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

FIRST APPEAL NO. 36 OF 2009

1) Jyotsna w/o. Bhaskar Chavhan, age : 29 years, Occ : Household

2) Ku.Vaishnavi d/o. Bhaskar Chavhan age : 08 years

3) Anurag s/o. Bhaskar Chavhan age : 06 years

4) Ramsingh Amrutrao Chavhan age : 65 years

5) Gumfabai w/o. Ramsingh Chavhan, age : 60 years, Occ : Household

Appellants No.2 and 3 are minors through their legal guardian, mother appellant No.1, Jyotsna, R/o. C/o. Krushnarao Laxmanrao Solanke, Village Kurum Tq. Murtizapur Dist. Akola

.. Appellants
(Original Petitioners)

Versus

1) Sardar Harpalsing Karnail Singh, age – not known, Businessman and Truck Owner of the truck bearing No.CG-04-ZC-2773, R/o. Nehru Nagar, Nagpur Dist. Nagpur

2) United India Insurance Co. Ltd., Lal Bazar, G.T.Road, Govind Nagar, Dhanbad, Jharkhand 828109, Govind Nagar, Dhanbad, Jharkhand State

3) Hardeepsingh Harchand Singh, age : 38 years, Driver R/o. Taiband, Raipur (C.G.)

.. Respondents

Mr. R.S. Charpe, Advocate for appellants.
Ms. Anita Mategaokar, Advocate for respondent No.2.

CORAM : ABHAY J. MANTRI, J.

DATED : JULY 21, 2025

ORAL JUDGMENT

(1) Heard learned counsel appearing for the parties at length.

(2) The original petitioners/appellants, being dissatisfied with the judgment and order dated 26/08/2008, passed by the learned Chairman Motor Accident Claims Tribunal, Akola, (herein after referred to as–'***the Tribunal***') whereby the claim of the petitioners was allowed and granted compensation to the extent of Rs.10,50,000/-, with interest, have preferred this appeal.

(3) On 02/07/2007, the deceased Bhaskar, along with his wife, was on his motorcycle bearing registration No.MH-27-S-1833 (for short, '***Motorcycle***') proceeding from Daryapur to Kurum. When he reached the village Kurum, the truck bearing registration No. CG-04-ZC-2733 (for short, '***truck***') came from behind and hit the motorcycle. Due to the said dash, petitioner No.1 was thrown away from the motorcycle, and the motorcycle, along with the deceased, came under

the wheel of the truck and sustained injuries, and he succumbed to the said injuries. Accordingly, the informant, Solanke, lodged the report. Based on the said report, an offence came to be registered at Mana Police Station, Taluka Murtizapur, District Akola vide Crime No.45/2005 for the offence punishable under Sections 279 and 304-A of the Indian Penal Code, 1860.

(4) Respondent No.1 is the owner of the truck, and the truck was insured with respondent No.2 Insurance Company. Respondent No.3 is the driver of the said truck. Due to the accident, the petitioners suffered a loss and therefore had filed a claim petition for compensation.

(5) The petitioner No.1 is the widow, and petitioners No.2 & 3 are the minor children, and petitioners No.4 and 5 were parents of the deceased. They were all dependent on the deceased. At the time of the accident, the deceased was 34 years old and was working as an 'Assistant Teacher' in Zilla Parishad High School, and he was earning Rs. 10,000/- p.m. (Rs. 9818/-pm.).

(6) Despite service of notice to respondent No.1, he chose to remain absent before the learned Tribunal; therefore, the petition was proceeded ex parte against him. Similarly, respondent No.3 – driver appeared in the matter, but failed to file a Written

Statement; therefore, the matter proceeded without his Written Statement.

(7) Respondent No.2 Insurance Company denied the occurrence of the accident, the age and the income of the deceased. It is also specifically denied that the driver of the truck was responsible for the said accident, but the deceased himself was responsible for the accident. Alternatively, it is contended that if the Court comes to the conclusion that the driver of the truck was responsible for the accident, the contributory negligence of the motorcycle rider has to be taken into consideration. Respondent No.2 does not dispute that the truck was insured with its company and the insurance policy was in force; however, it was contended that respondent No.1 had committed a breach of the terms and conditions of the policy. Therefore, respondent No.2 Insurance Company is not liable to pay compensation; hence, it is urged to dismiss the claim against Insurance Company.

