



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

FIRST APPEAL NO.1022 OF 2010

1. The Divisional Manager,
F.D.C.M. Nagpur Divisional
Plot No.41, Anandnagar,
Jaitala Road, Nagpur.
2. Hanumantu s/o Narayan Embadwar,
Aged about ..years,
Occ : Driver, F.D.C.M. Nagpur
Divisional, Plot No.41, Anand Nagpur,
Jaitala Road, Nagpur. .. Appellants

..Versus..

1. Uma wd/o Tulsiram Karokar,
Aged about 39 years,
Occ : Household.
2. Dipak s/o Tulsiram Karokar,
Aged about 24 years,
Occ. : Student.
3. Sanjay s/o Tulsiram Karokar,
Aged about 22 years,
Occ. : Student.
4. Wasudeo s/o Tulsiram Karokar,
Aged about 21 years.
5. Namita d/o Tulsiram Karokar,
Aged about 15 years.
Occ. : Students.
6. Shravan s/o Mahadeo Karokar,
Aged about 70 year,
Occ. : Nil.

7. Kasabai w/o Shravan Karokar,
(Dead)

Nos.3 to 5 are minor through
natural guardian petitioner No.1
R/o. Surra Khapa, Tah. Saoner,
District-Nagpur. ..

Respondents

.....
Ms. Tajwar Khan, Advocate for Appellants.
Mr. Kunal Mirache, Advocate for Respondents.
.....

CORAM : PRAVIN S. PATIL, J.
DATED : 15.12.2025.

JUDGMENT

1. By way of present appeal, the challenge is to the judgment and order dated 8.2.2010 passed by the Motor Accident Claims Tribunal, Nagpur in Claim Petition No.216/2005. The appellants herein are the original respondents and the employer of the deceased.

2. On 21.11.2004 at about 12.00 noon along with officials of his department, deceased was travelling from Nagalawadi to Mugalwar. At that time, the present appellant no.2 was driving the said jeep in a high speed. Appellant no.2 applied the brake

of the jeep and at that time the deceased fell down from the vehicle on the road. In the said motor accident he had sustained fatal injuries and he succumbed to those injuries on the spot. This motor accident was registered at Bichua Police Station and offences were registered against the present appellant no.2.

3. In the background of this accident, the legal heirs of deceased moved an application for compensation before the Claim Tribunal. In their application, they have stated that deceased was working as a labour with appellant and he received monthly salary at the rate of Rs.2,500/- per month. Accordingly, they have prayed for compensation of Rs.3,50,000/- before the claim tribunal.

4. The present appellants have strongly opposed the claim petition before MACT, Nagpur. It is their contention that the deceased was negligent while he was occupying the vehicle and, therefore, he is also responsible for the accident. It is further stated by them that deceased was not a regular labour in the department and, therefore, they have denied the permanent salary at the rate of Rs.2,500/- per month to the deceased.

According to them, he was earning Rs.70/- to Rs.80/- per day as and when work made available to him by the department. According to them, at that time, he used to work for 10 to 15 days in the department. Hence, the amount claimed in the matter is exorbitant and the same cannot be granted.

5. In the light of the submission of the parties, the Claim Tribunal has decided the petition and by the impugned judgment and order has awarded the compensation of Rs.2,39,900/- along with interest to the legal heirs of the deceased.

6. The appellants herein challenged the appeal mainly on two grounds, firstly, the deceased was negligent while he was occupying the vehicle and secondly the amount of compensation in the matter is without considering the evidence which was made available on record. Hence, according to them the judgment and order needs consideration by this court.

7. The learned counsel for the respondents stated that the learned Tribunal has rightly determined his monthly income at the rate of Rs.1,800/- per month and thereby awarded the just

and reasonable compensation by applying the multiplier. His only grievance is that in view of the judgment of Hon'ble Supreme Court of India in the case of *National Insurance Company Limited .vs. Pranay Sethi and others, reported in (2017) 16 SCC 680* and other cases he is entitled for the future prospects, additional amount towards the loss of consortium, loss of estate and funeral expenses in the matter, hence he seeks enhancement in the claim on the conventional heads in the matter.

8. After hearing both the parties in the matter, it is admitted fact that the deceased was working as a labour. The appellant, who entered into the witness box, has orally stated that he was not working entire month in the department, but in support of the same, no documentary evidence was placed on record. The appellant no.1 was the best persons to produce on record the relevant records such as attendance register or the pay register of the employees maintained by department of the daily-wagers workings in the department and could have establish this fact. However, there is only oral evidence on record without any support of documentary evidence. Hence,

this oral statement in absence of documentary evidence cannot be accepted in the matter.

9. The appellant has admitted the fact that the deceased was working as a labourer in the department on daily wages basis. Hence it is expected to pay the amount to daily wagers at the minimum rate. Therefore, the conclusion drawn by the learned tribunal that he was earning Rs.1,800/- per month cannot be said to be exorbitant in the matter. In my view, the conclusion drawn by the learned tribunal in the matter is just and proper.

