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

FIRST APPEAL NO. 36 OF 2011

1) Smt. Kankam Malikamma w/o Ramulu,
Aged about 36 years, Occ. - Household,

2) K. Sharawan Kumar s/o Ramulu,
Aged about 19 years, Occ. - Education,

3) Ku. K. Shrawani d/o Ramulu,
Aged about 17 years, Occ. - Education,

4) K. Rajaiah s/o Bagaiah,
Aged about 67 years, Occ.- Nil,

5) ~~K. Madanamma w/o Rajaiah~~ - (Deleted as per order dt. 03-11-2017)
~~Aged about 61 years, Occ. - Nil~~,

Appellant Nos. 2 and 3, being minors, are represented by their mother and Natural Guardian mother the applicant No. 1.

Applicant Nos. 1 to 3 are r/o. Uparwahi, Tahsil – Korpana, District – Karimnagar (A.P.) …. **APPELLANTS**

VERSUS

1) The National Insurance Company Ltd.,
through the Branch Manager : on R.A.
The National Insurance Co. Ltd.,
Chandrapur.

2) Smt. Nirmala w/o Harjeet Singh Ghotra,
Aged – Major, Occupation – Transport,
R/o Padoli, Tahsil and District Chandrapur.

3) ~~Indrajith Munsiram Sharma~~ -(Appeal dismissed against him vide order dt. 16-8-2011)
~~Occupation – Driver~~,
~~R/o Bhiwapur Ward, Chandrapur~~,
~~Tahsil and District Chandrapur~~. …. **RESPONDENTS**

Ms. Diksha Kamwani, Advocate h/f. Mr. M. Anilkumar, Advocate for the appellants,
None for the respondents.

CORAM : ABHAY J. MANTRI, J.

DATE : 26-08-2025

ORAL JUDGMENT :

Appellants/original claimants, being dissatisfied with the judgment and award dated 04-02-2009 passed by the learned Member, Motor Accident Claims Tribunal, Chandrapur (hereinafter to be referred to as '***the Tribunal***') in M.A.C.P. No. 179/2003, whereby the claim of the claimants was partly allowed, have preferred this appeal.

2. The original claimants/applicants have filed the claim petition as the deceased K. Ramulu s/o K. Rajaih died in a motor vehicle accident on 10-08-2003. Claimant No. 1 is the widow, claimant Nos. 2 and 3 are the children, claimant Nos. 4 and 5 are the mother and father of the deceased.

3. On 10-08-2003 at bout 4-00 p.m., deceased K. Ramulu was passing through Gadchandur-Nanda-Bibi Road by walking. At that time, one Truck bearing registration No. MH-34/A-4709 (for short, the '***Truck***') came in a rash and negligent manner and at high speed and gave a dash to the deceased; due to which, he sustained severe injuries and succumbed to the said injuries. Accordingly, the F.I.R. was lodged at Gadchandur Police

Station against the Truck driver vide Crime No. 60/2003 for the offences punishable under Sections 279 and 304-A of the Indian Penal Code.

4. At the time of the accident, the deceased was 32 years old and was working as a Peon and Sweeper in Dayanand Aglo-Vaidik Ambuja Vidya Niketan, Upparwahi (Gadchandur) and was earning a Rs. 2,000/- per month salary. Due to his death, the claimants have suffered a lot and, therefore, they filed the claim petition claiming compensation.

5. Though summons were served on respondent Nos. 2 and 3, they remained absent, hence the matter was proceeded *ex parte* against them.

6. Respondent No. 1 Insurance Company filed its reply and denied the contents of the application in toto. However, it admitted that at the time of the incident, the said Truck was duly insured with them. They denied the age and income of the deceased. It was contended that the deceased, while crossing the road suddenly without bothering about the traffic and while trying to save the deceased, the truck went beyond control, and suddenly the incident occurred. Therefore, the deceased was also responsible for the said accident. Hence, it prayed for dismissal of the claim against it.

7. Based on the rival pleadings of the parties, the learned Tribunal framed the issues. Pursuant to the issues, the claimants examined claimant No. 1-Smt. Kankam Malikamma Ramulu, produced and proved the documents. The claimants have also examined C.W. No. 2-Gopal Burghate

and proved the salary certificate and other documents on record. However, none of the respondents has adduced any evidence. After appreciating the evidence on record, the learned Tribunal partly allowed the claim. Being dissatisfied with it, the claimants have preferred this appeal.

8. Heard the learned Advocate for the appellants/original claimants. None appears for the respondents. Perused the impugned judgment, record and proceedings. The following points arise for determination.

(i) Whether the respondent No. 1 proves that it was a case of contributory negligence?

(ii) Whether the claimants are entitled to an enhanced compensation amount as prayed?

(iii) Whether any interference is required in the impugned judgment and award in the appellate jurisdiction?

