



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1964 OF 2015
WITH CIVIL APPLICATION NO.11764 OF 2024 IN FA/1964/2015
WITH CIVIL APPLICATION NO.1679 OF 2015 IN FA/1964/2015

- 1) The Union of India
- 2) Air Force Head-quarter,
State of Maharashtra,
3 P & M (U) A.F. 1020,
Area/Akashnagar,
Pune 411 032.
- 3) Magam Krushnayya Narsayya (MTD)
R/o. Quarter No.650/6,
New Project Area,
Airport Station Lohgaon,
Pune – 32.

..Appellants
(Orig. opponent nos.1 to 3)

Versus

- 1) Mandakini Suresh Makasare
Age: 59 years, Occu.: Household.
- 2) Archana Suresh Makasare
Age: 34 years, Occu.: Nil.
- 3) Nilesh Suresh Makasare
Age: 29 years, Occu.: Nil.
All R/o. Prakashpur Colony,
Near TV Centre, Ahmednagar,
District Ahmednagar ..(Orig. petitioner nos.1 to 3)
- 4) Mrunalini Amit Makasare
Age: 32 years, Occu.: Service. (Orig. opponent no.4)
- 5) Tanvi @ Arpita Amit Makasare
Minor through Guardian mother
Respondent no.4, (Orig. opponent no.5)
C/o. Lamuvel Londhe

Both R/o. Londhe Chowk, Camp No.2,

Behind Zilla Parishad School No.14
Yeola Road Manmad, Tq.Nandgaon,
District Nashik.

..Respondents

...

Advocate for Appellants: Shri A.G.Talhar, Additional Solicitor General
and Shri Nandkishore U.Yadav, Standing Counsel

Advocate for Respondent nos.1 to 3 : Shri A.C.Darandale

Advocate for Respondent nos.4 & 5 : Shri D.A.Madake alongwith
Shri Amol Arun Shinde

...

WITH

FIRST APPEAL NO.2900 OF 2015

- 1) Mrunalini Amit Makasare
Age: 32 years, Occu.: Service.
- 2) Tanvi @ Arpita Amit Makasare
Age : Minor through Guardian of mother
i.e. Appellant No.1
C/o. Lamuvel Londhe

Both at present R/o. Londhe Chowk,
Camp No.2, Behind Zilla Parishad
School No.14, Yeola Road Manmad,
Tq.Nandgaon, District Nashik.

..Appellants

(Orig. Resp. No.4 & 5/claimants)

Versus

- 1) Union of India
- 2) Air Force Headquarter
State of Maharashtra
3 P & M (U) A.F. 1020
Area / Akashnagar, Pune 411 032.
- 3) Magam Krishnayya Narsayya (MTD)
R/o. Quarter No.650/6, New Project Area,
Airport Station, Lohgaon, Pune -32.
- 4) Mandakini Suresh Makasare
Age: 59 years, Occu.: Household.
- 5) Archana Suresh Makasare
Age: 34 years, Occu.: Nil.

(As per Court's order dated 15-07-2019,
Respondent nos.4 & 5 are dead and legal
heir is already on record as Respondent no.6)

- 6) Nilesh Suresh Makasare
Age : 29 years, Occu.: Nil

(Respondent no.6 at present R/o.
Prakashpur Colony, Near TV Centre,
District Ahmednagar). ..Respondents
(Resp. Nos.1 to 5 are orig. Respondents and
Resp.No.6 is original Petitioner)

...
Advocate for Appellants : Shri D.A.Madake alongwith
Shri Amol Arun Shinde
Advocate for Respondent nos.1 to 3 : Shri A.G.Talhar
Advocate for Respondent nos.4 to 6 : Shri A.C.Darandale
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 27 FEBRUARY, 2026
PRONOUNCED ON : 13 MARCH, 2026

JUDGMENT :-

1. Dissatisfied by the Judgment and award dated 31-01-2014 passed by learned Member, Motor Accident Claims Tribunal (MACT), Ahmednagar in MACP No.807 of 2008, original opponent nos.1, 2 and 3 have come up by way of First Appeal No.1964 of 2015 challenging the liability saddled on them and quantum of compensation.

