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

FIRST APPEAL NO. 61 OF 2023

1. Nirjala wd/o Arun Meshram
   Aged about 58 years, Occ. Household

2. Vinal s/o Arun Meshram
   Aged about 37 years, Occ. Private

3. Snehal d/o Arun Meshram
   Aged about 35 years, Occ. Household

4. Mansi d/o Arun Meshram
   Aged about 29 years, Occ. Household

   All R/o. MIG 1 Quarter No.B3/43,
   Nara Road, Hudko Colony, Jaripatka,
   Nagpur – 440014

... **Appellants**

Versus

1. Sunil s/o Shriram Ramteke
   Aged 56 years, Occ. Owner
   R/o. At Shirdi Nagar, Bhudura Fata,
   Umred Road, Nagpur

2. The Regional Manager
   The New India Assurance Co. Ltd.,
   Riaan House, 1st Floor, Mohan Nagar,
   Near Kasturchand Park, Nagpur.

...**Respondents**

Ms. Rohini Mankar, Advocate for appellants.
Mr. M.M. Agrawal, Advocate for respondent No.1.
Ms. S.H. Bhatia, Advocate for respondent No.2.

CORAM : ROHIT W. JOSHI, J.
DATE : 06.02.2025.

ORAL JUDGMENT:

Heard finally with consent of learned counsel for the parties.

(2) The original petitioners have filed present appeal under section 173 of the Motor Vehicles Act, 1988, dissatisfied with the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Additional Court, Nagpur in Claim Petition No.1120/2016, decided by the judgment and award dated 05.04.2022.

(3) The appellant No.1 is widow, appellant No.2 is son and appellant Nos.3 and 4 are daughters of deceased, Arun Pandurang Meshram, who died in road accident on 05.08.2016. The respondent No.1 is the owner of the offending vehicle which was insured with the respondent No.2, at the relevant time.

(4) The case of appellants before the learned Tribunal is that the deceased was in private service and was earning income of Rs.25,000/- per month. At the time of his sad demise, he was 50 years old and on this basis, the appellants claim compensation of Rs.48,37,500/-.

(5) The respondent Nos.1 and 2 filed written statement disputing the claim. Based on rival pleadings, issues were framed in the matter. The appellant No.1 has entered the witness box on behalf

of the appellant/original petitioners. The respondent did not lead any evidence in the matter.

(6) Ms. Mankar, learned counsel appearing for the appellant contends that the monthly income of the deceased was Rs.19,200/- which was duly proved by examining the employer. The salary certificate issued by the employer is proved during the course of the evidence and marked as Exhibit 33. She argues that the respondent have not led any evidence in order to disbelieve the salary certificate.

(7) Apart from this, she also contends that the learned Tribunal has awarded compensation under the head of consortium of Rs.44,000/- in all whereas consortium ought to have been awarded to all the four petitioners @ Rs.44,000/- each. She also submits that learned Tribunal has erred in granting interest on the compensation. She submits that interest ought to have been awarded @ 9% p.a. as against @ 6.5 % p.a. awarded by the learned Tribunal.

(8) Per contra, Ms. Bhatia, learned counsel for the respondent No.2 contends that the appellants have failed to bring on record any believable material to establish that the deceased was earning Rs.19,200/- per month. She criticizes, the evidence of alleged employer PW-2 and salary certificate by drawing attention to the Shops and Establishment License produced and exhibited during the course of evidence of PW-2, in order to point out that the date of commencement of business as mentioned in the registration certificate is 01.03.2017 and deceased has breathed his last on 05.08.2016. She also contends that the salary certificate is not supported by any other documentary evidence, such as salary register or bank statement etc.

(9) The learned Tribunal has discarded the salary certificate and evidence of PW-2 and computed the compensation under the head of financial dependency by taking notional income of Rs.6,000/- per month. It may be mentioned that there is no dispute between the parties, as regards, the multiplier adopted and the percentage of future prospect.

(10) In view of the submissions canvassed before me, following points arise for my determination:-

(i) What should be the amount of compensation to be awarded to the appellants for loss of financial dependence ?

(ii) What is the amount of compensation that should be awarded under the head 'loss of consortium' ?

(iii) What should be the rate of interest ?

