

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

FIRST APPEAL NO. 253 OF 2019

IFFCO TOKIO General Insurance Co. Ltd.
2nd Floor, AFL House, Lok Bharti Complex,
Marol Maroshi Road, Andheri (east),
Mumbai 400 059

...Appellant

Versus

1. Indumati Ashok Sannake
Aged 34 years, Occupation - Household
2. Santosh Ashok Sannake
Aged 18 years, Occupation – Education
3. Master Mahantesh Ashok Sannake
Aged 14 years, occupation – Education
4. Master Kiran Ashok Sannake
Age 12, occupation – education
Nos. 3 and 4 being minor,
through their mother and natural guardian,
Respondent No. 1 herein
5. Parubai Pandurang Sannake
Aged 64 years, Occupation - Nil

All R/o Vilage Umarani, Taluka Jath,
District Sangli
6. Arvind Bassappa Teli
Aged 30 years, Occupation - Driver
R/o Village Shedyal, Taluka: Jath, District Sangli.
7. Shrichandra Bhimanna Muchandi
Aged 45 years, Occupation :Agriculture
R/o Village Kolgiri, Taluka Jath, District Sangli

**WITH
CROSS OBJECTION [XOB] (ST.) NO 23613 OF 2025
IN
FIRST APPEAL NO. 253 OF 2019**

IFFCO TOKIO General Insurance Co. Ltd.
2nd Floor, AFL House, Lok Bharti Complex,
Marol Maroshi Road, Andheri (East),
Mumbai 400 059

...Appellant
(Orig. Insurer)

Versus

1. Indumati Ashok Sannake
Aged 45 years, Occupation - Household
2. Santosh Ashok Sannake
Aged 29 years, Occupation – Education
3. Master Mahantesh Ashok Sannake
Aged 25 years, occupation – Education
4. Master Kiran Ashok Sannake
Age 24, occupation – education
5. Parubai Pandurang Sannake
Aged 75 years, Occupation - Nil

All R/o Vilage Umarani, Taluka Jath,
District Sangli

...Respondents
(Orig. Claimants)
Cross Objectors

AND

6. Arvind Bassappa Teli
Aged 37 years, Occupation - Driver
R/o Village Shedyal, Taluka: Jath, District Sangli.
7. Shrichandra Bhimanna Muchandi
Aged 52 years, Occupation :Agriculture
R/o Village Kolgiri, Taluka Jath,
District Sangli

... Respondents
(Resp. Nos.6 & 7 orig. Opp. Nos.1 &2.)

.....
Ms. Varsha Chavan, for Appellant.

Mr. T. S. Ingale a/w Mr. Sourabh Patil and Mr. Aditya Patil, Advocate
for Respondent.

Adv. B. V. Salunkhe, Advocate for Respondent No.3.

.....
CORAM : SHIVKUMAR DIGE, J.
DATE : 12th NOVEMBER, 2025

ORAL JUDGMENT :

1. The Appellant - Insurance Company has preferred this appeal against the Judgment passed by the learned Member, Motor Accident Claims Tribunal, Sangli (for short "the Tribunal"). The claimants have also preferred Cross Objection for enhancement of compensation. As the Appeal and Cross objection are against the same Judgment and order, I am deciding it by this Common Judgment.

2. It is Claimant's case that on 23rd June, 2010, at about 2:00 p.m., the deceased along with his friend were proceeding towards Village Sankh from Village Umarani on his Bajaj motorcycle. The deceased was riding motorcycle and his friend was a pillion rider. He was riding motorcycle in a moderate speed on Kolgiri Madgyal road. At the relevant time, the offending tractor having agricultural instruments attached to its rear portion was going ahead of the said

motorcycle. The driver of said tractor was driving it in rash and negligent manner. It was going in zigzag manner. The driver of tractor suddenly slowed speed of tractor, thereby the instruments tied on the rear side of the tractor dashed to the motorcycle of the deceased. The deceased sustained injuries and succumbed to the injuries. The offence was registered against the driver of tractor. Initially the claim petition was filed at Vijapur, thereafter, it was transferred to Sangli. To prove the negligence, the claimants have examined. The claimant No.1, Smt. Indumati Sannake, she has stated that the accident occurred due to sole negligence of the tractor driver. The Respondent - Insurance Company has examined Shri. Arvind Teli, driver of offending tractor to prove their defence. While dealing with the issue of negligence, the Tribunal has observed that the police papers produced on record and spot panchnama at Exhibit-29 shows that the accident occurred due to negligence of the driver of offending tractor. The learned Tribunal further relied on the deposition of Shri. Rajkumar Havinal recorded in M.V.C. No.1504 of 2010 before the First Additional Senior Civil Judge and Member, MACT-VI, Bijapur at Exhibit-53 eye witness to the accident. He has stated that the accident occurred due to sole negligence of tractor driver. I do not find infirmity in the observations of the Tribunal as offence is registered