The original opponent nos.4 and 5 (claimants) have also filed First Appeal No.2900 of 2015 for enhancement of compensation.

2. As both the appeals are arising out of one and same impugned judgment, the same are dealt and decided by this common judgment.

BRIEF FACTS OF THE CASE

3. In short, above numbered claim petition was instituted by mother, sister and brother of deceased Amit, who while proceeding towards MIDC over Nagar - Manmad road on Motorcycle bearing No.MH16 Z6584 suffered dash given by Swaraj Mazda vehicle bearing No.T-3500-04C-071468H belonging to opponent no.2 Air Force Headquarter. In the above accident, Amit suffered fatal injuries and succumbed to the same. Consequently, his brother Nilesh/claimant no.3 lodged FIR, against driver of the Swaraj Mazda Truck opponent no.3, bearing no.198 of 2008 under Sections 304A, 279, 337, 338 and 427 of the Indian Penal Code (IPC) and under Section 184 of the Motor Vehicles Act.

4. Respondent nos.1 to 3 herein (original claimants) instituted above claim petition seeking compensation from appellants in FA/1964/2015 (original opponent no.1 to 3) and they also arraigned wife as well as daughter of deceased Amit as opponent nos.4 and 5 alongwith above opponents and sought compensation to the tune of Rs.10,00,000/-. During pendency of First Appeals, original petitioner

no.1 (mother of deceased) expired. Subsequently, original petitioner no.2 (sister of deceased) also reportedly died.

5. The above claim petition was opposed by appellants in FA/1964/2015 (original opponents) primarily on the ground of deceased to be solely responsible for the accident and therefore, they are not liable. After appreciating the respective cases, learned Tribunal passed following order :

“1. Petition is allowed with costs.

Applicant Nos.2 and 3 being major and not dependent, their claim stands dismissed.

Opponent nos.1 to 3 shall jointly and severally pay Rs.17,82,256/- (Rs.Seventeen lac eighty two thousand two hundred and fifty six only inclusive of NFL amount) as compensation to applicant no.1 and opponent nos.4 and 5. This amount shall carry interest at the rate of 7.5% p.c.p.a. from the date of filing of the petition till actual realization of the amount.

Out of this amount Rs.4,90,120/- along with interest be paid to applicant no.1 and remaining amount along with interest and costs be paid to opponent nos.4 and 5. Out of said amount Rs.7,00,000/- be kept in fixed deposit in any nationalized bank in the name of opponent no.5 under the guardianship of her mother till opponent no.5 attains age of majority.

All the amounts be paid by account payee cheques, after recovery of deficit court fee.

Award be drawn accordingly.”

GROUND

(IN FIRST APPEAL/1964/2015 BY THE APPELLANTS UNION OF INDIA AND OTHERS)

6. The above judgment and order is assailed by the original opponent nos.1 to 3 on following grounds :

Firstly, that the judgment and award is contrary to the provisions of Motor Vehicles Act as well as evidence on record.

Secondly, findings of the learned Tribunal holding opponents to be 50% liable is against the evidence on record.

Thirdly, learned Tribunal erred in not deducting income tax but considering the gross salary instead of net salary.

Fourthly, exorbitant amounts have been granted under the heads of consortium and funeral expenses.

SUBMISSIONS

On behalf of Appellants Union of India and others :

7. Shri Talhar, learned ASG for appellants in First Appeal No.1964 of 2015 took recourse to above grounds and would submit that both vehicles were proceedings towards opposite directions. According to him, deceased Motorcycle rider had left his correct side and has crossed over to the extreme right side, which was meant for vehicle plying towards southern side. Therefore, driver of Swaraj Mazda i.e. opponent no.3 was not at all responsible. That, the accident occurred due to sole negligence and rash driving of deceased. Consequently, he questions the liability of 50% saddled on opponents.

