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

FIRST APPEAL NO. 1161 OF 2009

1) Smt.Mangala wd/o Arun Kulkarni age 50 years, Occ : Household 2) Chinmay Arun Kulkarni age 28 years, Occ : Student 3) Saurabh Arun Kulkarni age 23 years, Occ : Student 4) Ku.Harshada Arun Kulkarni age 25 years, Occ : Student All Residents of Muktanana Nagar, At and Tq. Khamgaon, District – Buldhana	**.. Appellants**

Versus

1) Arun Dhruvkumar Kulkarni age 29 years, Occ : Business R/o Civil Lines, Khamgaon, Tq. Khamgaon, District – Buldhana 2) The Oriental Insurance company Ltd. through its Manager/Authorised Officer, "Ambar", 2nd Floor, Station Road, Khamgaon, Tq. Khamgaon, District – Buldhana	**.. Respondents**

WITH
FIRST APPEAL NO. 1145 OF 2008

The Oriental Insurance Co. Ltd., Khamgaon Branch, through the Divisional Manager, Nagpur Divisional Office – II, Plot No.8 Hindustan Colony, Wardha Road, Nagpur.	**.. Appellant** (Org. Res. No.2)

Versus

1) Smt.Mangala wd/o Arun Kulkarni
   age 45 years, Occ : Household
2) Chinmaya s/o Arun Kulkarni
   age 23 years, Occ : Student
3) Saurabh Arun Kulkarni
   age 18 years, Occ : Student
4) Ku.Harshada Arun Kulkarni
   age 20 years, Occ : Student
   All Residents of Muktanana Nagar, at Khamgaon, Tq. Khamgaon District – Buldhana

   .. Respondents
   (Org. Petitioners)

5) Atul s/o Dhruvkumar Kulkarni,
   age 24 years, Occ : Business
   R/o Civil Lines, Khamgaon,
   Tq.Khamgaon, Dist. Buldhana

   (Org. Res. No.1)

Ms. Deepali Sapkal, Advocate for appellants in FA No.1161/2009 and respondents in FA No.1145/2008.
Mr. D.N.Kukday, Advocate for respondent No.2 in FA No.1161/2009 and appellant in FA No.1145/2008.

CORAM : ABHAY J. MANTRI, J.

DATED : JULY 11, 2025

ORAL JUDGMENT

Heard learned counsel for the parties in both the appeals.

(2) The respondent No.2 Insurance Company in Motor Accident Claim Petition No.46/2003 has preferred First Appeal No.1145/2008, similarly, the claimants therein have preferred First Appeal No.1161/2009, challenging the judgment and order dated 15/01/2008

passed by learned Additional Motor Accident Claims Tribunal, Khamgaon (hereinafter referred to as the ***'Tribunal'***), whereby the claim petition was partly allowed. For the sake of convenience, the parties are referred to by their denomination in the claim petition.

(3) The claimants have preferred the appeal for the grant of enhancement of the compensation; on the other hand, the Insurance Company has preferred the appeal on the ground that the learned Tribunal has erred in granting the excess amount of compensation to the claimants/petitioners.

(4) The facts of the case in a nutshell are as under :-

The claimant Nos. 1 to 4 are the legal representatives of the deceased, Arun Ramkrishna Kulkarni. Claimant No.1 is the widow, and claimants Nos. 2 to 4 are children of the deceased Arun, and they were all dependent on the deceased. On 21/03/2003, the deceased Arun was travelling along with others in a Tata Sumo bearing No.MH-20-E-9822 (hereinafter referred to as ***'Tata Sumo'***) from Yavatmal to Khamgaon and on the way at Yavatmal – Darwha Road, Tata Sumo rammed into a Tractor bearing No.MH-29-B-71 and Trolley bearing No.MH-29-1550. Due to the said accident, the deceased Arun sustained a head injury and he went into a coma, and the claimant No.1 also sustained minor injuries. Deceased Arun was admitted to the hospital for three months, and he succumbed to the said injuries on 13/07/2003.

(5) The vehicle, Tata Sumo, was owned and driven by respondent No.1, Atul, and the same was insured with respondent No.2, Oriental Insurance Company. Due to the death of Arun, the claimants have suffered an irreparable loss; therefore, they have filed a claim petition seeking compensation.

(6) The respondent No.1 failed to file a Written Statement and therefore, the matter was proceeded without filing a Written Statement.