(11) Point No. (i) - It is true that the appellants have failed to bring on record any reliable evidence in support of their contention that the deceased was drawing monthly salary of Rs.19,200/-. The learned counsel for respondent No.2 has rightly pointed out that the salary certificate is completely unbelievable inasmuch as the date of commencement of the business is subsequent to the date of sad demise of the deceased. The salary certificate as well as the evidence of PW-2 are of no help to the appellant. The appellants have failed to prove that the deceased was employed with PW-2 and further that he was drawing monthly salary of Rs,19,200/-. The learned Tribunal was right in computing the dependency on the basis of notional income of the deceased. However, in my considered opinion, the amount of Rs.6,000/- that is considered by the learned Tribunal is on the lower side. The deceased was 50 years old at the time of his demise. He was residing at Nara Raod, Hudko Colony, Jaripatka, Nagpur. He was supporting family of five people, including himself. By the modest of estimates, if the house was owned by him, it must be around Rs.12 to 15 Lakhs. Assuming that the house was a rented accommodation, then also with the modest of estimate, the rent for same will not be less than Rs.4,000/- to Rs.5,000/-. This gives a clue about his income.

(12) In my considered opinion, the monthly notional income should have been taken at Rs.9,000/- minimum. The deceased was survived by four dependents and therefore, ¼th deduction will have to be made for personal expenses. Likewise, future prospect will have to be awarded @ 25%, on which, there is dispute between the parties. The loss of financial dependence, thus, works out at Rs.8437.50 per month i.e. Rs.1,01,250/- per year. Multiplier of 13 is adopted by the learned Tribunal, which is also not disputed by the parties. In such circumstances, the total compensation payable under the head of loss of financial dependency is works out at Rs.13,16,250/-.

(13) Point No.(ii) - The learned Tribunal has awarded consolidated amount of Rs.44,000/- towards loss of consortium. Infact, there are four dependents and each of them is entitled to a sum of

Rs.44,000/- independently towards loss of consortium. A sum of Rs.1,76,000/- ought to have been awarded under this head.

(14) Point No.(iii) - As regards, the rate of interest, the learned counsel for respondent No.2 vehemently submits that prevailing bank rate of interest is around @ 6% to 6.5% for fixed deposit. She also points out from the record that time of around 13 months was consumed by the appellants for examining the witnesses. She, therefore, contends that there should be no interference with respect to the rate of interest awarded by the learned Tribunal.

(15) Per contra, the learned counsel for the appellants contends that interest @ 7.5% to 9% is routinely being awarded by this Court as well as the Hon'ble Supreme Court. She submits that there is no reason for reducing the rate of interest in the present case.

(16) Having heard the respective submissions, in my considered opinion, end of justice would be met, if interest is awarded @7.5% p.a., payable from the date of filing of the petition.

(17) In view of the above, the appellants are entitled to receive compensation of Rs.15,25,250/-, the breakup whereof is as under :

(a) Rs. 13,16,250/- Loss of financial dependence;

(b) Rs. 1,76,000/- Loss of consortium (Rs.44,000/- x 4);

(c) Rs. 16,500/- Funeral expenses ;

(d) Rs. 16,500/- Loss of estate.

The appellants are entitled to receive the said amount with interest @7.5% per annum from 26.10.2016 i.e. the date of filing of claim petition till the date of realization of entire amount.

(18) Thus, the appeal is partly **allowed** in the following terms : -

O R D E R

1. The appellants are entitled to receive and the respondent Nos.1 & 2 are jointly and severally liable to pay amount of Rs.15,25,250/- (Rs. Fifteen Lakhs Twenty Five Thousand Two Hundred and Fifty Only) along with accrued interest @7.5% p.a. from 26.10.2016 i.e. date of filing of the claim petition till the date of realization of the said amount.

2. The respondent Nos.1 and 2 are directed to jointly and severally pay enhanced amount of

compensation of Rs.5,70,750/- (Rs. Five Lakhs Seventy Thousand Eight Hundred Eighty Five Only) to the appellants along with accrued interest @ 7.5% p.a. from 26.10.2016 i.e. date of filing of the claim petition till the date of realisation of entire amount of compensation.

3. Compensation amount be apportioned amongst appellants as under:

Appellant No.1	-	40%
Appellant Nos.2 to 4	-	20% each

4. The appellants are directed to pay deficit court fee, if any.

[ROHIT W. JOSHI, J.]