(8) During the pendency of the petition, the respondent No.2 amended the Written Statement and contended that liability of the Insurance Company is limited as per the terms and conditions of the policy under Section II (ii) in respect of any one claim or series of claims arising out of one event is upto Rs.7,50,000/- and therefore, submitted that if the learned Tribunal comes to the conclusion that Insurance Company is liable to pay compensation, the maximum

liability be fixed upto Rs.7,50,000/- only.

(9) Based on the rival pleadings of the parties, the learned Tribunal has framed issues. Pursuant to the said issues, the claimants/petitioners, as well as respondent No.2 Insurance Company, have led evidence, and also produced and proved the documents. After considering the evidence and material on record, the learned Tribunal allowed the claim of the petitioners to the extent of Rs. 10,50,000/-; however, it restricted the liability of respondent No.2 Insurance Company to the extent of Rs. 7,50,000/- only. Being aggrieved by the same, the petitioners have preferred this appeal.

(10) Heard learned counsel for the appellants and respondent No.2, Insurance Company and perused the impugned judgment, record and proceedings. I have also gone through the judgment relied upon by learned counsel for the appellant in ***Oriental Insurance Company vs. Rajni Devi and others (2008) 5 SCC 736*** and judgment relied upon by learned counsel for the respondent in ***New India Assurance Co. Ltd. vs. C.M.Jaya and others, AIR 2002 SC 651.*** The following points arise for determination.

1. Whether appellants/original petitioners are entitled to enhancement of the compensation?

2. Whether any interference is required in the impugned judgment and order ?

<u>As to points No.1 and 2</u> :-

(11) It is pertinent to note that during the arguments learned counsel for appellants, as well as learned counsel for respondent No.2 do not dispute the applicability of the mandate in the cases of (1) ***National Insurance Co. Ltd. vs. Pranay Sethi and others, (2017) 16 SCC 680,*** (2) ***Sarla Verma vs. Delhi Transport Corporation, (2009) 6 SCC 121 and*** (3) ***United India Assurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and others, (2021) 11 SCC 780,*** therefore, they both have submitted that in view of the mandate in the above judgments, the appellants are entitled for getting enhanced compensation.

(12) It is worth noting that respondent No.2 Insurance Company has not preferred any appeal against the impugned judgment and order, which itself shows that they have no grievance about the findings recorded by the learned Tribunal. Therefore, the findings recorded by the learned Tribunal are binding on it.

(13) Learned counsel for the appellants contended that the learned Tribunal has erred in restricting the liability of respondent No.2 Insurance Company to pay compensation to the extent of Rs.10,50,000/- only. In fact, Section II (ii) under the limits of liability does not apply to the facts in the case at hand. On the contrary, the

limits of liability under Section II (i) are applicable in the case at hand, as the truck driver gave a dash to the motorcycle from the rear side, and in those circumstances, the deceased was the third party to the Insurance Policy, therefore, the said finding is liable to be set aside.

(14) To buttress his submission, he has relied upon the judgment in ***Rajni Devi*** (supra). On the other hand, learned counsel for respondent No.2 initially supported the finding given by the learned Tribunal; however, she relied on the observations made in the judgment of ***C.M.Jaya*** (supra). When the facts and observations made in the said case were confronted and pointed out to the learned counsel for respondent No.2, she admitted that the facts and observations are different from the case at hand.

(15) Apart from this, perused the case of ***C.M.Jaya*** (supra), in the said case the limits of liability of the insurance policy under Section II (i) and II (ii) was restricted up to Rs.50,000/- only, therefore the Court held that the Insurance Company's liability was limited to Rs.50,000/- only, as per the terms and condition of the policy. However, in the case at hand, it appears that the truck driver was found negligent; and the deceased was a third party to the owner of the truck, therefore, limits of liability of the insurance policy under Section II (i) applies, i.e. as per the Motor Vehicles Act, 1988 and the question of limited liability Section II (ii) does not apply, and hence the

observations made in the said authority are not be applicable in the case at hand.

(16) I have gone through the Insurance Policy and facts of the case that truck driver gave dash to the motorcycle from rear side, I found substance in the contention of learned counsel for the appellants that the findings recorded by the learned Tribunal restricting the liability of the Insurance Company cannot be sustained in the eyes of the law. The same is liable to be set aside.

(17) The next point argued by learned counsel for respondent No.2 is that during the pendency of the proceedings, appellants No. 4 and 5 died; therefore, the appellants/petitioners are not entitled to claim consortium on their part. However, at the time of filing the petition, they were alive. It is the settled position of the law that the compensation has to be paid, taking into consideration the facts of the dependency of the petitioners on the deceased at the time of filing the petition and not at the time of passing the judgment and order. In view of the above, I do not find substance in her contention in that regard.

