IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.961 OF 2016

APPELLANT (Ori. Resp. No.2)	:	**Reliance General Insurance Co. Ltd.** Akola Divisional Office, through its Manager, Nagpur Office, Ayodhya Building, 1st Floor, 119, Near Bajaj Nagar Chowk, Nagpur, Tah. & Dist. Nagpur.
		..VERSUS..
RESPONDENTS ON R.A.	: 1	**Smt. Malekas Bi W/o Syd. Afsar**, Aged about 48 years, Occu: Nil (Dead) **LRs brought on record**. Legal Representatives of Respondent No.1. **1(a) Sayyad Ajhar Ali Sayyad Afsar Ali**, Aged 40 years, Occu : Labour, R/o Sayyad Pura, Patur, Tah. Patur, Dist. Akola. **1(b) Shagufta Bi Sayyad Akhtar**, Aged : 45 years, Occu : Home-maker, R/o near Mohommadiya Masjid, Mullani Chauk Khadan, Chadur, Tah. & Dist. Akola. **1(c) Shaheen Bee Mohammad Nisar**, Aged : 33 years, Occu : Home-maker, R/o. Salavat Plots, Tah. Patur, Dist. Akola. **1(d) Sayyad Akhtar Ali Sayyad Afsar Ali**, Aged : 50 years, Occu : Labour, R/o. Sayyad Pura, Tah. Patur, Dist. Akola. **1(e) Shahista Bi Syed Liyakat Ali**, Aged 50 years, Occu : Home-maker, R/o. Sayyad Pura, Tah. Patur, Dist. Akola. **1(f) Sayyad Zafar Ali Syed Afsar Ali**, Aged 47 years, Occu : Labour, R/o. Devdi Maidan, Tah. Patur, Dist. Akola.

1(g) Syad Asgar Ali Syed Afsar Ali,
Aged 43 years, Occu : Labour, R/o. Solabat Plots, Tah. Patur, Dist. Akola.

1(h) Heena Parveen D/o Liyakat Ali,
Aged 26 years, Occu : Home-maker, R/o. Quazi Pura, Tah. Patur, Dist. Akola.

1(i) Seema Parveen D/o Liyakat Ali,
Aged 27 years, Occu : Home-maker, R/o Syed Pura, Tah. Patur, Dist. Akola.

1(j) Shahin Parveen Nasir Khan,
Aged 33 years, Occu : Home-maker, R/o. Kokewali Chal, Khadan, Tah & Dist. Akola.

Deleted as per order dated 18.12.2024 on CAF No.3726/2024.

~~**1(k) Syed Noor Ali Syed Afsar Ali**,~~
~~Aged 35 years, Occu : Labour, R/o. Syed Pura, Tah. Patur, Dist. Akola~~ **(Deleted)**

1(l) Syed Meer Ali Syed Afsar Ali,
Aged 36 years, Occu : Labour, R/o. Syed Pura, Tah. Patur, Dist. Akola.

1(m) Syed Mazhar Ali Syed Afsar Ali,
Aged 38 years, Occu : Labour, R/o. Syed Pura, Tah. Patur, Dist. Akola.

Amendment for respondent No.2 carried out as per Court's order dated 07.01.2025

2 **Syd. Afsar S/o. Syd. Imam (Dead)**,
Aged about 52 years, Occu : Nil.

3 **Shahista Bi W/o Liyakat Ali**,
Aged about 30 years, Occu : Household work.

4 **Heena Parvin D/o Liyakat Ali**,
Aged about 14 years, Occu : Education.

5 **Seema Parveen D/o Liyakat Ali**,
Aged about 12 years, Occu : Education

Respondentt Nos.4 and 5 minors, through the respondent No.3 their mother and natural guardian.

All R/o. Patur, Tq. Patur, Dist. Akola
...(Original Claimants)

6 **Ejajullah Khan S/o. Hamidullah Khan**, Aged-Adult, Occu : Owner and driver of taxi, R/o. Dahihanda ves, Old City, Akola.

...(Original Respd. No.1.)

Mr D. N. Kukday, Advocate for Appellant.
Mr U. J. Deshpande, Advocate for Respondent Nos.1 to 5.

CORAM	:	**M. W. CHANDWANI, J.**
RESERVED ON	:	**10th MARCH, 2025.**
PRONOUNCED ON		**9th JUNE, 2025.**

JUDGMENT

1. Heard finally by consent of learned counsel Mr D. N. Kukday appearing for the appellant and Mr U. J. Deshpande, learned counsel for respondent Nos.1 to 5.

