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

FIRST APPEAL NO. 1080 OF 2009

1) Smt. Safiyabi wd/o Sk. Shakur,
Age 35 years, Occ.- Household Work,

2) Ku. Rafiyabi d/o Sk. Shakur,
Age 19 years, Occ. - Household Work,

3) Sk. Ezaz s/o Sk. Shakur,
Age 15 years, Occ. - Student,

4) Ku. Ashabi d/o Sk. Shakur,
Age 14 years, Occ. - Student,

5) Ku. Parvinbi d/o Sk. Shakur,
Age 13 years, Occ.- Household Work,

6) Ku. Farheenabi d/o Sk. Shakur,
Age 12 years, Occ.- Household Work,

7) Ku. Sakinabi d/o Sk. Shakur,
Age 11 years, Occ.- Household Work,

Nos. 3 to 7 are minors by next friend
Smt. Safiyabi wd/o Sk. Shakur,

All R/o. Babbusaheb Scooter Mechanic,
Scooter Care Centre, Near Akola Taluka
Society Petrol Pump, Akot Stand,
Akola, Tahsil & District Akola. .... APPELLANTS

VERSUS

1) Satish Chandulal Bafna,
Adult, R/o 280/1, "Kundan", Mahatma
Fule Peth, Timber Market Road, Pune,
Tq. & Distt. Pune.

2) Bank of Maharashtra,
Through its Branch Manager,
Bhavani Peth, Pune, Tq. & Distt. Pune.

[Nos. 1 & 2 Legal heirs of Deceased
Respondent No. 1, Shri Dadabhau
s/o Sakharam Pathare,]

3) Maharashtra State Road Transport Corporation,
through its Chairman, Vah Tukbhavan,
Mumbai Central, Mumbai-4.

4) Babasaheb s/o Madhavrao Nalkul,
Age 43 years, Occ. - Driver,
R/o Chinchodi Patil, Tq. & Distt. Ahmednagar.

5) Sk. Lal s/o Sk. Gulab,
Age 47 years, Occ. - Business,
R/o Mankarna Plots, Akola, Tq. & Distt. Akola.

6) National Insurance Co. Ltd..,
through its Branch Manager, Gandhi Road,
Akola, Tq. & Distt. Akola.

7) The United India Insurance Co. Ltd.,
through the Branch Manager, Branch Office,
Old Cotton Market, Akola, Tq. & Distt.
Akola. .... **RESPONDENTS**

Mr. C.A. Joshi, Advocate for the appellants,
None for respondent Nos. 1 to 5,
Mr. V.P. Maldhure, Advocate for respondent No.6,
Mr. Jain, Advocate h/f. Mr. M.R. Joharapurkar, Advocate for resp. No.7.

CORAM : ABHAY J. MANTRI, J.

DATE : 16-07-2025

ORAL JUDGMENT :

The original claimants, being dissatisfied with the judgment and order dated 09-04-2007 passed by the learned Chairman, M.A.C.T., Akola (hereinafter referred to as the "***Tribunal***") in M.A.C.P. No.

37/2001, whereby the claim of the claimants was partly allowed, have preferred this appeal for enhancement of compensation.

2. On 12-11-2001, deceased Sk. Shakur was travelling by Truck No. MH-31/W-2636 (for short- "***Truck No. 2636"***) from Akola to Pune as a second driver on the said truck. When the truck reached near Narayangavhan, at about 10:30 p.m., the offending Truck bearing No. MTQ-2241 (for short- "***Offending Truck No. 2241"***) came from the opposite direction at high speed in a rash and negligent manner and gave a dash to the Truck No. 2636. In addition to this, the bus No. MH-20/D-2575, following offending truck No. 2241, gave it a dash from the rear. The accident was caused by the driver of the offending truck No. 2241 and the bus driver's rash and negligent driving. In the said accident, the deceased had sustained grievous injuries and he succumbed to them. Accordingly, Police Constable Kusalkar lodged the report at Parner Police Station. Based on the report above, an offence was registered vide Crime No. I-242/2000 for an offence punishable under Sections 304-A, 279, 337, and 427 read with Section 34 of the Indian Penal Code and Sections 163 and 184 of the Motor Vehicles Act.

3. Opponent No. 1 was the owner of the offending truck No.2241. The opponent, No. 2, the owner of the offending bus, has been served. Opponent No. 3 is the bus driver. Opponent No. 4 is the

owner of the truck bearing No. Mh-31/W-2636. Opponent No. 5 is the insurer of truck No. Mh-31/W-2636 and respondent No.6 are the insurer of the offending truck.

4. At the time of the accident, the deceased was 32 years of age and was working as a truck driver. His salary was Rs. 5,000 per month, and he received a bhatta of Rs. 1,000 per month. All the claimants are dependents of the deceased, due to the death of Sk. Shakur, the claimants, suffered a loss; therefore, they filed the claim petition for compensation.