(18) The next question is that what was the age of the deceased at the time of the accident as the petitioners in claim petition stated the age of the deceased as 34 years and, in the post-mortem

report, his age was mentioned as 32 years, however, during the evidence petitioner No.1 deposed that at the time of accident deceased was 36 years old, said testimony was neither denied nor challenged by the respondents. The petitioners have also produced the first page of the Service Book of the deceased (Exh.**43**), wherein his date of birth is mentioned as 02/07/1970, which indicates that at the time of the accident, the deceased was 35 years old and 36 years had begun. Thus, I have no hesitation in holding that at the time of the accident, the deceased had completed 35 years of age and therefore, he would fall in the age group of 36 to 40 and multiplying by 15 would be applicable. Similarly, in the claim petition, claimants/petitioners have stated that the deceased was on leave and getting a salary of Rs.10,000/-p.m. However, the salary certificate (Exh.**37**) produced on record indicates that the gross salary of the deceased was Rs.9818/-, and after deduction of Rs.175/- towards professional tax, it would come to Rs.9643/-.

(19) It also appears from the record that at the time of the accident, five petitioners were dependent on the deceased. Therefore, it would be appropriate to deduct 1/4th of the salary towards personal expenses of the deceased, and after deducting the same, it would come to Rs.7232.25/-. (Rounded up Rs.7250/-).

(20) Considering the above discussion and the fact that both parties do not dispute the mandate in the above-referred decisions, it would be proper to calculate the compensation based on the law laid down in ***Pranay Sethi*** (supra), the same is as under :-

Age	36
Dependents	5
Income (per month)	Rs.9818/- p.m.
Professional Tax	Rs.175/- p.m
Net Income (per month)	Rs.9,643 p.m.
Deduction towards personal expense as 5 dependents (1/4)	Rs.2410/- p.m
Net Income after deduction towards personal expense per month	Rs.7,233 (Rounded off to Rs.7,250/- p.m)

Sr. No.	**Compensation Heads**	**Amount Awarded**
(i)	Net Income p.a.	Rs.87,000/-p.a. (Rs.7,250 x 12)
(ii)	Towards Future Prospects as age is below 40 (50%)	Rs.43,500/-
(iii)	Multiplicand	Rs.1,30,500/- (Rs.87,000 + Rs.43,500)
(iv)	Multiplier as age is between 36-40	15
(v)	Loss of Income of the deceased	Rs.19,57,500/- (Rs.1,30,500 x 15)
(vi)	**Compensation to be awarded (A)**	**Rs.19,57,500/-**

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 i.e. filial, spousal and parental (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/-

Total Compensation

Total Compensation to be Awarded (A+ B)	Rs.19,57,500/- + Rs.2,78,300/- **= Rs.22,35, 800/-**

Hence, I answer points 1 and 2 in the affirmative.

(21) In view of the above, the appeal is partly allowed. Accordingly, the impugned judgment and order dated 26/08/2008 to the extent of restricting the liability of the Insurance Company to Rs.7,50,000/- is hereby quashed and set aside and modified as under:-

(22) Respondents No.1 and 2 are jointly and severally liable to pay enhanced compensation to the petitioners as observed in para 20 above, within eight weeks from today.

(23) Respondent No.2 Insurance Company is directed to deposit the remaining enhanced compensation amount along with interest thereon in this Court within eight weeks from receipt of the copy of this order; failing which, necessary action will be taken against the Officer of the insurance company who is found responsible for non-compliance with this order.

(24) It is pertinent to note that during the pendency of the appeal, appellants/petitioners No. 4 and 5 died, leaving behind the rest of the appellants as their legal heirs. Moreover, the learned Tribunal has not passed an order in respect of the apportionment of the amount; in such circumstances, it would be proper to apportion the said amount between the petitioners. The appellant/petitioner No.1 widow is entitled to receive 50% of the total compensation amount, and petitioners No.2 and 3 are entitled to receive 25% each of the total compensation amount, along with the accrued interest thereon.

(25) On deposit of the compensation amount and its realization, the Registrar(J) is directed to transmit the said amount in the bank accounts of the respective petitioners as observed in para 24, within five weeks on payment of Court fees and furnishing their bank account details to the Registry.

(26) The original petitioners/appellants are directed to deposit the Court fees on the enhanced compensation amount in this Court within five weeks. No order as to costs.

[ABHAY J. MANTRI, J.]

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