

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.755 OF 2006

1. Smt. Nilam Tanaji Taralekar
Age 32 years, Occ. Household ...
2. Sujata Tanaji Taralekar
Age 13 years Occ. Education ...
3. Rupali Tanaji Taralekar
Age 11 years Occ. Education ...
4. Vijay Tanaji Taralekar
Age 10 years Occ. Education ...
5. Ajay Tanaji Taralekar
Age 10 years, Occ. Education
Appellant Nos.2 to 5 are minors,
Through their G.A.L. Appellant No.1. ... Appellants.

vs.

1. Shri Bharat Shamrao Bansode
Age Major, Occ. Owner R/o. Uran
Islampur Tal. Walwa Dist. Sangli ...
2. United India Company Ltd.
Islampur
(Policy No.161105/31/33/883/97-98
valid for 29/08/1997 to 28/08/1998,
(Summons to be served on its Br.at
Vakharabhag, Sangli) ...
3. Shivaji Rajaram Kadam
Age 28 years, Occ. Driver
R/o Islampur, Tal.Walwa, Dist. Sangli ... Respondents

Mr. Tejpal S. Ingale with Ms.Priyanka A. Babar for the Appellants.
Ms. Poonam Mital for the Respondent No.2

CORAM : SHYAM C. CHANDAK, J.

DATED : 07th APRIL, 2025

JUDGMENT:

. Present Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (“**the Act**”) by the original claimants against the Judgment and Order dated 28.11.2005, in M.A.C. Petition No.52 of 1998, passed by the Motor Accident Claims Tribunal, Sangli whereby the said claim was partly allowed and Respondent Nos.1 and 2 (Insured and Insurer) have been directed to jointly and severally pay the compensation amount of Rs.2,78,000/- to the Appellants, including the amount of Rs.50,000/- as ‘No fault liability’ along with interest at the rate of 9% per annum from the date of claim till its realisation.

2) Heard Mr. Ingale, the learned Advocate for the Appellants and Ms.Mital, the learned Advocate for the Respondent No.2.

3) Record indicates that the Appeal was admitted on 12th April 2006. Thereafter the Respondents have been duly served with the notice of this Appeal.

4) Facts in brief are that :-

On 8th November 1997, at about 10:15 a.m. late Tanaji Taralekar (deceased) alighted from a bus at Bavchi-phata on Sangli-

Islampur road. From that place, the deceased started walking towards his office which was situated at a distance of 1 km from the said place. At about 10.20 am, Respondent No.3 came there driving the Jeep No.MH-10/C-1065 from western direction. Then, the Respondent No.3 drove the jeep in reverse direction without giving any signal and at a high speed. As a result, the jeep dashed the deceased, who was walking towards eastern direction, and caused him grievous injuries. Immediately, the deceased was taken to the Public Health Center, Bavchi and thereafter, he was being taken to Civil Hospital, Sangli but he succumbed to the injuries on the way. It was averred that the accident occurred due to rash and negligent driving of the jeep by the Respondent No.3.

5) The deceased was serving as a 'Pump Operator' with Environmental Engineering Works Division, Jalbhavan, Sangli, thereby the deceased was earning salary of Rs.3,800/- per month. The deceased was aged 35 years. Appellant No.1 is the widow and Appellant Nos.2 to 5 are the children of the deceased. Therefore, the Appellants filed the said claim and prayed to award compensation of Rs.15,20,000/- under the admissible heads but restricted to Rs.5,00,000/- for the purpose of Court fees.

6) The parents of the deceased expired during pendency of the claim. Hence, their names were deleted from array of the title *vide* order below (at Exh.29).

7) Respondent Nos.1 and 3 opposed the claim by their written statement at (Exh.28) while Respondent No.2 resisted the claim by filing the written statement at (Exh.14). The Respondents have not admitted and specifically denied each and every material allegation, averment and submission made in the claim against them.

8) Respondent Nos.1 and 3 contended that at the relevant time the deceased was alighting from the bus in an inebriated condition. Consequently, the deceased lost his balance and he himself dashed against the rear portion of the jeep and fell on the road. As a result the deceased sustained fatal injuries.

8.1) Respondent No.2 contended that the deceased was traveling in the jeep as fare paying passenger. When the jeep stopped near the bus stop at Bavchi village, the deceased, in a hurry to attend his office, recklessly tried to alight from the jeep. At the same time other passengers were boarding the jeep while some of the passengers were alighting from the jeep. In that process the deceased fell down from the jeep and suffered injuries leading to his death.

9) In order to prove the claim, the Appellants adduced the evidence of Appellant No.1-Nilam Tanaji Taralekar (AW1/Exh.33) and Vasant Dudappa Saundade (AW2/Exh.46).

10) Respondent No.2 also examined the same AW2-Vasant Dudappa Saundade in their defence as RW1 (Exh.55). Respondent Nos.1 and 3 examined Mr.Rajesh Bhaurao Patil (RW2/Exh.78).