5. Opponent No. 1 was the owner of the offending truck. During the pendency of the claim petition, he succumbed to death and thereupon his legal heir, opponent No. 1-A, was brought on record. However, he did not file the written statement and, therefore, the said claim petition was proceeded with '*without written statement*'.

(a) Opponent No. 1-B, Bank of Maharashtra, filed its written statement contending that they have only provided the finance to opponent No. 1-A and the said truck was hypothecated with the bank and, therefore, they are not responsible for paying the compensation.

(b) Opponents Nos. 2 and 3 filed their written statement, denying the contents of the petition in toto. They have categorically denied that the accident was caused by their negligence. However, due to the fault of the truck driver of the offending truck No. 2241, which was proceeding ahead of the bus, the bus gave a sudden dash to the rear side of the offending truck, and the offending truck No. 2241 collided with the truck No. 2636, which was coming from the opposite direction. Hence, it was contended that they are not liable to pay the compensation. Alternatively, it is stated that the accident occurred due to the contributory negligence of all the drivers.

6. Despite service of notice, none appeared for Opponent No.4. As such, the claim was proceeded ex parte against him.

7. Opponents Nos. 5 and 6, Insurance Companies, have filed their written statements and denied the contents of the petition. They categorically denied that the deceased was working as a driver of the truck. They both denied that the truck drivers, whose trucks were insured with them, were responsible for the accident, but the bus driver was negligent in driving the vehicle rashly and carelessly. They also denied the age and income of the deceased and, therefore, they contended that the truck drivers of their vehicles were not responsible for the accident and they are not liable to pay the compensation. Alternatively, both parties have submitted that the accident occurred, involving all the vehicles. Hence, contributory negligence on the part of

all the drivers can be inferred. Therefore, they have prayed for exoneration from paying the liability.

8. Based on the rival pleadings of the parties, the learned Tribunal had framed the issues. Pursuant to the issues, the claimants examined claimant No. 1 and produced and proved the documents. Opponent No. 3 bus driver examined himself. Except for opponent No. 3, none of the opponents adduced any evidence in support of their defence. After considering the material and evidence on record, the learned Tribunal partly allowed the petition, holding that opponents Nos. 4 and 5 are jointly and severally liable to pay 50% compensation to the claimants, opponent Nos. 1-A and 6 are jointly and severally liable to pay 30% compensation, and opponents Nos. 2 and 3 are jointly and severally liable to pay 20% compensation to the claimants. Being dissatisfied with the same, the claimants have preferred this appeal.

9. Heard the learned Advocates for the appellant and respondent Nos. 5 and 6. None appears for the other respondents. Perused the impugned judgment, record and proceedings. The following points arise for determination.

(i) *Whether the appellants are entitled to enhanced compensation*?

(ii) *Whether any interference is required in the impugned judgment and order*?

<u>Point Nos. (i) & (ii)</u> :

10. It is pertinent to note that none of the respondents have challenged the impugned judgment and order, which itself indicates that they have no grievance about the findings recorded by the learned Tribunal. Likewise, they are disgruntled by the impugned judgment and order. Thus, it appears that they have accepted the findings recorded by the learned Tribunal. The appellants/claimants are challenging the impugned judgment and order solely on the point of quantum, and they do not dispute the remaining findings recorded by the learned Tribunal. Thus, the short question that arises before me is '*whether the claimants are entitled to the enhanced compensation as claimed*'.

11. It is not in dispute that before the passing of the judgment in ***National Insurance Company Ltd. v. Pranay Sethi and Ors., (2017 (16) SCC 680***, (for Short- ***Pranay Sethi***) the impugned judgment was passed; therefore, the question to deal with the mandate in the said judgment does not arise by the learned Tribunal while passing the impugned judgment and order.

12. The learned Advocate for the appellants has submitted that in view of the mandate in ***Pranay Sethi*** (supra), the appellants are entitled to the enhanced compensation. The learned Advocates for respondent Nos. 5 and 6 do not dispute the mandate laid down in ***Pranay Sethi,*** and, therefore, they do not dispute the grant of compensation as per the law laid down in it. Thus, in my view, it would be proper to grant the enhanced compensation to the appellants as per the law laid down in ***Pranay Sethi's*** case, if any claimants are entitled.

