claim Petition till realisation of amount. Out of this amount, Rs.2,28,000/- is consortium amount. The claimants are entitled @ 7% interest on this amount from 1st November 2017 till realisation of the amount;

iii. The Appellant - Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within four weeks from the date of receipt of this order;

iv. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon;

v. Statutory amount along with interest be transmitted to the Tribunal. The parties are at liberty to withdraw the cash as per rule;

vi. The claimants shall pay the deficit Court fees on enhanced amount, if any, as per Rule;

vii. Record and Proceedings be sent back to the Tribunal.

8. The appeal is disposed off in the aforesaid terms.

9. All pending applications, if any also stand disposed off.

(SHIVKUMAR DIGE, J.)