11) The evidence of AW1 is that on the relevant date, at time and place the deceased was going on foot to attend the office at village Bavachi. At that time, the jeep was going ahead of the deceased. However, from some distance the jeep driver took the jeep in reverse direction. In that process, the jeep dashed the deceased. AW1 deposed that immediately after the accident, the deceased succumbed to the injuries. In the cross-examination, AW1 admitted that she did not witness the incident.

12) In contrast, the evidence of RW2 is that on 08/11/1997, he had gone to Sangli and the Respondent No.3 was driving the said jeep. At about 10.00 am, they were going from Sangli to Islampur. On the way, they stopped at Bavachi Phata. After five minutes, one S.T. bus came there and stopped. The deceased alighted from the rear door of the bus. There was heap of stones on the road in front of the

rear door where the deceased alighted. Therefore, the deceased fell down and sustained injuries. RW2 deposed that thereafter, they shifted the deceased to Islampur. In the cross-examination for the claimants, RW2 admitted that the police did not record his statement.

13) In the written statement of the Respondent Nos.1 and 3, it was contended that when the deceased alighted from the bus, he was under the influence of liquor, therefore, the deceased lost his control and dashed on the backside of the jeep and fell down.

14) In the written statement, Respondent No.2 has taken a completely contradictory stand that, when the jeep stopped near the bus stop, the deceased, in a hurry to reach his office, tried to step down from the jeep, recklessly. At the same time, other passengers were trying to board the jeep and some passengers were trying to get down, due to which the deceased fell down and sustained injuries. Therefore, the police papers are significant. The FIR (Exh.36) clearly states that after the deceased alighted from the jeep at Bavachi phata, one passenger standing at the bus stop waived hand, indicating that, he intends to travel in the jeep. Therefore, the driver of jeep took the jeep in reverse. At that time, the left rear corner portion of the jeep dashed the deceased and caused him injury. Thereafter, immediately

the deceased was taken to Public Health Center, Bavchi and from there he was being taken to Sangli. However, the deceased expired on the way. Therefore, the FIR was registered at Ashta Police Station under Sections 279, 304-A of I.P.C. and 184 of the Act against the driver of the jeep. The FIR was filed by Head Constable Mr.Kamble, Buckle No.6 at Astha Police Station, after recording the statement of the eye witness. The Spot Panchnama (Exh.37) supports the contents of the FIR. Both documents remained unaffected in the cross-examination of AW1. Therefore, the Tribunal rightly held that the accident occurred due to negligent driving of the jeep.

15) The evidence of AW2 is that, at the relevant time, he was serving as a Junior Clerk in the Public Welfare Department. The deceased was serving there as pump operator. The deceased had joined the service on 17/04/1991. Before that, the deceased worked for five years in the same office on daily wages. In October 1997, the gross salary of the deceased was Rs.4,052/-. AW2 deposed that, in normal course, on getting an increment as usual in January 2005, the salary of the deceased would have increased to Rs.6,858/-. The 5th Pay Commission was made applicable from 01/01/1996. Normally, the deceased would have received pension of Rs.2,342/- plus other

allowances.

16) Record indicates that, after examining AW2 on 23/03/2005, on the same day, the Appellant closed his evidence. Thereafter, said AW2 was examined as RW1 by Respondent No.2. At that time, AW2/RW1 produced the report about the absence of the deceased from duty (Exh.57) and the show cause notice/memo (Exh.58), issued to the deceased. In the cross-examination RW1 admitted the the salary and allowance certificate (Exh.61).

17) In view of the evidence of RW1 that as on 08/01/1997, the deceased was getting basic pay of Rs.1,050/- and D.A. Rs.1,018/-, the Tribunal held that, the monthly salary of the deceased was Rs.2,068/- because the report (Exh.57) showed that the deceased was remaining absent from duty without payment and, therefore, the memo (Exh.58) was served to him. Accordingly, the Tribunal held that the deceased was getting Rs.2,100/- and deducted Rs.700/- (1/3rd) towards the personal and living expenses of the deceased. Thus, the Tribunal took the net salary income as Rs.16,800/- per annum and taking the multiplier of '16', quantified the loss of the dependency at Rs.2,68,800/-. The Tribunal awarded Rs.5,000/- for the loss of consortium, Rs.2,000/- for funeral expenses and

Rs.2,000/- for the loss of estate. Thus, the Tribunal awarded total compensation of Rs.2,78,800/-.