2. This appeal challenges the impugned award dated 31.08.2015 passed by the Motor Accident Claims Tribunal, Akola in Claim Petition No.36 of 2013, thereby granting Rs.18,63,000/- alongwith interest at the rate of 8.50% per

annum from the date of petition till its realization to the original claimants towards compensation on account of the death of Syd. Noor Ali.

3. On 24.01.2012 at about 01:30 p.m., deceased Syd. Noor Ali was travelling by taxi bearing No.MH-30-E-9034 from Akola to Patur. The driver was driving the said taxi in a rash and negligent manner in high speed. When the offending taxi reached near Nandkhed branch road, it bumped over a pit and its rear door got opened due to which the deceased fell on the road. He sustained severe head injuries and died on the spot. Crime No.106 of 2012 came to be registered against the driver of the offending taxi for the offences punishable under Sections 279, 304-A of the Indian Penal Code, 1860 and under Section 184 of the Motor Vehicles Act, 1988. The original claimants claiming themselves to be the dependents of deceased Syd. Noor Ali filed the claim petition before the Tribunal. The Tribunal by the impugned award directed the appellant – original respondent No.2 and respondent No.6 – original respondent No.1 to pay jointly and

severally, the compensation amount of Rs.18,63,000/- inclusive of no fault liability amount of Rs.50,000/- to the original claimants alongwith interest @ 8.50%. Feeling aggrieved with the impugned award, the present appeal came to be filed on the ground of quantum of compensation and granting future prospects to the extent of 50% of the income of deceased Syd. Noor Ali.

4. Mr. D. N. Kukday, learned counsel appearing for the appellant submitted that in-spite of discarding the evidence of claimants' witness Salim Khan, the Tribunal considered the income of the deceased at Rs.350/- per day which was deposed by Salim Khan who is a Building Contractor. It is contended that the Tribunal ought not to have granted the future prospects as they lacked any promotional avenue. According to him, notional income at the rate of Rs.6,000/- per month ought to have been awarded. To buttress his submission, he seeks to rely on the following decisions :

i) ***New Indian Assurance Co. Ltd. and Another vs. Vishal Rameshwar Mote and Another*, *2020(4) Mh.L.J. 598*,**

ii) ***Malanbai w/o Mahipatrao Tumane and Another vs. Suresh S/o. Natthuji Moharle and Another***, ***2019(3) Mh.L.J. 821*** and

iii) ***Nisha W/o Naresh Gajre and Others vs. Subhash S/o Laxman More and Another***, ***2018 (5) Mh.L.J. 631***.

5. Per contra, Mr. U. J. Deshpande, learned counsel appearing on behalf of respondent Nos.1 to 5 vehemently submitted that deceased Syd. Noor Ali was working as a mason and therefore, the Tribunal has rightly considered his income at Rs.350/- per day. According to him, the Tribunal has rightly assessed the income of the deceased and in wake of the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi and ors***, ***2017 (16) SCC 680*** has rightly granted compensation towards future prospects. On the contrary, the Tribunal applied the wrong multiplier of 15 instead of 17 without considering the age of deceased Syd. Noor Ali. For applying the multiplier, age of deceased is required to be considered. Therefore, the amount of compensation is required to be enhanced by applying the multiplier of 17. He stressed on the fact that, for enhancement of compensation in appeal, no cross-appeal or cross-objection is

required to be filed by the claimants and the theory of just compensation will apply to the case in hand.

6. Having heard the learned counsels appearing on behalf of the respective parties and having gone through the impugned award, it transpires that deceased Syd. Noor Ali died in a vehicular accident on 24.01.2012. The crime came to be registered against the driver of the offending taxi for the offences punishable under Sections 279, 304-A of the IPC and under Section 184 of the M. V. Act. The investigation conducted in the said crime reveals that respondent No.6 was driving the taxi in high speed in a rash and negligent manner due to which, the rear door of the taxi opened and the deceased fell down on the road sustaining severe injuries that became the cause of his death. Hence, the Tribunal held respondent No.6 responsible for negligence in the accident.

7. So far as the income of the deceased is concerned, the mother of deceased Syd. Noor Ali deposed that the deceased was a mason and was earning Rs.350/- to 400/- per day. Salim

Khan – a Building Contractor who issued the salary certificate mentioning the daily wages of deceased as Rs.350/- to 400/- per day was also examined. However, his evidence was discarded by the Tribunal on the count that the registration certificate of Building Contractor Salim Khan was effective from 26.05.2014 to 25.05.2017.