against the driver of tractor. Moreover, the incident is witnessed by Rajkumar Havinal, who is independent witness and his deposition supports the claimants case. It is contention of learned counsel for the Appellant- Insurance Company that there is no cross examination to the driver of offending tractor on the ground that the tractor was going in zigzag manner and he slowed down his speed. In my view, not asking particular questions in cross examination cannot wipe out the claimants' case as the police papers produced on record and evidence of the eye witnesses shows that the accident occurred due to sole negligence of the driver of offending tractor. It is contention of learned counsel for Appellant that the deceased was riding motorcycle in the middle of the road, which shows his contributory negligence. The spot Panchanama is at Exhibit-29, it shows that motorcycle was lying on the side of the road in oblique direction towards north facing to east, so it cannot be said that the deceased was riding motorcycle in the middle of the road. It is contention of learned counsel for the Appellant that statement of eye witness is not recorded by the police. In my view, though the police has not recorded his statement but the FIR was registered against the tractor driver after enquiry. Police papers produced on record indicates negligence of tractor driver.

3. It is contention of the learned counsel for Respondents-claimants that the Tribunal has not considered gross salary of the deceased. It has come on record that the deceased was working as Assistant Mechanic and earning salary of Rs.9,052/- but Tribunal has considered net salary at Rs.6,787/-. In my view, it is settled principle of law that gross salary has to be considered by deducting professional tax. Hence, I am considering at Rs.8,887/- as monthly income of the deceased.

4. 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 ACJ 2782 (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.

5. It is contention of learned counsel for the Appellant that the Tribunal has applied multiplier of '16' which is erroneous. The age of the elder son of the deceased is 18 years, hence the deceased must have been around 40 years old. Considering the submission of learned counsel for the Appellant, I am considering the multiplier as '15'.

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

Particulars	Amount
Income	Rs.9,052/- p.m.(-) 175 P.T. = Rs.8,877/-
Personal Deduction (1/4th being 5 Claimants)	Rs.8,877/- (-) Rs.2,219/- = 6,658/- p.m.
Multiplicant	Rs.6,658 p.m. X 12 = 79,896/-
Future prospects	50% (aged 35 Yrs. Salaried) Rs.39,948/- Rs.79,896 + Rs.39, 948/- = Rs.1,19,844/-
Multiplier "15"	Rs.1,19,844 X 15 = Rs.17,97,660/-
<u>Loss of Consortium</u>	
Claimant No.1	48,000/-
Claimant No.2	48,000/-
Claimant No.3	48,000/-
Claimant No.4	48,000/-
Claimant No.5	48,000/-
Loss of Estate	18,000/-
Funeral Expenses	<u>18,000/-</u>
Total	2,76,000/-
Total Compensation 17,97,660/- + 2,76,000/-	Rs.20,73,660/-
Less already received under Award : Rs.20,73,660 (-) Rs.16,50,920/-	Rs.4,22,740/-

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

ORDER

- (i) The Appeal is partly allowed.
- (ii) The cross objection is allowed.
- (iii) The claimants are entitled for enhanced amount of **Rs.4,22,740/-** at the rate of **7.5%** per annum from the date of filing claim Petition till realisation of amount. Out of this amount, **Rs.2,76,000/-** is consortium amount. The claimants are

entitled interest on this amount from 1st November 2017 till realisation of the amount;

(iv) The Appellant - Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within eight weeks from the date of receipt of this order;

(v) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon;

(vi) The Statutory amount along with interest in appeal be transmitted to the Tribunal. The parties are at liberty to withdraw the cash as per rule;

(vii) The claimants shall pay the deficit Court fees on enhanced amount, if any, as per Rule;

(viii) Record and Proceedings be sent back to the Tribunal.

8. The Appeal and Cross objection are disposed off in the aforesaid terms.
9. All pending applications, if any also stand disposed off.

(SHIVKUMAR DIGE, J.)