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

FIRST APPEAL NO.669 OF 2012
WITH
CROSS-OBJECTION NO.88 OF 2019

The National Insurance Company Limited,
Through its Divisional Manager,
Branch Office, Samra Complex, Jaistambh
Chowk, Amravati, Tah. and Distt. Amravati
(Insurer of the Contenor Truck No.MH-55/
B-6618 vide Insurance Policy No.361400/31/05/
630000311115 for period from 14.02.2006
to 13.02.2007. .. Appellant

..Versus..

1. Smt. Savita Pramod Karde,
Aged about 31 years,
Occ : Household work.

2. Master Vedant Pramod Karde,
Aged about 9 years, Occ. Nil.

3. Master Piyush Pramod Karde,
Aged about 4 years.

Nos.2 and 3 are minors, hence through natural guardian mother i.e. Respondent No.1.

All R/o. Shirajgaon Bhikam, Tah. Morshi, Distt. Amravati.

Matter is dismissed against R.No.4 & 5 vide Reg. (J) order dtd.24.6.14.

4. Mr. Indrajeet s/o Birender Singh,
Aged Adult, Occ. Driver of Contenor
Truck No.HR-55/B-6616, R/o. At Post
Lawan, Distt. Mahendergarh (Haryana).

5. M/s. Yadao Auto Transport,
Aged Adult, Occ. Owner of
Contenor, Truck No.HR-55/B-6618,
R/o. 6 K.M. Delhi, Gudgaon Road,
Near Mul, Distt. Gudgaon (Haryana).

6. Mrs. Manorama Akaramji Karde,
Aged about 74 years,
Occupation-Nil, R/o. Shirajgaon
Bhikam, Tah. Morshi,
Distt. Amravati. .. Respondents

WITH

CROSS-OBJECTION NO.88 OF 2019
IN FIRST APPEAL NO.669 OF 2012

The National Insurance Company Limited
through it's Divisional Manager,
Office at - Samra Complex, Jaistambh
Chowk, Amravati, Tq. and Distt. Amravati.. Appellant

..Versus..

1. Savita wd/o Pramod Karde,
Aged about 36 years,
Occ : Household.

2. Vedant s/o Pramod Karde,
Aged about 16 years, Occ. Education.

3. Piyush s/o Pramod Karde,
Aged about 11 years.
Occ.-Education.

Nos.2 and 3 are minors, hence through
natural guardian mother i.e. Respondent
No.1.

All R/o. Sirajgaon Bhikam, Tq. Morshi,
Dist. Amravati.

Matter is dismissed against R.No.4 & 5.

4. Indrajit s/o Birender Singh,
Aged about Adult, Occ. Driver,
R/o. Lawan, Dist. Mahendergarh (Haryana).

5. M/s. Yadao Auto Transport,
Occ. Owner, R/o. 6 K.M.,
Delhi Gudgaon Road, Near Mul,
Dist. Gudgaon (Haryana).

6. Manorama Akaramji Karde,
Aged about 80 years,
Occupation-Nil, R/o. Shirajgaon
Bhikam, Tq. Morshi,
Dist. Amravati. .. Respondents

1) Savita wd/o Pramod Karde,
2) Vedant s/o Pramod Karde,
3) Piyush s/o Pramod Karde. .. Cross-Objectors.

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Shri M.A. Kadu, Advocate a/w Ms. Mallika Babhulkar, Advocate for Appellant.

Shri P.R. Agrawal, Advocate for Respondent Nos.1 to 3/Cross-Objectors.

Matter is dismissed against Respondent Nos.4 and 5.

None for Respondent No. 6 through served.

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CORAM : PRAVIN S. PATIL, J.
DATED : 09.12.2025.

JUDGMENT

1. In the present matter, the appellant-insurance company challenged the judgment and order passed by the Motor Accident Claims Tribunal, Amravati dated 19.01.2012 passed in Motor Accident Claim Petition No.221/2007 on the ground that the day of which the accident occurred, the insurance policy was not in existence as the amount of premium which was paid by way of cheque by the owner was dishonoured and same was duly communicated to the owner the date before the accident. Hence, according to the present appellant, the insurance-company be exonerated from the payment of compensation.

2. In cross-objection, the submission of the cross-objectors is that the learned Tribunal failed to consider the notional income of deceased in the light of the various judgments delivered by this court wherein by taking into consideration inflation, devaluation of rupee and cost of living determined the rate of Rs.6,000/- per month, irrespective of the fact whether the income has been proved or not by the applicants. Therefore, he seeks enhancement in the compensation amount, by considering the notional income of

deceased at rate of Rs. 6000/- per month.

3. In the present case, it is undisputed fact that on 2.2.2008 in a road accident, Pramod Karde was the victim in the accident due to rash and negligent driving of offending truck involved in the accident. The truck was insured with the present appellant. In view of death of Pramod Karde, his legal heirs filed the claim petition before the Motor Accident Claims Tribunal, Amravati stating that he was progressive farmer and along with cultivation of land he used to do the business of selling of milk in the village and used to give bullocks and bullock-cart on hire to the agriculturist. Hence, his yearly income was Rs.1,14,000/- accordingly, they are entitled for the compensation of Rs.16,29,500/-.