8. He further pointed out that, learned Tribunal has also erred

while computing the compensation. He would submit that, there is no dispute about employment of deceased as well as his salary however, according to him, necessary deduction under income tax was not made by the learned Tribunal and instead of considering net salary, gross salary is considered, and the same is against settled principles.

9. He also criticized the grant of compensation under various heads like consortium, funeral expenses to be excessive and on higher side and resultantly he urges for indulgence of this court.

On behalf of Original Claimants nos.1 to 3 (mother, sister and brother of deceased) :

10. Shri Darandale, learned counsel would point out that, mother, brother and sister of the deceased are original claimants. That, report was lodged by brother of deceased. That, claimant no.1 had lost her son whereas claimant nos.2 and 3 have lost their brother. That, deceased was the only earning member of family. That, during pendency of the first appeal, original claimant no.1 mother and original claimant no.2 sister have expired. Therefore, original claimant no.3 Nilesh is only surviving member of family. That,

learned Tribunal has erred in refusing compensation to him as well as deceased sister and has only granted compensation to mother. That, even quantum of compensation awarded is less. Moreover, now having lost original claimant nos.1 and 2 i.e. mother and sister respectively, original claimant no.3, in the capacity of legal heir of original claimant no.1, is entitled to receive her share. In support of above submissions, he seeks reliance on the following rulings :

- a) *Srikrishna Kanta Singh v. The Oriental Insurance Company Ltd. And Others (2025) 3 SCR 1113.*
- b) *N.Jayasree and Others v. Cholamandalam MS General Insurance Company Ltd. (2022) 14 SCC 712.*
- c) *Sk.Kader Ali and Others v. Oriental Insurance Company Ltd. And Others, 2024 SCC Online Cal.2055.*

On behalf of original opponent nos.4 and 5 (wife and daughter of deceased) :

11. Shri Shinde, learned counsel for appellants/claimants (wife and daughter of deceased) in First Appeal No.2900 of 2015 would point out that, when original opponent no.3/driver of Swaraj Mazda being solely responsible, 50% liability ought not to have been saddled on deceased. On this count, he took this Court to the findings recorded by learned Tribunal in paragraph nos.19 of the impugned judgment and also at the same time, he took this Court

through various rulings and would submit that, primarily learned Tribunal has taken into account spot panchanama for fixing liability. That, it is incorrect method of fixing liability. He pointed out that, other circumstances at the scene of occurrence have not been taken into account while attributing 50% negligence to deceased. He pointed out that, driver of the Swaraj Mazda has not contested the claim and therefore, adverse inference ought to have been drawn against him. According to him, sketch map placed on record makes it abundantly clear that it was driver of Swaraj Mazda i.e. opponent no.3, who was rash and negligent.

He seeks reliance on the following citations :

- a) *Jiju Kuruvila and others v. Kunjujamma Mohan and others*, 2013 AIR SCW 3881.
- b) *Subhada Subhash Dhekne and Anr. V. Suresh Vithoba Gaonkar and Others*, AIR Online 2022 Bom. 6103.
- c) *Vellagada Durgaprasadarao v. B.Chiranjeevulu*, AIR Online 2024 Bom. 1799.
- d) *National Insurance Company Ltd. v. Pranay Sethi and Others*, AIR 1017 SC 5157.

EVIDENCE BEFORE TRIBUNAL

Before proceeding to analyze and appreciate evidence, it would be apposite to give brief account of the evidence adduced on behalf of the parties before the learned Tribunal, which is as under :

12. **PW1** Mandakini Suresh Makasare is mother of the deceased. She has filed affidavit at exh.29. She stated that on 15-10-2008, her son Amit was proceedings on his Motorcycle No.MH16 Z6584 towards his Office in MIDC for his duty. While he was travelling on Nagar – Manmad road, at 08:15 hours, Swaraj Mazda vehicle came from Manmad side in high speed and gave dash to the Motorcycle of Amit. That, Amit was severely injured and he was taken to Civil Hospital at Ahmednagar for treatment. Further, as per advice of Doctor, he was taken to Noble Hospital at Ahmednagar. That, while taking treatment, Amit succumbed to the injuries at 11:30 a.m.