8. The contention of the learned counsel for the appellant is that when there was no material on record to show the income of the deceased, the Tribunal ought to have decided the compensation on the basis of notional income. According to him, at the relevant time, the notional income of deceased Syd. Noor Ali ought to have been considered by the Tribunal at Rs.6,000/- per month.

9. It is not in dispute that the deceased was a mason at the time of his death which is unorganized labour. Considering the fact that he was a mason and had the skill regarding construction of buildings, the Tribunal was right in holding his income at Rs.350/- per day. However, since it was unorganized

labour and the deceased may not have worked everyday, in my view, the income at Rs.9,000/- per month would be just and proper. To that extent, I find substance in the argument of the learned counsel for the appellant and accordingly, the income of the deceased is assessed @ Rs.9,000/- per month.

10. Needless to mention that, in wake of the decision in the case of ***Pranay Sethi*** (supra), the Hon'ble Supreme Court held that for a person working on a fixed salary or self employed, an addition of 40% towards future prospects is to be given if he is below the age of 40 years. Therefore, I do not find force in the argument of the learned counsel for the appellant that the Tribunal ought not to have granted future prospects. However, it appears that the Tribunal has granted an addition of 50% towards future prospects which is to be reduced to 40% on assessing the income of the deceased.

11. The next argument of the learned counsel for the respondents is that, the Tribunal deducted 1/3rd of the assessed income towards personal expenses, whereas there are 5

dependents, therefore, 1/4th of the assessed income ought to have been deducted towards personal expenses. Let me state that the deceased was a bachelor and in case of ***Sarla Verma vs. Delhi Transport Corporation***, ***(2009) 6 SCC 121***, the Hon'ble Supreme Court has held that generally, in case of bachelors, the amount of 50% of the assessed income should be taken as a personal expenses of the deceased. However, if numbers of dependents are more than, the Tribunal can consider 1/3rd of assessed income as personal expenses of the deceased. Considering the number of dependents, the 1/3rd of the assessed income of the deceased should be deducted towards personal expenses which is rightly done by the Tribunal in the present case.

12. Perusal of the impugned award reveals that the multiplier applied by the Tribunal on the assessed income is 15. In the case of ***Pranay Sethi*** (supra), it has been held that while applying the multiplier, age of the deceased should be considered. The deceased was 28 years old at the time of his death. Therefore, I find substance in the argument of the

learned counsel for the respondents that the multiplier of 17 would be applicable.

13. In view thereof, the original claimants are entitled for the following compensation :

1.	The monthly notional income of deceased	Rs.	9,000/-
2.	Annual Income of the deceased (Rs.9,000/- x 12)	Rs.	1,08,000/-
3.	Since the deceased was below the age of 40 years at the time of his death **Add** – 40% future prospects as per the judgment of National Insurance Co. Ltd. vs. Pranay Sethi (2017) 16 SCC 680	(+)Rs.	43,200/-
		Rs.	1,51,200/-
4.	**Less** – 1/3rd deduction as per the judgment of Sarla Verma vs. Delhi Transport Corporation (2009) 6 SCC 121	(-)Rs.	50,400/-
5.	Salary for multiplier		1,00,800/-
6.	**Multiplier** of 17 as per the judgment of Sarla Verma vs. Delhi Transport Corporation, (2009) 6 SCC 121, applicable for the age group of 31 to 35	(x)Rs.	17,13,600/-
7.	**Add** Loss of consortium : Rs.40,000/- for each claimant as per the judgment of Magma General Insurance Co. Ltd. Vs. Nanu Ram, (2018) 18 SCC 130 followed in United India Insurance Co. Ltd. vs. Satinder Kaur, AIR 2020 (SC) 3076 (40,000/- x 3)	(+)Rs.	1,20,000/-
8.	**Add** Loss of Estate :	(+)Rs.	15,000/-
9.	**Add** Funeral Expenses	(+)Rs.	15,000/-
	Total compensation payable to the claimants.	**Rs.**	**18,63,600/-**

14. In the above said terms, the appeal is disposed of. Accordingly, the impugned award is modified.

15. The original claimants are entitled for the compensation amount of Rs.18,63,600/- alongwith interest @ 8.50% per annum from the date of petition till its realization.

16. The appellant would be entitled to the amount in enhanced compensation with accrued interest.

(M. W. CHANDWANI, J.)

Tambe.