18) However, the Tribunal did not considered the evidence of said Vasanth Saundade, when he was examined as AW2, wherein he stated that the deceased had joined the service on 17/04/1991. Before that, the deceased served for five years on daily wages. In October 1997, the gross salary of the deceased was Rs.4,052/-. Even though, same AW2 deposed as RW1 that the deceased was served with the memo etc. for absence on duty, in the chief-examination, he stated that before taking an action by the department, the deceased died in the accident. The salary-cum-allowance certificate (Exh.61) clearly states that since the deceased died on 08/11/1997, his monthly salary for October 1997 was of Rs.4,052/- and it comprised of : Basic Salary–Rs.3,275/-, DA–Rs.426/-,HRA–Rs.246/-, T.A.–Rs,75/- and Washing Allowance–Rs.30/-. It is not clear that in the months previous to 1997, the deceased was paid less than Rs.4,052/-. Therefore, I am of the considered view that the monthly income of the deceased was Rs.4,052/-. Accordingly, I hold the same.

19) The evidence of AW2 clearly established that the date of birth of the deceased is 21/09/1962, so, he was aged 35 years and two

months. The deceased was in the regular employment. Therefore, in accordance of the decisions in *National Insurance Co. Ltd. Vs. Pranay Sethi and Others*¹ and *Sarla Verma and others Vs. Delhi Transport Corporation and another*², 50% of the established net annual income should be added towards the future prospects of the deceased.

19.1) Appellant No.1 was doing household work and Appellant Nos.2 to 5 were minors. Original Claimant Nos.6 and 7, i.e., parents of the deceased were aged. As such, all the 7 claimants were depending on the income of the deceased. No statutory defence was available to the Insurance Company-Respondent No.2. As such, immediately after the accident, all the claimants were entitled to be compensated towards the loss of the dependency. Although Original Claimant Nos.6 and 7 expired during pendency of the claim, they are represented by the remaining claimants. As held in the case of *Kirti and others Vs. Oriental Insurance Co. Ltd.*³, “Claims and legal liabilities crystallize at the time of the accident itself and, changes post thereto ought not to ordinarily affect pending proceedings. Just like how Appellant-claimants cannot reply upon subsequent increases in minimum wages, the Respondent-insurer too cannot seek benefit

1. 2017 ACJ 2700 (SC)

2. 2009 ACJ 1298 (SC)

3. (2021) 2 SCC 166

of the subsequent death of a dependent during the pendency of legal proceedings.” Hence, $1/5^{\text{th}}$ from the actual net yearly income should be deducted towards the personal and living expenses of the deceased. The multiplier is of ‘16’. Accordingly, the claimants are entitled to receive Rs.9,33,584/- towards the loss of the dependency.

20) As held in the case of *Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors.*⁴, Appellant No.1 is entitled to get Rs.48,000/- towards ‘spousal consortium’ and Appellant Nos.2 to 5 are entitled to receive Rs.48,000/- each as ‘parental consortium’. Similarly, Original Claimant Nos.6 and 7 would have received the ‘filial consortium’ of Rs.48,000/- each if they had not expired. Be that as it may, as noted above, they are represented by the remaining claimants. Therefore, the entire ‘filial compensation’ amount of Rs.98,000/- of the share of Original Claimant Nos.6 and 7 should be paid to the remaining claimants. Additionally, the claimants are entitled to receive Rs.18,000/- under the head ‘funeral expenses’ and Rs.18,000/- under the head of ‘loss to estate’. Thus, the claimants are entitled for total compensation of Rs.13,05,584/-.

21) Learned Advocate for Respondent No.2 stated that the original award amount of Rs.2,78,000/- granted by the Tribunal has

4. 2018 ACJ 2782 (SC)

been deposited by Respondent No.2. Therefore, the Appellants are entitled to receive only the enhancement of compensation amount of Rs.10,27,584/-. Considering the facts and circumstances of the case, the Appellants are entitled to receive the enhanced compensation amount along with interest at the rate of 7.5% from the date of claim till realisation of said amount.

22) In view of the above discussion the Appeal partly succeeds.

23) Hence, following order is passed :-

(i) First Appeal is partly allowed with proportionate costs.

(ii) The impugned Judgment and Order dated 28th November 2005, in MACP No.52/1998 passed by the learned II-Additional District Judge & Member, Motor Accident Claim Tribunal, Sangli is modified.

(iii) Respondent No.1-insured and Respondent Nos.2-insurer shall jointly and severally pay the additional compensation of **Rs.10,27,584** (inclusive of NFL amount) together with interest thereon at the rate of 7.5 % per annum from the date of the claim petition till realisation of the amount.

(iv) Respondents are directed to comply with this

Judgment and Order within a period of three months from today, by depositing the amount in the Tribunal.

(v) The entire amount of the compensation alongwith interest shall be disbursed amongst Appllent Nos.1 to 5 as directed by the Tribunal, subject of payment of deficit Court fee, if any.

(vi) Statutory deposit be transferred to the Tribunal. It be disbursed in accordance with law.

(vii) Record and Proceedings of the Tribunal shall be immediately sent back.

24) The Appeal stands disposed of in the aforesaid terms.

(SHYAM C. CHANDAK, J.)