

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 99 OF 2010**

1. Smt. Madhuri Ajay Chavan
Age- 35 years, Occ: Household
R/o Nirukhe, Pangrad, Tal. Kudal,
Dist. Sindhudurg

2. Kum. Rohan Ajay Chavan
Age-11 years, Occu: Education
Minor represented through his
natural Guardian Appellant No. 1
Smt. Madhuri Ajay Chavan
R/o Nirukhe, Pangrad, Tal. Kudal,
Dist. Sindhudurg

....Appellants

Versus

1. Vinod Ramchandra Deshpande
Age-40 years, Occupation-Business
R/o 2602, A Ward, Deshpande Galli,
Shivaji Peth, Kolhapur.

2. The Divisional Manager
The New India Assurance Co. Ltd.
(Divisional Office No. 11)
Kedar complex, Station Road, Kolhapur

3. Prakash Maruti Atpadikar
Age-25, Occupation-Driver
R/o Shia, Tal-Karveer, Dist. Kolhapur

....Respondents

Mr. S. R. Ganbavale a/w Mr. Sangramsinh Yadav a/w Ms. Shruti
Jadhav for the appellants

Poonam Mittal a/w Atharva R. B. for respondents

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd DECEMBER, 2025.

ORAL JUDGMENT:

1. This appeal is preferred by the appellants-claimants against the Judgment and Order dated 5th October 2005 passed by Motor Accident Claims Tribunal at Kolhapur (for short 'the Tribunal').

2. It is contention of learned counsel for appellants that accident occurred due to sole negligence of the driver of the truck. Learned counsel further submitted that the Tribunal has not awarded future prospects. The consortium is awarded on lower side. The multiplier is not applied. The Tribunal has considered 75% contributory negligence of the deceased which is erroneous and requested to allow the appeal.

3. It is contention of learned counsel for the respondent-insurance company that the deceased was riding motorcycle on wrong side of the road. He gave dash to the truck. The offence was registered against the deceased. The Tribunal has passed well reasoned order. No interference is required in it and requested to dismiss the appeal.

4. I have heard both the learned counsels, perused impugned Judgment and Order. Its prosecutions' case that on 2nd October 1999, the deceased was proceeding on his motorcycle to Dhadgaon to attend his duty, he was driving slowly, cautiously and carefully by the left side of the road. When he reached near Tartewadi and gave signal to the tempo trax for approaching the road, he overtook the trax, at that time, the offending truck came from opposite side in fast speed and gave dash to the motorcycle of the deceased. He died while taking treatment. To prove the negligence of truck driver, the claimants have examined the claimant no. 1. While dealing with the issue of negligence, the Tribunal has observed that the claimant no. 1 was not an eye witness to the incident. Spot panchanama and contents of F.I.R. produced on record shows that the deceased came on wrong side of the road and gave dash to the truck. On that basis the Tribunal has considered 75% contributory negligence of the deceased and 25% of the driver of the truck. In my view, the driver of the truck did not step into the witness box to prove the negligence of the deceased. It appears from the record that the deceased was overtaking the tempo, at that time truck gave dash to his motorcycle was in high and excessive speed. The truck driver could have avoided the accident.

5. Considering these facts, I am considering 60% negligence of the deceased and 40% negligence of the truck driver. The Tribunal has not awarded future prospects. The claimants are entitled to 30% future prospects. The Tribunal has awarded consortium on lower side. As per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each claimant is entitled Rs. 48,000/- for consortium amount, Rs. 18,000/- for loss of estate and Rs. 18,000/- for funeral expenses.

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

Income and Future	Rs. 1,08,000/-
Add 30% Prospectus	Rs. 32,000/-
Total	Rs. 1,40,000/-
Less 1/3 personal deduction	Rs. 46,800/-
Total per annum	Rs. 93,600/-
Multiplier 15 (Rs. 93,600/- X 15)	Rs. 14,04,000/-
Consortium Rs. 48,000/- X 4 (claimants)	Rs. 96,000/-
Loss of Estate	Rs. 18,000/-
Funeral Expenses	Rs. 18,000/-
Total compensation	Rs. 15,36,000/-
Less 60% Negligence	Rs. 9,21,600/-
Less Awarded by the Tribunal	Rs. 1,88,666/-
Total amount	Rs. 4,25,734/-

7. In view of above, I pass following Order:

ORDER

- I. The Appeal is allowed.
- II. The claimants are entitled for enhanced compensation at **Rs. 4,25,734/-** at **7.5%** interest per annum from the date of filing claim petition till realization of the amount. Out of this amount, Rs. 1,32,000/- is consortium amount, the claimants are entitled @ 7.5% interest per annum on it from 1st November 2017, till realization of the amount.
- III. Respondent No. 2-Insurance Company shall deposit enhanced compensation amount along with accrued interest thereon, within a period of six 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. Record and proceedings be sent back to the Tribunal.
8. All pending applications, if any, also stand disposed off.

(SHIVKUMAR DIGE, J.)

IRESH MASHAL

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