

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

FIRST APPEAL NO. 1640 OF 2025

- | | | |
|----|---|---|
| 1. | Sanjivani Madhukar Fartade |] |
| | Age- 62 years, Occu: Household. |] |
| 2. | Dhanashri Madhukar Fartade |] |
| | Age- 33 years, Occu: Education |] |
| 3. | Alankar Madhukar Fartade |] |
| | Age – 29 years, Occu: Education. |] |
| 4. | Padmini Mahadev Fartade (Deceased) |] |
| 5. | Mahadev Tulshiram Fartade (Deceased) |] |
| | All R/o – Jagdale Mama Soceity, |] |
| | Alipur Road, Barshi, District: Solapur. |] |

.... **Appellants**
Original
Petitioners

Versus

- | | | |
|----|---|---|
| 1. | Ramesh Madhavrao Bhandwalkar |] |
| | Age – 59 years, Occu: Business |] |
| | R/o – 195/E, Dattachaya, Kawala Naka, |] |
| | Tal: Kolhapur, District: Kolhapur 416002. |] |
| 2. | New India Assurance Co. Ltd. |] |
| | Through the Divisional Manager |] |
| | New India Assurance Co. Ltd. |] |
| | Near Hutatma Smruti Mandir |] |
| | Park Chowk, Solapur. |] |

.... **Respondents**
Original
Respondents

Mr. R. S. Alange a/w Adv. V. S. Kupawade, Advocate for the Appellants.

Mr. Pravin D. Alawekar, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 20th NOVEMBER, 2025.

ORAL JUDGMENT. :

1. This appeal is preferred by the Appellants – Claimants for enhancement of compensation.

2. It is contention of learned counsel for the Appellants – Claimants that the accident occurred due to sole negligence of the driver of offending vehicle, but the Tribunal has considered 40% contributory negligence of the deceased without any reasonable ground. The driver of offending vehicle did not step into witness box to prove the negligence of the deceased. Learned counsel further submitted that the Tribunal has awarded 6% interest on compensation amount, it is on lower side, it should be 9%. The consortium amount is awarded on lower side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondent No.2 – Insurance Company that the accident occurred due to sole negligence of the deceased as the deceased gave dash to the offending vehicle. The Tribunal has passed well reasoned order, no interference

is required in it and requested to dismiss the appeal.

He relied on *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Ors. (2006) ACJ 1058*, *United India Insurance Company Limited Vs. Satinder Kaur @ Satwinder Kaur and Ors. (2020) ACJ 2131* and *Pukh Raj Bumb Vs. Jagannath Atchut Naik and Ors. (2013) AAC 2597*.

4. I have heard both learned counsel, perused impugned judgment and order passed by the Motor Accident Claims Tribunal, Kolhapur, (for short, “the Tribunal”).

5. It is Claimants’ case that on 5th June, 2015 at about 2:45 p.m., the deceased was travelling in his Indigo car. He was driving the said car. When he was proceeding on Kolhapur to Sangli road, at that time, the offending tanker came from opposite direction in high and excessive speed and gave dash to the car of the deceased. Due to said dash, the deceased sustained injuries and died. The offence was registered against the driver of offending tanker.

6. To prove the negligence of the driver of offending tanker, the Claimants have relied on police papers. While dealing with the issue of negligence, the Tribunal has observed that the spot panchanama at Exhibit – 20 shows that the road where accident

occurred was 18 feet wide tar road. The car driven by the deceased dashed into the tanker at a point, 6 feet from north edge of the road, it clearly manifests the fact that the car driver neither slowed down the speed of his car nor swerved to its left to avoid the collision. Therefore, he was not diligent and contributed his negligence for the accident. On that ground, the Tribunal has considered 60% contributory negligence of the driver of offending tanker and 40% negligence of the deceased.

7. I am unable to understand the observations of the Tribunal that the deceased had an opportunity to avoid the accident, but he failed to do so. In my view, the spot panchanama shows that the accident occurred due to sole negligence of the driver of offending tanker. The offence was registered against the driver of offending tanker. To prove the negligence of the deceased, the driver of offending tanker did not step into witness box. It is settled principle of law that if any defence is raised, it must be proved by evidence. However, no such evidence was produced. The Tribunal, merely on assumption has considered 40% contributory negligence of the deceased, which is erroneous. Hence, I hold that the accident occurred due to sole negligence of the driver of offending tanker.

8. I have gone through the case laws cited by the learned counsel for Respondent No.2 – Insurance Company, the facts of the present case and cited case are different, hence not applicable.

9. The Tribunal has awarded interest at 6% on compensation amount. In my view, it is on lower side. I am considering it at 7.5% per annum. The Tribunal has awarded consortium amount on lower side. As per 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 Rs.48,000/- for consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

10. Considering above calculations, the Claimants are entitled for following compensation.

Monthly income	Rs.1,60,213/-
Annual Income	Rs.19,22,556/-
Less income Tax	Rs.4,20,000/-
Less professional Tax	Rs.2400/-
Total	Rs.15,00,156/-
Less deduction	Rs.3,75,039/-
Total income	Rs.11,25,117/-
Multiplier X 7 (Rs.11,25,117/- X 7)	Rs.78,75,819/-
Medical expenses	Rs.36,520/-
Consortium amount Rs.48,000/- X 5 (Claimants)	Rs.2,40,000/-
Loss of Estate	Rs.18,000/-
Funeral expenses	Rs.18,000/-
Total compensation amount	Rs.81,89,339/-

Less awarded by the Tribunal	Rs.51,47,578/-
Enhanced amount	Rs.30,47,578/-

11. In view of above, I pass following order:

ORDER

- i. The appeal is allowed.
 - ii. The Appellants – Claimants are entitled for enhanced amount **Rs.30,47,578/-** @ 7.5% interest from the date of filing claim petition, till realization of the amount.
 - iii. The Respondent No.2 – Insurance Company shall deposit the enhanced amount along with accrued interest thereon.
 - iv. The Appellants – Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - v. The Appellants – Claimants shall pay the deficit Court fees on enhanced amount, if any, as per Rules.
 - vi. Record and Proceedings be sent back to the Tribunal.
12. All pending applications, if any, also stand disposed off.

(SHIVKUMAR DIGE, J.)