4. Before the Claim Tribunal, the learned Tribunal has verified the contentions raised by the insurance company about the validity of the insurance policy. The learned Tribunal has recorded the finding that the owner of the offending vehicle has paid the premium by cheque (Exh.73) for the insurance of the truck and accordingly policy was issued for the period 13.2.2006 to 12.2.2007. The cheque issued by the owner was

of dated 10.2.2006. According to the appellant-insurance company, the cheque was dishonoured and same was informed to the owner on 2.3.2006 and accordingly from that date the policy was cancelled. However, the appellant-insurance company failed to establish before the Tribunal by producing the evidence of acknowledgment or receipt of said information of cancellation of policy by any mode of service.

5. In this regard as per settled principles of law as laid down by the Hon'ble Supreme Court of India, unless there is no valid communication of cancellation of the policy to the owner of vehicle before the date of accident, the insurance company cannot be exonerated from his responsibility to pay the compensation. The observations made by the learned Tribunal are based upon the judgment of Hon'ble Supreme Court of India. The appellant-insurance company failed to demonstrate from any document by placing on record that before the date of accident, the owner of the offending truck was specifically informed by them about the cancellation of the policy.

6. In my opinion, if the appellant-insurance company is unable to place on record any documents in that regard, the

findings recorded by the learned Tribunal in the matter can't be held illegal or perverse in nature. In the circumstances, only conclusion can be drawn that insurance company failed to establish their submission in the appeal also and, therefore, the present appeal filed by the insurance company deserves to be dismissed.

7. In respect of cross-objection, the submission of the cross-objectors is that the learned Tribunal has committed an error by not considering the proper notional income of the deceased. According to him, it is established on the record that the deceased was having eight acres of agricultural land and he was doing the business of milk in the village, so also he was giving the bullocks and bullock-cart on hire to the agriculturist. According to them, deceased was the progressive agriculturist in the village and, therefore, his income ought to have been considered by taking into account inflation, devaluation of rupee and cost of living. In support of this, cross-objector has relied upon the judgment of the Hon'ble Supreme Court of India in case of ***Kurvan Ansari Vs Shyam Kishore reported in (2022) 1 SCC 317***.

8. The other submission of the cross-objectors is that while calculating the compensation amount, the learned Tribunal failed to consider the conventional heads and further factors which are determined by the Hon'ble Supreme Court of India in the case of ***Sarla Verma (Smt) and others .vs. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121, National Insurance Company Limited .vs. Pranay Sethi and others, reported in (2017) 16 SCC 680 and Magma General Insurance Company Limited .vs. Nanu Ram alias Chuhru Ram and others, reported in (2018) 18 SCC 130***. Hence, according to him, if all these factors are considered, the cross objector is entitled for the enhancement of the compensation.

9. In respect of submission that notional income is to be considered at the rate of Rs.6,000/- per month, he has relied upon the judgment of this court in First Appeal No.1003/2009, wherein in para 15, this court has observed as under :

> *15. By applying this principle even if it is considered that the deceased was doing labour work and was earning Rs.150/- to Rs.200/- per day his monthly income comes to Rs.6,000/- per month. The learned Advocate of the appellant*

prayed that monthly income of the deceased by considering him as an agriculture labour is considered then his annual income comes to Rs.72,000/- p.a. The submission made by the learned Advocate of the appellant appears to be reasonable one if the said submission is considered in the light of the fact that the accident took place in the year 2006 at that time agriculture labour were getting Rs.150/- to 200/- per day thus monthly income comes to Rs.6,000/- per month. Yearly income comes to Rs.72,000/- after deducting 1/3rd yearly income comes to Rs.48,000/-. The deceased was 35 years old at the time of accident. As per the observation in Sarla Verma & Ors Vs. Delhi Transport Corporation and another (supra) as cited supra multiplier is to be applied of 16. After applying multiplier compensation amount of Rs.7,68,000/- After adding 40% future prospects in view of the judgment of Hon'ble Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others (supra) said addition of future prospects is to be added, considering that the deceased was below 40 years of age and there is every likelihood of addition of labour charges considering his agriculture labour. So after adding 40% of future prospect the amount comes to Rs.3,07,200/-. Thus, the appellants are entitled to receive the compensation of Rs.7,68,000/- + by adding 40% towards future prospects Rs. 3,07,200/- it comes to Rs. 10,75,200/-. Besides the above amount of compensation the appellant No. 1 is the wife, who lost her husband at the young age. At the time of filing the petition she was only 21 years of age, she has to lead her life without the love and affection of her husband. Petitioner No.2 Sk. Ahmed Sk. Yusuf, who is son of the deceased and was aged about 11 months at the time of accident. He lost love and affection of his father and has to lead his life without the love *and affection of his father. At the same time respondent No.4 Saliabegam is mother, who lost her son at her old age. The Hon'ble Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others (supra) has considered the aspect of consortium and held that we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. It is further held that the concept of loss of consortium in legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. Said non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium". The Hon'ble Apex Court had further laid down the reasonable figures on conventional*

