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

FIRST APPEAL NO. 803 OF 2023

1. Salma Wd/o. Mohsin Memon,
   Aged 33 years, Occ. Household

2. Muskan D/o. Mohsin Memon,
   Aged 12 years, Occ. Nil

3. Sanobar D/o. Mohsin Memon,
   Aged 9 years, Occ. Nil

4. Asim S/o. Mohsin Memon,
   Aged 8 years, Occ. Nil

   No. 2 to 4 are minors through guardian
   mother appellant no. 1.

5. Rafik S/o. Daud Memon (dead)
   Aged 60 years, Occ. Business

6. Hamida W/o. Rafik Memon
   Aged 56 years, Occ. Household,
   All R/o. Bhavsar Ward, Ambetkar Layout,
   Ghutkala, Chandrapur, Tah. & Dist.
   Chandrapur. . . . **APPELLANTS**

// **V E R S U S** //

1. Santosh S/o. Bhaurao Dhengle,
   Aged 40 years, Occ. Driver,
   R/o. Sindoor, Tah. & Dist. Chandrapur.

2. Baljindersingh Jagtarsingh Bais,
   Aged not known, Occ. Transporter,
   R/o Sarkar Nagar, Mul Road, Chandrapur
   Tah. & Dist. Chandrapur.

3. Oriental Insurance Co. Ltd. Through
   its Branch Manager, Chandrapur Branch
   Dhanraj Plaza, Near Azad Garden,
   Chandrapur, Tah & Dist. Chandrapur. . . . **RESPONDENTS**

Shri N. A. Chawhan, Advocate for appellants.
Shri Lalit Limaye, Advocate for respondent no. 3.

<u>CORAM</u> :- M. W. CHANDWANI, J.

RESERVED ON :- 28.04.2025
PRONOUNCED ON :- 15.07.2025

<u>JUDGMENT</u> :-

Heard.

2. **Admit**.

3. This appeal is filed for enhancement of compensation awarded to the claimants in Motor Accident Claims Petition No. 152/2015 by the impugned award dated 20.12.2019 passed by the Motor Accident Claims Tribunal, Chandrapur (for short, "the Tribunal").

4. The claimants are dependents of Mohsin S/o. Rafik Memon (the deceased). On the fateful day i.e. on 01.01.2015, the deceased was proceeding from Sindewahi to Chandrapur by his car bearing registration No. MH34-AA-8474. The offending truck bearing registration no. MH34-AB-0705 coming from opposite direction, gave a dash to the car driven by the deceased whereby he suffered severe

injuries and died on the spot. An offence came to be registered against the driver of the offending truck vide Crime No. 1/2015 for the offence punishable under Sections 304A of the Indian Penal Code and also under Section 184 of the Motor Vehicles Act. The claimants, consisting of the wife, minor daughters, minor son and the parents who were dependent on the deceased had filed the Claim Petition before the Tribunal against the driver, owner as well the insurer of the said offending truck.

5. The learned Tribunal awarded a compensation of Rs.7,38,800/- by holding that there was contributory negligence in the occurrence of the accident on the part of the deceased to the extent of 50%. The learned Tribunal also discarded the Income Tax Return (ITR) of the deceased filed by the claimants since they were filed after the accident and there was no earlier history of filing of ITR by the deceased.

6. Mr. Chawhan, learned counsel for the appellants vehemently submitted that just because the deceased was holding a learning license, it cannot be presumed that he also contributed to the accident. The Tribunal wrongly held him liable for 50% of the contributory negligence. According to him, an ITR filed after the death of the deceased can be taken into account while assessing the income

of the deceased. To buttress his submission he seeks to rely upon the decision in the case of ***Rukmani Jethani Vs. Gopal Singh*** [1].

7. *Per contra*, Mr. Limye, learned counsel for the Insurance Company submitted that the judgment passed by the Tribunal is a well reasoned one. Considering the Tyre marks of the offending vehicle, the Tribunal held the deceased liable for contributory negligence to the extent of 50% for the accident. According to him, considering the fact that the deceased had not filed any ITRs prior to his death, the Tribunal has rightly disbelieved the income shown in the ITR which was filed after the death of the deceased and sought rejection of the appeal.

8. Having gone through the record and the impugned award, it transpires that the deceased was holding a learning license at the time of the accident and therefore, there is no doubt that the deceased was a learner. The trails of the Tyre marks of the offending vehicle on the spot also suggest that the driver of the offending vehicle tried to avoid the accident. Apart from that, it can also be seen that the accident was a head on collision. Hence, I do not find any substance in the argument of the learned counsel for the appellants that the deceased was not at fault at all. However, the Tribunal failed to

1 **2021 SCC Online SC 3496**

consider the principle of "*heavier the vehicle, heavier the responsibility*".