13. **PW2** Balu Shankar Kasar is an employee of BSNL. He deposed at exh.38 that deceased Amit was working as Sr. Telecom Office Assistant General. He produced salary certificates of Amit for the months of September and October, 2008.

14. **DW4** Mrunalini Amit Makasare is wife of the deceased. She has filed affidavit at exh.45. She has stated that as original petitioner nos.2 and 3 are major and earning members, they have no right to get compensation. That, as per request of the original petitioners, the learned Tribunal has granted Rs.50,000/- towards no fault

liability and out of the said amount, Rs.15,000/- was directed to be paid to petitioner no.1 and remaining Rs.35,000/- was directed to be paid to this witness and her daughter. That, petitioner no.1 is getting Rs.6,000/- per month as pension. That, petitioner no.2 is doing service and he is earning Rs.10,000/- per month. That, petitioner no.3 is working in HDFC as Sales Executive and she is earning Rs.10,000/- per month. Therefore, petitioner nos.1 to 3 are not eligible for getting compensation. It is further stated that petitioner nos.1 to 3 have filed claim petition for getting compensation and as she has not given consent to them, she and her daughter were driven out of house for depriving them from getting their share from compensation. That, she had filed separate Motor Accident Claim Petition No.297 of 2008, however, as respondent nos.1 and 2 therein informed the Court that Motor Accident Claim Petition is already filed in Ahmednagar Court, she had withdrawn the said petition and she and her daughter are added as respondent nos.4 and 5 in Motor Accident Claim Petition No.807 of 2008. That, her deceased husband was working in BSNL at Ahmednagar and his salary was Rs.16,557/- per month. That, she has no source of income. That, she has to incur expenses for education of her daughter.

15. It is further stated that, Petitioner Nos.1 to 3 and Vaishali Anand Kakde had filed a proceedings bearing no.151 of 2009 praying for apportionment in the compensation and for getting legal heirs certificate for pension purpose, however, this witness appeared in said proceedings and after hearing both the sides, the learned Court rejected the prayers of Petitioner nos.1 to 3 and Vaishali Kakde. She further stated that, petitioner no.3 and petitioner no.1 had already received amount of Rs.48,963/- and Rs.63,000/- respectively from the LIC as they were nominated in the said LIC policies by her deceased husband.

ANALYSIS

After hearing submissions of all the parties and on going through the evidence, first, this Court will deal with the objections raised by the learned ASG for appellant Union of India.

16. **First Objection** : The judgment and award is contrary to the provisions of Motor Vehicles Act as well as evidence on record.

With regard to such objection, impugned judgment and award put to scrutiny. It is noticed that learned Tribunal has taken into account pleadings raised by claimants in the claim petition, and has also taken into account say of original opponent nos.1 to 3 at exh.21

and exh.22 as well as say of original opponent nos.4 and 5 at exh.18, and appreciated the evidence adduced by claimants comprising of FIR, spot panchanama, inquest panchanama, post mortem report and has thereafter, reached to a conclusion that it is a case of contributory negligence and for the same, spot panchanama is taken into account from which the directions in which the vehicles were proceedings was ascertainable. Taking into account exact spot of incident, who was negligent to what extent has been decided. Therefore, the above submission of learned ASG for Union of India that, findings and conclusion drawn by learned Tribunal are contrary to evidence on record, has primarily no foundation.