(7) The respondent No.2 Insurance Company had filed a Written Statement contending that the allegations levelled against Respondent No. 1 in respect of rash and negligent driving of the jeep were incorrect. However, it was specifically averred that the Tractor, which was standing on the road in a stationary condition without any signal, was therefore the cause of the accident. Hence, it was contended that it was a case of contributory negligence on the part of both vehicles; however, the claimants failed to make the owner and insured of the Tractor and Trolley parties to the proceedings. Therefore, the claim petition is hit by the non-joinder of necessary parties. Alternatively, it is contended that even if the respondent No.2 is held

liable jointly and severally with respondent No.1 to pay the compensation, then, as per the terms and conditions of the insurance policy, the liability of the respondent No.2 is limited to the extent of Rs. 2 Lakhs only. Hence, he urged the dismissal of the claim; otherwise, it is liable to the extent of 50% of the total compensation amount.

(8) Considering the rival pleadings of the parties, the learned Tribunal has framed the issues pursuant to the same, both parties have led their evidence and produced and proved the documents. After considering the pleadings and evidence of the parties, the learned Tribunal partly allowed the claim, holding that respondents Nos. 1 and 2 are jointly and severally liable to pay compensation of Rs. 19,86,580/-, excluding the amount for no-fault liability. Being dissatisfied with the said judgment and order, the claimants, as well as the Insurance Company, have preferred these appeals.

(9) Heard learned counsel for both parties. Perused the impugned judgment and order, as well as having gone through the Record and Proceedings. Having considered the same, the following point arises for consideration :-

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

(10) Learned counsel for the Insurance Company submitted that though the Insurance Company raised the ground that the petitioners have not made the owner and insurer of the Tractor and Trolley parties, therefore, the claim petition is hit by non-joinder of necessary parties. Alternatively, it was contended that they may be held liable to the extent of 50% only, as the driver of both vehicles was found to be partially at fault for the accident. However, during the argument, he has fairly submitted that in view of the mandate of the Hon'ble Apex Court in ***Khenyei vs. New India Assurance Co. Ltd. & others*** reported in ***(2015) 9 SCC 273,*** he does not press the said grounds and the Insurance Company restricts the challenge to the judgment on the point of quantum only.

(11) That being so, he has taken me through the salary certificate produced at Exh. 56 issued by the employer of the deceased, which was proved in the evidence. Accordingly, he argued that the learned trial Court has erred in considering the gross salary as the net income of the deceased. He has pointed out the salary certificate, Exh. 56. and submitted that at the time of death, the deceased's gross monthly income was Rs. 20,790 per month, and Rs. 4,000 was deducted towards income tax and Rs. 300 towards professional tax per

month. He therefore asserted that the amount of taxes required to be deducted from the gross salary income, and if so deducted, the net salary would have been Rs. 16,490 per month. He also calculated the compensation amount as Rs. 18,83,788/- instead of Rs. 20,36,580/-, as determined by the learned Tribunal. Accordingly, a computation of compensation dated 10.07.2025, which he has tendered on record. Hence, he urged allowing the claim to that extent.

(12) *Per contra*, learned counsel for the petitioners/claimants vehemently submitted that the learned Tribunal has rightly considered the income of the deceased and awarded the compensation. The Learned Tribunal has not considered the fact that the petitioners have spent an amount of Rs. 5,70,000/- towards the medical treatment of the deceased, and an amount of Rs. 4,56,903/- was reimbursed from the office. However, the learned Tribunal failed to award the entire expenses incurred towards the medical treatment. Though the petitioners in their appeal memo stated that they are entitled to Rs.11 Lakhs towards the pain, loss of company and shelter etc., however, during the argument she does not press the same and submitted that in view of the mandate in ***National Insurance Company Ltd. vs. Pranay Sethi and others*** reported in ***2017 (16) SCC 680*** petitioners are entitled for the compensation, therefore, she urged for grant of enhancement of compensation to the petitioners.

(13) The learned counsel for both parties challenging the impugned judgment on the point of quantum only, and therefore, it would be proper to deal with the said issue. Before that it would be appropriate to consider the admitted and undisputed evidence on record i.e. ***salary certificate of deceased at Exh.56***. A bare perusal of the same, it is evident that in the salary certificate gross salary of the deceased was shown as Rs.20,790/- and it was also mentioned that employer used to deduct an amount of Rs.4000/- pm towards the income tax and Rs.300/- pm towards the professional tax and if the said amount is deducted from the gross income, it would come to an amount of Rs.16,490/-. i.e. the Net income of the deceased. Now, it would be appropriate to calculate the compensation based on the law laid down in ***Pranay Sethi*** (supra).