9. In the present case, the offending vehicle is a heavy motor-vehicle whereas, the car driven by the deceased is a light motor-vehicle within the provisions of the Motor Vehicles Act. Having considered that, in my view, the Tribunal erred in fixing the negligence to the extent of 50% on the deceased who was driving the car at the time of the accident. Therefore, the contributory negligence should be in the ratio of 2:1 considering the facts of the case and the nature of the vehicle driven by the drivers of the respective vehicles. Thus, the contributory negligence of the offending vehicle is fixed at 66.66% whereas, the contribution of the deceased to the occurrence of the accident is fixed as 33.33%.

10. This takes me to the next question of non-consideration of the income mentioned in the returns of the income of the deceased filed by the claimants. There is no doubt about the fact that those income tax returns have been filed on 30.03.2015 i.e. three months after the death of the deceased. It is also important to note that the appellants failed to prove that prior his death, the deceased was an assesse of the Income Tax Department. No documents connecting these ITRs with the business of the deceased have been filed by the

appellants. In view of this peculiar situation, the Tribunal has rightly discarded the income shown in the ITR for the reason that it was filed after the death of the deceased.

11. So far as, the decision in the case of ***Rukmani Jethani*** (supra) is concerned, in that case the deceased had already filed the return with the Income Tax Department prior to his death and in that scenario, the return filed subsequent to the death of the deceased was considered by the Supreme Court, which is not the case here.

12. It appears that the Tribunal has assessed the income of the deceased notionally and considered the income of the deceased as Rs.6,000/- per month. Here, it is to be noted that the deceased owned a car and was doing some business. That apart, the deceased was maintaining the appellants who were six in number at the time of his death and therefore, in my view the deceased would have been earning at least Rs.10,000/- per month. This aspect has been ignored by the Tribunal and it erred in assessing the income of the deceased @ Rs.6,000/- per month which is required to be corrected by holding the income of the deceased @ Rs.10,000/- per month at the time of his death.

13. Needless to mention that though, the Tribunal has awarded the compensation towards loss of consortium but it has been restricted to the extent of Rs.40,000/-. In the cases of ***National Insurance Co. Ltd. Vs. Vs. Pranay Sethi*** [2] and ***Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram*** [3] it has been held that the wife is entitled for spousal consortium @ Rs.40,000/-, the children are entitled for parental consortium @ Rs.40,000/- each and the parents are entitled for filial consortium consortium @ Rs.40,000/- each which has not been considered by the Tribunal.

14. In view of the above, the appellants are entitled to the following compensation :-

1.	Monthly notional income of the deceased fixed	Rs.	10,000/-
2.	Annual income of the deceased (Rs.10,000/- x 12)	Rs.	1,20,000/-
3.	**Add** – 40% future prospects as per the judgment of National Insurance Co. Ltd. vs. Pranay Sethi (2017) 16 SCC 680	(+) Rs.	48,000/-
		Rs.	1,68,000/-
4.	**Less** –1/4th deduction as per the judgment of Sarla Verma vs. Delhi Transport Corporation [(2009) 6 SCC 121]	(-) Rs.	42,000/-
5.	Salary for multiplier	Rs.	1,26,000/-
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 25 to 30 years (Rs. 1,12,000 X 17)	(x) Rs.	21,42,000/-

2 **(2017) 16 SCC 680**
3 **(2018) 18 SCC 130**

7.	**Less**- Deduction for contributory negligence @ 33.33%	(-) Rs.	7,13,929/-
		Rs.	14,28,071/-
8.	**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] (10% increase as per Pranay Sethi's Judgment) (Rs.40,000/- x 6)	(+) Rs.	2,40,000/-
9.	**Add** : Loss of Estate	(+) Rs.	15,000/-
10.	**Add** : Funeral Expenses	(+) Rs.	15,000/-
11.	Total compensation payable to the claimants	Rs.	16,98,071/-
12.	Compensation granted by the Tribunal	(-)Rs.	7,38,800/-
13.	**Enhanced Compensation to be paid to the appellants**	Rs.	9,59,271/-

15. Hence, I proceed to pass the following order:-

i) The appellants are entitled to the enhanced compensation along with interest @ 7.5% p.a. from the date of the petition till realization of the amount.

ii) The enhanced amount of compensation shall be deposited before the Tribunal within eight weeks from today.

iii) The appeal is partly allowed to the above extent.

(M. W. CHANDWANI, J.)

RR Jaiswal