17. **Second Objection** - Findings of the learned Tribunal holding opponents to be 50% liable is against the evidence on record

It is the contention of the learned ASG that sole responsibility was of deceased. Per contra, it is the contention of claimants that sole responsibility was of driver opponent no.3 and not of deceased. Consequently, they both questioned the findings of learned Tribunal on fixing of liability. The findings of the learned Tribunal about fixing of liability is as under :

“19. The police papers filed at exh.3 i.e. complaint

*clearly show that the offence is registered against the driver of the offending vehicle. After perusal of the spot panchanama filed at exh.3/2 clearly shows that the deceased was proceeding from Ahmednagar to MIDC i.e. from southern side to northern side. The deceased was required to drive his motorcycle from left side of the road i.e. from western edge of the road, however, spot panchanama shows that he was in the middle of the road that too on the eastern side of the road. **From the spot panchanama, it is clearly seen that the offending vehicle was proceeding by its correct side i.e. from eastern side of the road.** The spot panchanama further shows that the deceased had crossed the middle line of the road and was proceeding from eastern side of the road and therefore, accident occurred. Deceased was expected to proceed from the western side of the road while proceeding from southern side towards northern side, but unfortunately he was proceeding from eastern side and invited the accident. At the same time it was also duty of the driver of offending vehicle to see the traffic condition on the road while driving the vehicle, but he failed to consider the same and contributed to the accident.*

20. Learned advocate Mr.S.K.Patil for the opponents, in support of his contention that there was contributory negligence on the part of deceased, relied on judgment **Pramodkumar Rasibhai Jhaveri vs. Karmasey Kunvargi Tak and others** reported in A.I.R. 2002 S.C. 2864 : 2002 (3)

T.A.C. 6, wehrein it is held that -

“Negligence ordinarily means breach of a legal duty to care, but when used in the expression ‘contributory negligence’, it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an ‘author of his own wrong’”.

*21. In the present case also **the record does now show that the offending vehicle has come to wrong side and dashed the Motorcycle of the deceased** and caused the accident. On the contrary, the spot panchanama shows that the offending vehicle was on its correct side, whereas the deceased went to the right side instead of plying his vehicle by left side and contributed to the accident. Therefore, in my opinion the concept of contributory negligence would apply to the present case.”*

18. In accident cases, when there is no direct evidence, generally it is the spot panchanama, which is taken into account and relied for fixing extent of liability of the vehicles. Here, it is noticed that in para 19 learned Tribunal has observed that, it was fault of deceased, however, after discussion of the spot panchanama and hand-sketch map and taking into account the directions in which each of the vehicles were proceedings, contradictory finding has been recorded

that there was fault of offending vehicle.

19. Shri Shinde, learned counsel for appellants/claimants (wife and daughter) has placed reliance on the decision of this Court in the case of ***Subhada Subhash Dhekne and Anr. (supra)*** and would lay much stress on the observations of this Court in this case and he also read the Placitum / Head note “A” which is as under “

(A) Motor Vehicles Act (59 of 1988), S.166 – Claim Petition – Contributory negligence – Minibus dashed to the Scooter – Panchanama and sketch, produced on record showing that accident occurred in middle of road - Even sketch shows divider line and spot of accident on side where minibus should never have been – Damages to bus, spot of accident, traces of broken glass, and position of two vehicles do not sustain findings of contributory negligence on part of deceased. Rather, evidence on record points out rashness and negligence of bus driver – Bus driver was solely responsible for accident in which claimants lost their 26-year-old son – Minibus was heavier and larger vehicle, duty of care of minibus driver was much greater – Findings about contributory negligence on part of deceased, reversed.

20. As stated above, in absence of direct, cogent and reliable evidence, it is the spot panchanama, which is decisive. Here, sketch map is also placed on record. The authority, who drew the sketch panchanama has unfortunately not been examined. However, spot is drawn within couple of hours of the occurrence. There are blood

stains at the spot and this is the vital parameter. Hand-sketch map shows faint dividing line on the road earmarked for vehicles proceedings to their respective sides in opposite directions. Going by such panchanama, it is emerging that, deceased was apparently proceeding from south to north, whereas Swaraj Mazda was coming from opposite direction i.e. from north to south direction. Blood is shown at the spot abutting to the dividing line i.e. it is well within the zone meant for vehicles proceedings towards north. This shows that Motorcycle rider was not expected to go towards the extreme side of his correct side. Similarly, it was broad-day light i.e. around 8 a.m. and driver of Swaraj Mazda had clear visibility of vehicle coming from opposite direction. He was expected to be vigilant to the traffic on the road, more particularly, when it was MIDC industrial area. Being heavy vehicle, it's driver is expected to be more cautious than the Motorcycle driver.