> *heads, namely, loss of estate, loss of consortium and funeral expenses as laid down the figures Rs.40,000/- towards loss of consortium to Rs.15,000/- each towards loss of estate and funeral expenses. It is further held that the amount should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years.*

10. The perusal of the judgment of this court also clarified the fact that while awarding the compensation, the law laid down in the above referred cases is also required to be considered by the learned Tribunal as well as by this court. Hence, cross-objector is right in his submission that by applying notional income at the rate of Rs.6,000/- per month and under various conventional heads, he is entitled for enhancement of compensation.

11. The learned counsel for the respondents in cross-objection has strongly opposed this proposition. According to her, as the buffalos and cows as well as the agricultural land being in existence, no loss has been cost to the family members of the deceased. According to appellant/insurance company, while determining the notional income, this material facts also required to be considered by this court and on that basis

notional income is required to be determined. According to Appellant/Insurance company, cross-objectors may be correct in stating that in the case of labours where skilled or unskilled workers are doing the various work for them the principle of notional income is applicable, but considering the peculiar facts of this present matter, the notional income which cross-objectors is pointed out is not applicable in the matter.

12. In the present matter, one factor is required to be considered that the deceased was the progressive mind agriculturist in the village. Due to his earning capacity and physical health he was doing the additional business of selling the milk and giving on hire his bullocks to the villagers. Therefore, it is clear that due to his progressive mind, it was possible for him to fetch additional amount in the house and was expending on his family. In such circumstances, it is not expected that other persons particularly the legal heirs can do the same work like the deceased in the matter. Therefore, the principle of notional income which is made applicable to even a labourer is required to be made applicable particularly to a person who is a progressive mind agriculturist of the village.

13. In my opinion, the cross-objectors are correct in pointing out that in absence of any evidence available on record, the notional income at the rate of Rs.6,000/- per month is the proper amount which needs to be considered in the facts and circumstances of the present case. In view of this, according to me, the cross-objectors are entitled for the compensation of Rs.12,84,200/- as under :

Notional Income of the deceased	Rs. 6,000/-
Yearly Notional Income (6,000 x 12)	Rs. 72,000/-
(-) 1/3rd deduction as per the Judgment of Sarla Verma v/s Delhi Transport Corporation, (2009) 6 SCC 121. (Rs. 72,000-24,000)	(-) Rs 48,000/-
(+) 40% Future prospects as per the judgment of National Ins. Co. Ltd. vs. Pranay Sethi, (2017) 16 SCC 680.	(+) Rs.19,200/-
Salary for multiplier	Rs.67,200/-
(X) "16" multiplier as per the Judgment of Sarla Verma v/s Delhi Transport Corporation, (2009) 6 SCC 121 applicable for the age group 31 to 35 years, (Rs.67,200 x 16)	Rs.10,75,200/- (loss of dependency)

Loss of Consortium : (+) Rs. 44,000/- for each claimant as per Judgment in case of Magma General Insurance Co. Ltd. v/s Nanuram, (2018) 18 SCC 130 followed in AIR 2020 (SC) 3076, United India Insurance Company v/s Satinder Kaur. (10% increase as per the Pranay Sethi's Judgment) (Rs.44,000/-x 4) (2023 AIR (SC) 44)	(+)Rs. 1,76,000/-
Loss of Estate	(+) Rs.16,500/-
Funeral Expenses	(+) Rs.16,500/-
Total compensation payable to claimants (Rs. 10,75,200/- + Rs. 1,76,000/- + Rs. 16,500/- + Rs. 16,500/-)	Rs. 12,84,200/-
Total Compensation granted by the Tribunal	Rs. 3,93,500/-+ 7.5% p.a.
Total enhanced compensation (Rs. 12,84,200 - Rs. 3,93,500) + interest 7.5 % p.a.	Rs. 8,90,700/-+ interest 9% p.a.

14. In the light of above discussion, I proceed to pass the following order :

<u>O R D E R</u>

(1) First Appeal No.669/2012 is hereby dismissed.

(2) Cross-Objection No.88/2019 is partly allowed.

(3) The impugned judgment and award dated 19.1.2012 passed by the learned Motor Accident Claims Tribunal, Amravati in Motor Accident Claim Petition No.221/2007 is modified to the extent that the cross-objectors are entitled for the compensation of Rs.12,84,200/- along with interest at the rate of 7.5% per annum.

(4) Needless to mention that the amount which was awarded by the Tribunal is to be deducted from this enhanced amount.

(5) The Appellant-Insurance Company is directed to deposit the enhanced compensation amount to the Registry of this Court within a period of three months.

(6) After the deposit of the amount by the appellant-insurance company, the Cross-Objectors are entitled to withdraw the same.

(Pravin S. Patil, J.)

Gulande