Point No. (i) :

9. It is pertinent to note that by the order dated 19-01-2011, the matter was ***admitted***. Similarly, the appeal was dismissed against respondent No. 3 vide order dated 16-08-2011. Though notice was served on respondent No. 2, none appeared for her. Today, none appears for respondent No. 1. During the pendency of the appeal, respondent No. 5 died; therefore, his name was deleted from the array of the appellants.

10. As per the submissions of the learned Advocate of the appellant, it appears that none of the respondents has preferred any appeal or cross-objection against the impugned judgment and award or the findings therein.

11. Ms. Diksha Kamwani, learned Advocate holding for Mr. M. Anilkumar, learned Advocate for the appellants, vehemently contended that the findings recorded by the learned Tribunal on the point of contributory negligence as well as the income of the deceased are incorrect and improper, and the same are liable to be set aside. She further submitted that respondent No. 1 did not examine any witness in support of its defence. Despite the said fact, the learned Tribunal has erred in holding that the deceased was 40% negligent who was walking beside the road and, therefore, the said finding is contrary to the evidence on record and is liable to be set aside.

12. On perusal of the impugned judgment, it appears that the learned Tribunal, while considering the point of negligence in para 10 of the judgment, has held that the *Truck driver was 60% negligent and the deceased was 40% negligent*. However, it appears that the learned Tribunal has erred in holding the deceased was negligent for the said accident to the extent of 40%, in fact, none of the respondents has adduced any evidence to show that the deceased was negligent while passing through the road. On the contrary, the F.I.R. clearly indicates that the Truck driver was rash and negligent while driving the truck. He drove the Truck at high speed, and therefore, the accident occurred. Accordingly, the F.I.R. was registered

against him. However, the learned Tribunal, on the assumption and presumption, has erred in holding that the deceased was negligent to the extent of 40%; in fact, he was passing through the road by walking. Merely, the dead body of the deceased was found in the middle of the Road. The learned Tribunal, on assumption on its own notion in the absence of cogent and reliable evidence, has erred in holding that the deceased was negligent to the extent of 40%. When the Tribunal itself held that the truck loaded with grass was in a high speed and the accident occurred. Despite the said findings, the learned Tribunal, in the absence of cogent and reliable evidence to show that the deceased was also negligent, or was crossing the road from the middle of the Road, on presumption, has erred in holding that the deceased was negligent to the extent of 40%. The reasoning recorded by the learned Tribunal appears contrary to the evidence on record.

13. *Per Contra,* the evidence of C.W.1 indicates that the deceased was walking on the left side of the road, and the Truck in question came from the rear side at high speed and gave a dash to the deceased and, therefore, he died on the spot. However, his testimony was not denied. The only suggestion was put to him that the deceased, while crossing the road, the said accident took place, which was denied by the witness. The said evidence itself indicates that the deceased was not at fault. There is no other evidence or material produced on record to show that the deceased was at fault and, on the contrary, the evidence on record, exhibited documents i.e. spot panchanama and FIR indicate that the Truck driver drove his Truck in rash and negligent manner and gave a dash to the deceased, therefore, the

findings recorded by the Tribunal appear perverse and contrary to the evidence on record. Based on the said findings, the judgment and award cannot be sustained in the eyes of the law, and, therefore, the said finding is liable to be set aside in the appeal. Consequently, I hold that due to the negligence of the Truck driver solely, the said accident occurred; therefore, the Truck driver was responsible for the said accident only. Hence, I have no hesitation in holding that respondent No. 1 failed to prove that it was a case of contributory negligence. Accordingly, ***I answer point (i) in the negative***.

Point Nos. (ii) & (iii) :

14. Learned Advocate for the appellants further argued that C.W.2-Gopal Burghate has deposed that the deceased was getting a salary of Rs. 2,000/- per month and a contributory provident fund. The deceased was getting a total amount of Rs. 2,240/- per month. However, the learned Tribunal has erred in taking the salary of Rs. 1,990/- per month and, therefore, the findings recorded by the learned Tribunal are incorrect and improper; hence, she urged for enhancement of the compensation.

15**.** On perusal of the Salary Certificate (Exhibit 72), it is evident that the deceased was getting a salary of Rs. 2,000/- per month and, in addition to that, he was contributing an amount of Rs. 240/- towards the provident fund. Therefore, CW 2-Gopal Burghate deposed that the deceased was getting a total salary amount of Rs. 2,240/- per month. During his cross-examination, his testimony was not denied specifically; therefore, there is no reason to discard his testimony on the said point. Similarly, the claimants in their petition categorically stated that the deceased was getting a monthly salary of Rs. 2,240/- per month. However, the learned Tribunal has not considered the evidence of C.W. 2 in its proper perspective and erred in holding that the deceased was getting a salary of Rs. 1990/- per month and calculated the compensation amount. In fact, it is apparent from the evidence on record that the deceased was getting a salary of Rs. 2,240/- per month and, therefore, based on the said income, the compensation has to be calculated. Therefore, in my view, the findings recorded by the learned Tribunal are liable to be set aside and required to be modified in the appeal.