Therefore, in the totality of the such circumstances, which are emerging on re-evaluation of the site map / sketch map, there is indeed fault on the part of deceased Motorcycle rider also but not to such extent as is held by learned Tribunal.

In the light of above discussion, in the considered opinion of this court, fixing liability over deceased to the extent of 20% would

be justified in the fitness of things and remaining 80% liability over the driver of offending vehicle Swaraj Mazda and accordingly, liability is duly fixed to the ratio of 20% and 80% respectively.

21. Third Objection - Learned Tribunal erred in not deducting income tax but considering the gross salary instead of net salary

Learned counsel for claimants (wife and daughter) invited attention of this Court to the judgment of the Hon'ble Apex Court in the case of *Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another*, (2009) 6 SCC 121, which was also laid emphasis before the learned Tribunal. Learned counsel for claimants would point out that, at that time, the income of deceased was not within the taxable slab.

It is worth noting that deceased was employee of Union Government. Salary slips are also placed on record. Had there been amount liable to be deducted under income tax, authorities would have deducted the same while issuing salary slips. Consequently, consideration of salary of deceased to the tune of Rs.16,132/- from the total salary of Rs.16,557/- is just and correct. Salary slip reflects permissible and standard deductions. Therefore, the net salary of deceased to the tune of Rs.16,132/- is rightly taken as a base for

further computation. Consequently, calculations made on this basis, are not erroneous as it is tried to be projected by learned ASG for appellant Union of India.

22. **Fourth Objection** - Exorbitant amounts have been granted under the heads of consortium and funeral expenses.

It appears from the impugned judgment that the learned Tribunal has granted Rs.10,000/- towards consortium, Rs.10,000/- towards loss of love and affection, Rs.10,000/- towards funeral expenses and Rs.5,000/- towards loss of estate. The amounts granted under the aforesaid heads cannot be said to be exorbitant.

23. The learned counsel for the appellants/claimants (wife and daughter) in First Appeal No.2900 of 2015 submits that, learned Tribunal has granted inadequate consortium to wife as well as daughter. The learned counsel placed reliance on the decision of the Hon'ble Apex Court in the case of *Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others, (2018) 18 SCC 130*, and submits that, as per decision in the said case, Rs.40,000/- each towards consortium needs to be paid to the claimants.

Now, question is whether when accident is of 2008 and ruling

of Hon'ble Apex Court in the case of ***Magma General Insurance Company Limited*** (supra) came to be delivered in 2018, consortium awarded as per this judgment could at all be paid to the claimants retrospectively.

In this regard, it will be fruitful to refer the Judgment of this Court dated 30-09-2022 passed in First Appeal No.257 of 2003, in which following observations are made in paragraph no.8 :

*"8. It is significant to note that the appellants-claimants had claimed for compensation to the tune of Rs.9,00,000/-, but it was restricted for Rs.3,00,000/- for the purpose of court fees. The appeal is filed mainly on two grounds, that the learned Tribunal instead of holding respondent No.1 negligent to the extent of 100%, held him responsible for contributory negligence to the extent of 80%. Secondly, it is the contention of the appellants-claimants that the learned Tribunal did not consider the income of the deceased on account of salary as well as agricultural income properly and also failed to consider any future prospects. The learned counsel for respondent No.2 - insurance company ultimately argued that there cannot be any fresh calculation for enhancement of compensation retrospectively by considering the current judgments of the Hon'ble Apex Court. However, this court in the judgment reported in **2021(6) ALL MR 171** in case of **Reliance General Insurance Co. Vs. Manju wd/o Vikram Choudhary and others** has specifically observed in para 10 as follows :*

