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

FIRST APPEAL NO. 833 OF 2022

1. Rani Abhimanyu Latwade]
Age: 23 years, Occ: Household.]
2. Parvati Raghunath Latwade,]
Age: 48 years, Occ: Household.]
3. Raghunath Narsappa Latwade,]
Age: 58 years, Occ. Nil,]

A;; R/o. Deshing Road, Yashwantnagar,]
Kavathe – Mahankal, Tal. Kavathe –]
Mahankal, District: Sangli.]
.... **Appellants**

Versus

1. Dattatraya Murlidhar Khalage ,]
Age: Major, Occ: Business,]
R/o. Chopadi, Tal. Sangola,]
District: Solapur.]
2. Subhash Jaganath Vibhute,]
Age: 44 years, Occ: Service,]
R/o. Madgul, Tal. Atpadi,]
District: Sangli.]
3. Brach Manager,]
The New India Assurance Company Limited,]
1036, E Ward, Dekkan House,]
Rajaram Road, In Front of Shivaji]
Uddyamnagar Parvati Talkies,]
Kolhapur 416 001.]
.... **Respondents**

Mr. Avesh Ghadge, Advocate for the Appellants.
Ms. S. S. Dwivedi (Through VC), Advocate for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 25th SEPTEMBER, 2025.

JUDGMENT. :

1. This appeal is preferred for enhancement of compensation against the judgment and order passed by the Motor Accident Claims Tribunal, Sangli (for short, "the Tribunal").

2. It is contention of learned counsel for the Appellants that the deceased was sole earning member of the Appellants' family. He was getting Rs.15,000/- monthly income from milk business, and he was working as mason and earning Rs.500/- per day. Learned counsel further submitted that it is Claimants' case that the deceased was earning Rs.28,000/- per month, but the Tribunal has considered total monthly income of the deceased at Rs.10,000/-, which is on lower side.

Learned counsel further submitted that the Tribunal has not awarded future prospects and consortium amount is awarded on lower side. Learned counsel further submitted that the accident occurred due to sole negligence of the driver of offending vehicle and he has been convicted by the learned Judicial Magistrate First Class, Sangli for the said offence, but the Tribunal has considered 20% contributory negligence of the deceased, which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondent – Insurance Company that the accident occurred due to sole negligence of the deceased. The driver of the offending vehicle has examined himself to prove the negligence of the deceased. On the basis of evidence produced on record, the Tribunal has rightly considered 20% contributory negligence of the deceased.

Learned counsel further submitted that though the Claimants are claiming Rs.15,000/- as monthly income of the deceased from Milk Business, but no evidence in that regard produced on record. Learned counsel further submitted that the evidence of employer of the deceased in respect of mason work has no credence. The Tribunal has passed well-reasoned order, no interference is required in it, and requested to dismiss the appeal.

4. I have heard both learned counsel, perused impugned judgment and order passed by the Tribunal.

5. It is Claimants' case that on 5th October, 2016, the deceased was riding on motorcycle, he was proceeding on Sangli-Tasgaon road

in moderate speed by keeping left side. At relevant time, the offending truck came from the opposite direction in high and excessive speed and gave dash to the motorcycle of the deceased by going on the wrong side. The offence was registered against the driver of offending truck. To prove the negligence of the driver of offending truck, the Claimants have relied on police papers. To prove his innocence, the driver of offending truck Shri. Subhash Vibhute examined himself. He has stated that the deceased was riding the motorcycle in high and excessive speed and in zigzag manner. In an attempt to overtake other vehicles, he gave dash to his truck. The accident occurred due to sole negligence of the deceased.

In cross-examination, he has admitted that near the accident spot, construction work of the said road was in process. He admitted that he has not filed any complaint about false offence registered against him.

6. While dealing with the issue of negligence, the Tribunal has observed that F.I.R. (at Exhibit-37) was lodged promptly after the accident, and spot panchanama at Exhibit-38 was drawn immediately after the accident. It shows that the offending truck went on wrong side of the road and gave dash to the motorcycle of the deceased. The

learned Tribunal further observed that at the time of accident, the driver of offending truck and the deceased Abhimanyu both were driving their vehicles in rash and negligent manner. Therefore, both have contributed negligence in the said accident, and accordingly, the Tribunal has fixed 80% contributory negligence on the driver of offending truck and 20% contributory negligence on the deceased.