10. In respect of contributory negligence, it is well established principles of law that if the employer came with submission that there is a breach of policy or negligence then they have to establish on record by strict proof as to how accident took place and specific evidence as to how deceased was responsible for the same. In present case, deceased was occupant of vehicle, therefore, it was more important to establish on record, as to how, he was negligent in accident. In such circumstances, driver of the vehicle would have been the best person to examine by the appellants, but admittedly the

driver of the vehicle was not examined in the matter. Only this Wasudeo Pundlik Haranje, who is a Range Forest Officer, was examined. He failed to disclose that he was also travelling in the vehicle at the time of the accident. Hence, in absence of specific evidence on record, the submission of the appellants cannot be accepted that deceased was responsible for accident. Moreover, it is well settled principles of law that court should not take hyper-technical approach and ensure that just compensation is awarded to the claimants.

11. It is further submitted by the appellant that in the appeal filed by the insurance company, the appellant cannot claim enhancement of compensation in the matter. According to the appellant, unless there is a separate appeal or cross-objection/appeal, it is not permissible to enhance the compensation in the matter.

12. In this regard, it will be proper to refer the judgment of the Hon'ble Supreme Court of India in the case of *Jitendra Khimshankar Trivedi and others .vs. Kasam Daud Kumbhar and others, reported in MANU/SC/0093/2015*, wherein Hon'ble Supreme Court has observed in para 13 as under :

13. The tribunal has awarded Rs.2,24,000/- as against the same, claimants have not filed any appeal. As against the award passed by the tribunal when the claimants have not filed any appeal, the question arises whether the income of the deceased could be increased and compensation could be enhanced. In terms of Section 168 of the Motor Vehicles Act, the courts/tribunals are to pass awards determining the amount of compensation as to be fair and reasonable and accepted by the legal standards. The power of the courts in awarding reasonable compensation was emphasized by this Court in Nagappa v. Gurudayal Singh and Ors. MANU/SC/1107/2002: (2003) 2 SCC 274, Oriental Insurance Co. Ltd. v. Mohd. Nasir and Anr. MANU/SC/0899/2009: (2009) 6 v. United India Insurance Co. Ltd. SCC 280, and Ningamma and Anr. MANU/SC/0802/2009: (2009) 13 SCC 710. As against the award passed by the tribunal even though the claimants have not filed any appeal, as it is obligatory on the part of courts/tribunals to award just and reasonable compensation, it is appropriate to increase the compensation.”

In view of this settled principles of law, I am of the opinion that the respondents-claimants can claim enhancement of compensation in the matter.

13. In respect of compensation awarded by the tribunal, it is prima facie seen that the tribunal failed to award the compensation towards the future prospects, there are seven

dependents of the deceased and there is a deduction of 1/3rd towards the personal expenses.

14. In my opinion, the respondents' legal heirs are entitled for the enhancement of compensation, as under :

Rs. 1,800/- x 12 = Rs.21,600/-	Income per month of the deceased Months
Rs. 21,600/- + Rs. 8,640/- = Rs.30,240/-	Per annum 40 % towards future prospects
Rs.30,240/- - Rs.6,048/- = Rs.24,192/-	1/5th deduction
Rs.24,192/- x 16 = Rs.3,87,072/-	Multiplier
Rs.10,000 x 7 = Rs.70,000/-	Loss of consortium
Rs. 10,000/- + Rs. 10,000/- = Rs.20,000/-	Loss of estate and funeral expenses
Rs.4,77,072/-	Total Compensation

15. It is herewith clarified that in the present matter the accident has been occurred on 21.11.2004. Therefore, in my view, the amount determined by Hon'ble Supreme Court of India in the case of *National Insurance Company Limited .vs. Pranay Sethi and others (supra)* under conventional heads at the rate of Rs.15,000/- is not justified. Therefore, I have quantified the compensation towards the loss of consortium, loss of estate and funeral expenses at the rate of Rs.10,000/-.

16. So also it is admitted fact in the matter that the appellant-insurance company has already deposited the entire amount of compensation awarded by the Tribunal before this Court. Some of the amount has already been withdrawn by the claimants. Hence, in my view, the appellants will be entitled for the interest on the compensation of enhanced amount only.

17. In view of above, I proceed to pass the following order :

O R D E R

(1) The appeal is partly allowed.

(2) The impugned judgment and order dated 8.2.2010 passed by the Motor Accident Claims Tribunal, Nagpur in Claim Petition No.216/2005 is modified to the extent that the respondent nos.1 to 7 are entitled for the compensation amount of **Rs.4,77,072 (-) Rs.2,39,900 = Rs.2,37,172/-** and it is made clear that respondent nos.1 to 7 will be entitled for the interest on amount of **Rs.2,37,172/-** at the rate of 7.5 % interest per annum from the date of judgment of this Court till its realization.

(3) Appellants pointed out that the amount awarded by the MACT is already deposited before this Court and some amount has been withdrawn by the respondents. Hence, appellants are directed to deposit the enhance amount of compensation with the Registry of this Court within a period of three months and the respondent no.1 is permitted to withdraw

the same after deposit of the amount.

(4) There shall be no order as to costs.

(Pravin S. Patil, J.)

Gulande.