*"10. Learned counsel for the appellant has strenuously argued that the award passed by the Tribunal has to be tested on the basis of the decision in **Sarla Verma [2009(4) All MR 429 (S.C.)]** (supra) which was holding the field. It may be mentioned that in **Maj. Genl. A.S. Gauraya and Anr vs S. N.***

Thakur AIR 1986 SC 1440 : [1986 All MR ONLINE 227 (S.C.)] the Hon'ble Supreme Court has held that "there is nothing like any prospective operation alone of the law laid down by the Supreme Court. The law laid down by the Supreme Court applies to all pending proceedings". It is also settled proposition that the discretion to restrict the operation of a decision prospectively, vests only with the Supreme Court. In **Pranay Sethi as well as Magma Gen. Ins. Company (2018 ALL SCR 2001]** (supra) the Apex Court has nowhere indicated that the judgment would apply prospectively and not retrospectively. This being the case, dictum of the Apex Court in **Pranay Sethi [2018 ALL SCR 953]** (supra) as well as **Magma General Insurance (2018 ALL SCR 2001]** (supra) would apply to all pending proceedings. The appeals being continuation of original proceedings filed before the Tribunal under Section 166 of the M. V Act, the compensation has to be computed on the basis of the law expounded by the Apex Court in the aforesaid cases."

Therefore, in view of aforesaid discussion, this Court is of the view that the claimants (wife and daughter) are entitled for Rs.40,000/- each towards consortium. Apart from this, Rs.15,000/- each is also required to be paid towards loss of estate and funeral expenses.

However, it is noticed that going by the post mortem, age of deceased was 27 years. For the said age, as per decision of the Hon'ble Apex Court in **Sarla Verma (Smt) and Others**, multiplier applicable is 17 and not 18. Therefore, Tribunal has apparently applied wrong multiplier and needs correction to that extent.

Entitlement of compensation and apportionment :

24. In paragraph no.30 of the impugned judgment, learned Tribunal, while recording entitlement of compensation and apportionment, has made following observations :

30. So far apportionment of the amount of compensation is concerned, applicant nos.1 to 3 and and opponent nos.4 and 5 have filed joint pursis vide exh.50 that 27.5% amount of compensation be awarded to applicant nos.1 to 3 and 72.5% amount of compensation be awarded to opponent nos.4 and 5. However, I have already held that applicant nos.2 and 3 being major and not dependent on the deceased, they are not entitled to any compensation. Therefore, the entire 27.5% amount will be awarded to applicant no.1 only.”

Thus, learned Tribunal taking note of brother and sister attaining majority, refused to grant compensation to both of them, but directed 27.5% amount to original petitioner no.1 - Mandakini, who was mother of deceased.

Now, during pendency of First Appeal, it is informed that both mother Mandakini and sister Archana have expired. Therefore, only brother Nilesh, who was informant and also original petitioner no.3, is surviving member of the family. As stated above, Tribunal has held him to be major at the time of accident and disqualified him from entitlement of compensation.

Said brother Nilesh has joined in this First Appeal at the

instance of appellant Union of India, questioning the award on the point of both contributory negligence as well as quantum of compensation. In this appeal, he has intervened in the capacity of legal heir of original petitioner no.1 - Mandakini without filing distinct appeal for enhancement or getting dissatisfied by refusal by Tribunal disqualifying him from receiving compensation on account of attaining majority. Shri Darandale, learned counsel for original petitioner nos.1 to 3 placed reliance on the Judgment of the Hon'ble Apex Court in the case of ***N.Jayasree and Others*** (supra).

25. On going through the judgment of Hon'ble Apex court in case of ***N.Jayasree and Others*** (supra), more particularly paragraph nos. 14, 15 and 16, it is emerging that the Hon'ble Apex Court discussed the issue of entitlement in the capacity of legal representative. For proper comprehension, paragraph nos. 14, 15 and 16 are reproduced as under :

“14. The MV Act does not define the term "legal representative". Generally, "legal representative" means a person who in law represents the estate of the deceased person and includes any person or persons in whom legal right to receive compensatory benefit vests. A "legal representative" may also include any person who intermeddles with the estate of the deceased. Such person

does not necessarily have to be a legal heir. Legal heirs are the persons who are entitled to inherit the surviving estate of the deceased. A legal heir may also be a legal representative.