I am unable to understand the observations of the Tribunal as the Exhibit - 37 is report made by Mr. Ramdas Bagadi, Police Head Constable, Sanjaynagar Police Station, District: Sangli. In the said report, it is specifically mentioned that the offending truck went on the wrong side of the road and gave dash to the motorcycle of the deceased. The spot panchanama is at Exhibit 38, which was drawn after the accident. It also shows that the offending truck had gone on wrong side of the road and gave dash to the motorcycle of the deceased. These documents which are prepared immediately after the accident clearly show that accident occurred due to sole negligence of the driver of offending truck. The Tribunal should not have considered 20% negligence of the deceased, as there is no evidence on record to show that the deceased was driving his motorcycle in rash and negligent manner. Hence, I hold that the accident occurred due to sole negligence of the driver of offending truck.

7. It is Claimants' case that the deceased was doing masonry work and milk business, and earning Rs.28,000/- per month from both the sources. To prove the income of the deceased, the Claimants have examined PW-2 Shital Mali at Exhibit – 50. He has stated that, he was manager in Mali Milk Collection Centre, Kavathe-Mahankal. The deceased Abhimanyu was member of their milk society. During period of 1st January, 2016 to 20th October, 2016, the deceased had supplied milk to their centre. He used to get Rs.5,000/- for 10 days for supplying milk. After the accident of the deceased, no milk is supplied to their centre by his family. He has produced the bills of milk, which are at Exhibit – 56(1) to 56(11) and 57(1) to 57(29).

In cross-examination, he has denied the suggestion that after the death of Abhimanyu, his family members are supplying milk to his centre.

To prove the income of the deceased from masonry work, the Claimants have examined Mr. Sachin Salunkhe, Civil Contractor at Exhibit – 58. He has stated that during period 2015 to 2016, the deceased was working as mason with him. There were eleven labourers working on his sites, and he used to give Rs.400/- to Rs.500/- per day to the deceased. The attendance and wages registered is at Exhibit – 59. In cross-examination, he has admitted that the deceased was not registered skilled labourer.

8. While dealing with the issue of income of the deceased, the Tribunal has observed that the milk business was carried out by all the family members. Every member of the family played a role in the said business, and net profit from milk business was shared by all family members. On that ground, the Tribunal has considered Rs.2,000/- per month as share of the deceased. The learned Tribunal further observed that there would be 50% expenses of maintenance of milching animals. The Tribunal has considered Rs.8,000/- as monthly income from masonry work, thus the Tribunal has considered total monthly income of the deceased at Rs.10,000/- from both the sources.

I am unable to understand the observations of the Tribunal , as PW-2 Shital Mali has categorically stated that the deceased used to get Rs.500/- per day for milk supplied to their centre. He had supplied milk to the centre for ten months prior to the accident. It shows that the deceased used to earn Rs.15,000/- per month from milk business. It has come on record that after the death of the deceased, the milk supply to his centre has stopped. It proves that the milk business of the family of the deceased was dependent on him. Considering these facts, by excluding the expenses, I am considering Rs.10,000/- as monthly income of the deceased from milk business.

9. It has come in the evidence of PW-3 Sachin Salunkhe that he used to pay Rs.400/- to Rs.500/- per day to the deceased for masonry work. He has produced wages and attendance register on record. Considering this fact, I am considering Rs.9,000/- as monthly income of the deceased from masonry work. Hence, total monthly income of the deceased is considered at Rs.19,000/-. As per view of Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi 2017 ACJ 2700 (SC),*** the Claimants are entitled for 40% future prospects. 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 for 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.19,000/-
Annual income	Rs.2,28,000/-
Multiplier 17 (Rs.2,28,000/- X 17)	Rs.38,76,000/-
Add: 40% future prospects	Rs.15,50,400/-
Total	Rs.54,26,400/-
Less 1/3 deduction for personal expenses	Rs.18,08,800/-
Total income	Rs.36,17,600/-
Funeral Expenses	Rs.18,000/-
Loss of Estate	Rs.18,000/-
Consortium Rs.48,000/- X 3 (Claimants)	Rs.1,44,000/-
Total compensation	**Rs.37,97,600/-**
Less awarded by the Tribunal	Rs.15,79,200/-
Enhanced amount	**Rs.22,18,200/-**

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

<u>ORDER</u>

i. The appeal is allowed.

ii. The Appellants/Claimants are entitled for enhanced amount of Rs.22,18,400/- @ 7.5% interest from the date of filing claim petition till realization of the amount.

iii. The Respondent – Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within six weeks, after receipt of the order.

iv. The Appellants/Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

v. The Claimants shall pay deficit Court fees, 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.)