13. The next submission advanced by the learned Advocate for the appellants is that at the time of the accident, the deceased was 32 years old. However, the Tribunal has erred in holding that at the time of the accident, the deceased was 40 years old. He has taken me through the pleadings and evidence of P.W. 1 and submitted that the evidence of P.W. 1 regarding the deposition in respect of the age of the deceased, that he was 32 years old, remained unchallenged; therefore, there is no reason to discard the said finding. On the other hand, the learned Advocates for respondent Nos. 5 and 6 vehemently contended that in the Post-Mortem Report (Exhibit No. 60), the deceased's age was stated to be approximately 40 years. The learned Tribunal has rightly considered the same and, therefore, no interference is required in the said findings in appellate jurisdiction.

14. Having considered the rival submissions, the crucial question that arises is what the age of the deceased was at the time of the accident/death. It appears that the claimants in the petition have categorically stated that at the time of the accident, the deceased was 32 years old. On the contrary, respondent Nos. 5 and 6 categorically denied that the deceased was 32 years old. In such circumstances, the burden was cast on the claimants to prove the age of the deceased; however, the claimants have not produced any documentary evidence in that regard on record. The claimant, No. 1, in her testimony deposed that at the time of the accident, the deceased was 32 years old. Her testimony, although not disputed, has to be considered in light of the fact that in the Post-Mortem Report, the deceased's age is given as 40 years. The P.M. report was produced and proved by the claimants themselves. However, the claimants have not disputed the age mentioned in the said document, which is a proven and exhibited document.

15. Apart from this, according to the claimants, the deceased was the truck driver and he was holding a licence, but despite the said contention, the claimants have not produced a certified copy of the licence on record. However, along with the police papers, a Xerox copy of the deceased's licence is produced on the record of the Tribunal,

indicating that the licence was issued in favour of the deceased in 1980. Indeed, after attaining the age of majority, the said licence was issued in favour of the deceased. (Accident occurred in 2001, i.e. 18+21=39 years) Secondly, according to the claimants, the deceased studied up to the 4th Standard, but they failed to produce his school-leaving certificate or any other document on record. However, to suppress the actual age of the deceased, they have not produced the best available evidence regarding the deceased's age. On the contrary, the Xerox copy of the deceased’s driving licence prima facie indicates that at the time of the accident, the deceased was at least 39 years of age or above 38 years of age. This leads to the inference that the deceased was above 35 years old.

16. *Moreover*, it appears that appellant Nos. 2 to 7 are the children of the deceased, and appellant No. 1, which also leads to the inference that the deceased was above 35 years of age, as the minimum age of the deceased at the time of marriage was 21 years.

17. The learned Tribunal in paragraph No. 22 of the judgment has considered the rival contentions of the parties and held that at the time of the accident, the deceased was about 40 years of age. Thus, I do not find any perversity or illegality in it.

18. The next point argued is what multiplier should apply to the deceased. Whether the deceased was under or over 40 years old. However, the learned Tribunal held that the deceased was 40 years old. Moreover, in the Post-Mortem Report, the deceased's age was approximately mentioned as 40 years. Neither of the insurance companies has challenged the said findings, and, therefore, there is no reason to dispute the said findings. Though the learned Advocates for the Insurance Companies vehemently contended that at the time of the accident, the deceased was above 40 years of age, no documents to that effect have been produced on record to demonstrate that the deceased was above 40 years of age. Likewise, they have neither pleaded nor put a suggestion to the witness that at the time of the accident, the deceased was above 40 years. They only denied that the deceased was 32 years old. No record has been brought to show that the deceased was above 40 years of age. But the evidence of claimant No. 1 and the Post-Mortem Report indicate that the deceased was 40 years old. Therefore, in my view, at the time of the accident, the deceased was between the age groups of 35 and 40; therefore, the multiplier of 15 would be applicable.

19. The learned Advocate for the appellants further canvassed that the learned Tribunal has not considered the income of the

deceased as Rs. 6,000/- per month, as claimant No. 1 has deposed the same. However, she has not produced any document on record to show that the deceased was getting an income of Rs. 6,000/- per month. The respondents have categorically denied the income in the pleadings as well as in the evidence; therefore, the burden lies on the claimants to prove that the deceased was receiving a salary of Rs. 5,000/- and Rs. 1,000/- as bhatta. Failure to produce the best available evidence leads to drawing an adverse inference that the deceased was not receiving the said income. The claimants, to prove the deceased's income, have not examined the truck's owner or the co-driver on the truck. He has not produced any receipt or document on record to show that the deceased was working as a driver and earning Rs. 6,000/- per month. Therefore, I do not find any substance in his argument in that regard. After considering the evidence on record, the learned Tribunal, in paragraph 23, held that the deceased was earning Rs. 3,000 per month. Therefore, I do not find any unreasonableness or unjustifiability in the said finding to interfere with the appellate jurisdiction.