16. It is pertinent to note that since the judgment and order were passed by the learned Tribunal on 04-02-2009, the question of granting compensation based on the mandate laid down in ***National Insurance Company Ltd. v. Pranay Sethi and Ors., 2017 (16) SCC 680*** by the learned Tribunal does not arise. In view of the above facts, the claimants are entitled to get the compensation as per the mandate laid down in ***Pranay Sethi*** and ***United India Insurance Co. Ltd. vs Satinder Kaur @ Satwinder Kaur And Ors., (2021) 11 SCC 780***. Hence, it would be appropriate to determine the compensation considering the income of the deceased as of Rs. 2,240/- per month instead of Rs. 1990/-. At the time of the incident, he was 32 years old. Similarly, five claimants were dependent on him; therefore, ¼ amount is required to be deducted. Having considered the same and in view of the mandate in ***Pranay Sethi*** and ***Satinder Kaur @ Satwinder Kaur And Ors.*** *(supra),* the claimants are entitled to the following compensation.

Age	32 years
Dependents	5
Monthly Income Net Income	**Rs. 2,240/- p.m.** **Rs. 26,880 /- p.a**
Future Prospects	50%
Multiplier	16

Sr. No.	**Compensation Heads**	**Amount Awarded**
(i)	Net Income	Rs. 26,880/-p.a.
(ii)	After deduction towards personal expenses as 5 dependents (1/4)	Rs. 6,720/- (Rs. 26,880 – Rs. 6,720 = Rs. 20,160/-)
(iii)	Towards Future Prospects, as age is below 40 (50%)	Rs. 10,080/-
(iv)	Multiplicand	Rs. 30,240/- **(Rs. 20,160 + 10,080)**
(v)	Multiplier as age is between 31-35	16
(vi)	Loss of Income of the deceased	**Rs. 4,83,840/-** **(Rs. 30,240 x 16)**
(vii)	**Compensation to be awarded (A)**	**Rs. 4,83,840/-**

Sr No.	**Conventional Heads**	**Amount**
(i)	Funeral Expense (Rs. 15,000 with 10% increase every 3 years from 2017)	Rs. 18,150/-
(ii)	Loss of Estate (Rs. 15,000 with 10% increase every 3 years from 2017)	Rs. 18,150/-

(iii)	Loss of Consortium to each of 5 Dependents (Rs. 40,000 with 10% increase every 3 years from 2017)	**Rs. 2,42,000/-** (Rs. 48,400 x 5)
(iv)	**Compensation under Conventional Head (B)**	**Rs. 2,78,300/-**

<u>Total Compensation</u>

Total Compensation to be Awarded (A+B)	Rs. 4,83,840/- + Rs. 2,78,300/- **= Rs. 7,62,140/-**

17. It is worth noting that the learned Tribunal has erred in holding that the deceased was responsible to the extent of 40%; similarly, it erred in calculating the compensation based on the salary to the extent of Rs. 1990/- per month. Therefore, based on the said findings, the judgment cannot be sustained in the eyes of the law; hence, the same is liable to be modified by interfering in the appellate jurisdiction and, in my opinion, the claimants are entitled to enhanced compensation as discussed above. Therefore, ***I answer point Nos. (ii) and (iii) are affirmative***.

18. As a result, the appeal is allowed. The impugned judgment and award dated 04-02-2009 is liable to be modified, and the appellants are entitled to get the compensation of **Rs. 7,62,140/-** along with accrued interest thereon @ 7.5% p.a. from the date of filing of the petition till its realisation. As such, claimant No. 1, being the widow, is entitled to the extent of 60% of the said compensation amount; claimant Nos. 2 and 3, being the children, are entitled to the extent of 15% each of the compensation amount; and claimant No.4 is entitled to 10% of the compensation amount, along with accrued proportionate interest thereon.

19. Respondent No.1 Insurance Company is directed to deposit the enhanced compensation amount along with accrued interest thereon within eight weeks from receipt of the copy of the judgment, failing which this Court will be constrained to initiate necessary action against the erring officer who is found responsible for non-depositing the said amount.

20. On deposit of the said amount by respondent No. 1- Insurance Company, the same be transmitted to the bank accounts of the appellants/claimants as per the above order, along with proportionate, accrued interest thereon, within seven weeks, on their furnishing bank account details to the registry.

21. The appellants are also directed to pay the Court fees on the enhanced amount of compensation within eight weeks from today. After the deposit of the court fees, the compensation amount shall be paid to the claimants. No order as to costs.

(ABHAY J. MANTRI, J.)

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