(14) It is also an undisputed fact that at the time of the accident, the deceased was above 50 years of age (DOB 11.04 1953 and date of death 13.07.2003, which means the deceased was 50y.3m.2days old). As such, a multiplier of 11 is applicable. There were four dependents on him. Therefore, 1/3rd of his income is required to be deducted for personal expenses. Thus, as per the mandate in ***Pranay Sethi*** (supra), the petitioners are entitled to get compensation as follows.

Age as on date of death- 50 years 3 months 2 days Income- Rs 20,790 p.m (-300 pm Professional Tax & -4000 pm Tax) = Rs 16,490 p.m. Dependents- 4

Sr. No.	**Compensation Heads**	**Amount Awarded**
(i)	Monthly Income	Rs 16490/- p.m.
	Yearly Income	Rs 1,97,880/- p.a.
(ii)	After deduction towards personal expenses (1/3)	Rs 1,31,920/-
(iii)	Towards Future Prospects (15%) (Age as on date of death being 50 years 3 months 2 days)	Rs 19,788/-
(iv)	Multiplicand	Rs 1,51,708/- (1,31,920+ 19,788)
(v)	Multiplier	11
(vi)	Loss of Income of the deceased	Rs 16,68,788/- (151708 x 11)
(vii)	Funeral Expense (15,000 with10% increase every 3 years from 2017)	Rs 18,150/-
(viii)	Loss of Estate (15,000 with 10% increase every 3 years from 2017)	Rs 18,150/-
(ix)	Loss of Consortium to each of 4 Dependents (40.000 with 10% increase every 3 years from 2017)	Rs 1,93,600/- (48,400 x 4)
(x)	Towards expenses for stay at Nagpur	Rs 25,000/-
(xi)	**Total Compensation**	**Rs 19,23,688 /-**

Thus, as per the mandate in ***Pranay Sethi*** (supra), the petitioners are entitled to get compensation to the tune of Rs**. 19,23,688/-.** However, the Tribunal has awarded an amount of Rs. **20,36,580**/-; thus, the difference in the compensation amount appears to be Rs. 1,12,892/-. It is pertinent to note that the petitioners have examined PW-2 Ashok Natthuji Junankar, who deposed that on account of hospital expenses and medical treatment, an amount of Rs. 5,68,184/- was spent by the claimants, accordingly, they have claimed the same from the Bank, however, out of which an amount of Rs. 4,65,903/- was only reimbursed. The said testimony of PW-2, Ashok, was neither challenged nor denied by the respondent Insurance Company; therefore, the evidence adduced by PW-2 remained unchallenged, and there is no reason to disbelieve the said evidence, though the petitioners have not produced the original bills before the Court. However, the evidence of PW-2 Ashok indicates that all the original documents were produced at the Bank for reimbursement, but Rs. 4,65,903/- was only reimbursed.

(15) In my view, the claimants are entitled to the entire expenses on account of hospitalisation and medical treatment charges . They have received Rs. 4,65,903/-. Thus, they received a lesser amount of Rs. 1,02,281/-. Therefore, that amount can be adjusted to cover the expenses incurred for medical treatment. Apart from this, in paragraph No.17(b) of the impugned judgment, the learned Tribunal has observed that the employer, in addition to the salary, used to contribute Rs. 1438/- pm to the employees' provident fund. Besides, it is worth noting that, the deceased was injured and hospitalised for four

months, and the intent of the legislature to enact the beneficial legislation with the object of providing relief to the victims, or their families, in cases of genuine, as well as accumulated effect of the above discussion, I deem it appropriate not to interfere with the impugned judgment and order for the meagre amount of Rs. 10,611/- granted over the entitlement of the claim.

(16) On the other hand, learned counsel appearing for the appellant in First Appeal No.1161/2009 failed to point out that the petitioners are entitled for the enhanced compensation as claimed by them, on the contrary, she does not dispute the calculation done by the learned counsel of the Insurance Company and therefore, there is no reason to discard the said calculation made by the Insurance Company. Besides, I have already opined that, for the grant of the meagre excess amount awarded to the claimants, I am not inclined to interfere with the impugned judgment of the learned Tribunal; As a result, I answer the point in the negative. Consequently, both appeals lack merit and stand dismissed. No order as to costs.

[ABHAY J. MANTRI, J.]

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