20. Now, turning to the next question that arises, the learned Tribunal, while considering the dependency, has deducted 1/3rd of the amount towards personal expenses of the deceased. However, considering the dependents of the deceased, as per the decisions in ***Sarla Verma & Ors. v. Delhi Transport Corporation and Anr., AIR 2009 SC***

3104 and ***Pranay Sethi*** (supra), it would be proper to deduct 1/5th amount towards the personal expenses of the deceased instead of 1/3rd. Accordingly, the calculations will have to be made. The Tribunal's finding, to the extent of deducting 1/3rd of the amount for the deceased's personal expenses, is required to be set aside in the appeal. Instead, I hold that there were seven dependents on the deceased. Therefore, in view of the mandate laid down in the case of ***Sarla Verma*** (supra), 1/5th of the amount towards personal expenses is required to be deducted from the income of the deceased.

21. Having considered the above discussion, in my view, the appellants are entitled to enhanced compensation as per the law laid down in the case of ***Pranay Sethi*** (supra).

22. To determine the compensation, I would like to mention the following facts that emerge from the pleadings and evidence:

(a) **Income** of the deceased was **Rs. 3,000/- per month**.

(b) The **age** of the deceased was **40** years,

(c) There were **seven dependents** on the deceased; 1/5th deduction of the income towards his personal expenses, i.e. Rs. **600/-**, thus the income should be considered as Rs. **2400**/-pm.

(d) The **multiplier** of **15** applies as he was between the ages of of 35 and 40 years.

23. It is pertinent to note that while passing the judgment in ***Pranay Sethi*** (supra), the Hon'ble Apex Court determined the consortium amount for loss of estate Rs. 15,000/-; loss of consortium Rs. 40,000/- and funeral expenses Rs. 15,000/- with the enhancement of 10% every three years. The Hon'ble Apex Court has determined the same in the year 2017; therefore, in my view, it would be proper to consider the enhancement of the said amount from the date of the said judgment, 10% every three years and not from the date of the accident as claimed by the claimant's advocate. Thus, claimant No.1 is entitled to consortium for Rs. 40,000/- under the head of spousal consortium and claimant Nos. 2 to 7 are entitled to Rs. 40,000/- each under the head of filial consortium with 10% increases as above.

24. The upshot of the above discussion is that the appellants have proved that they are entitled to enhanced compensation and, therefore, to that extent, interference is required in the impugned judgment and order in the appellate jurisdiction. Hence, I answer point Nos. (i) and (ii) in the affirmative.

25. It is evident that the Tribunal, while awarding the compensation, observed that all the claimants are equally entitled to get the compensation. However, considering the factual position, I

disagree with the said finding recorded by the learned Tribunal. Therefore, I modify the same by interfering with the finding above.

26. As a result, the appellants are entitled to get the compensation as under :

Sr. No.	**Compensation Heads**	**Amount Awarded**
(i)	Net Income	Rs. 36,000/-p .a.
(ii)	After deduction towards personal expenses as 7 dependents (1/5)	Rs. 7,200/- (Rs. 36000- Rs. 7200 = Rs. 28,800/-)
(iii)	Towards Future Prospects as age is below 40 (40%)	Rs. 11,520/-
(iv)	Multiplicand	Rs. 40,320/- (Rs. 28,800+ Rs. 11,520)
(v)	Multiplier as age is between 36-40	15
(vi)	Loss of Income of the deceased	Rs. 6,04,800 /- (Rs. 40,320 x 15)
	Compensation to be awarded (A)	**Rs 6,04,800/-**

Sr No.	**Conventional Heads**	**Amount**
(i)	Funeral Expense (15,000 with 10% increase every 3 years from 2017)	Rs. 18,150/-
(ii)	Loss of Estate (15,000 with 10% increase every 3 years from 2017)	Rs. 18,150/-
(iii)	Loss of Consortium to each of 7 Dependents (40,000 with 10% increase every 3 years from 2017)	Rs. 3,38,800/- (Rs. 48,400 x 7)
	Compensation under Conventional Head (B)	**Rs. 3,75,100/-**

<u>Total Compensation</u>

Total Compensation to be Awarded (A+ B)	Rs. 6,04,800/- + Rs. 3,75,100/- **= Rs. 9,79,900/-**

27. The appeal is accordingly partly allowed. Respondent Nos. 1, 3 to 6 (herein) are directed to deposit the enhanced compensation before the Tribunal within eight weeks as per the proportion awarded by the Tribunal. On deposit of the said amount, the appellants are entitled to withdraw the same without making any further application. Claimant No.1, being the widow and mother of all the claimants, is entitled to get 40% of the said compensation amount, as she was taking care of all the children, and claimant Nos. 2 to 7 are entitled to get 10% of the compensation amount.

28. The rest of the judgment and order, except to the extent of enhancement of compensation and apportionment of the share of the appellants as observed above, shall remain as it is.

(ABHAY J. MANTRI, J.)

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