15. Indicatively for the present inquiry, the Kerala Motor Vehicles Rules, 1989, define the term "legal representative" as under:

*2. (k) "**Legal representative**" means a person who in law is entitled to inherit the estate of the deceased if he had left any estate at the time of his death and also includes any legal heir of the deceased and the executor or administrator of the estate of the deceased."*

*16. In our view, the term "legal representative" should be given a wider interpretation for the purpose of Chapter XII of the MV Act and it should not be confined only to mean the spouse, parents and children of the deceased. As noticed above, the MV Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the MV Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfill its legislative intent. We are also of the view that in order to maintain a claim petition, **it is sufficient for the claimant to establish his loss of dependency. (emphasis laid)** Section 166 of the MV Act makes it clear that every legal representative who suffers*

on account of the death of a person in a motor vehicle accident should have a remedy for realisation of compensation.”

26. On the other hand, Shri Shinde, learned counsel for claimants (wife and daughter) had placed on record a copy of Judgment and order dated 02-02-2011 passed in Enquiry Application No.151 of 2009 conducted by learned 3rd Joint Civil Judge, Senior Division, Ahmednagar, on application at the instance of Mandakini, one Vaishali, sister Archana and brother Nilesh seeking share in the compensation of deceased Amit and by a a reasoned order, said Court rejected that application.

27. Further, from the decision of the Hon'ble Apex Court in the case of ***N.Jayasree and Others*** (supra), which is relied by brother Nilesh, more particularly paragraph 16, which is reproduced above, it is clear that, firstly “legal representative” has to establish loss of dependency. It is elaborated that Section 166 of the Motor Vehicle Act makes it clear that every “legal representative” who suffers on account of death of a person in Motor Vehicle accident, should have remedy of realization of compensation.

28. In the light of above, **firstly**, learned Tribunal has turned down entitlement of original petitioner no.3 Nilesh (brother of deceased) to receive compensation, being major. **Secondly**, in the pleadings put-forth at the time of original claim petition, Nilesh projected that he was younger to deceased but was on temporary employment. Therefore, his pleadings are not that he was completely dependent on deceased. **Thirdly**, attempt to seek share before the Civil Court by holding it as property of deceased, was also turned down by the Civil Court.

As stated above, original petitioner no.3 Nilesh has also not filed distinct appeal against judgment and order of Tribunal rejecting his and his sister's entitlement to receive compensation. For above reasons, when real dependents are wife and daughter of deceased, the instant First Appeal No.2900 of 2015 for enhancement of compensation is considered only to their extent, mother being already expired.

29. Now, as this Court has held that, there is contributory negligence on the part of deceased to the extent of only 20%, the calculation of the compensation would be as under :

Sr. No.	Particulars (Rs.)	Amount (Rs.)
1	Monthly Income = 16,132 p.m. Add Future Prospects = 8,066 p.m. Total = 24,198 p.m.	
2	Less 1/3rd deduction towards personal expenses (24,198 – 8,066) = 16,132	
3	Annual Income = 16,132 x 12	1,93,584
4	Multiplier of 17 (1,93,584 x 17)	32,90,928
5	Amount of total Income after deducting 20% amount towards negligence on the part of deceased (32,90,928 – 6,58,186)	26,32,742
5	Non-pecuniary Losses : A) Loss of consortium (40,000 x 2) = Rs.80,000 B) Loss of Estate = Rs.15,000 C) Funeral Expenses = Rs.15,000	1,10,000
6	Total Compensation	27,42,742
7	Less - amount of compensation granted by MACT	17,82,256
8	Total enhanced amount of compensation	9,60,486

30. Considering the aforesaid discussion and computation of compensation, the wife and daughter of the deceased are entitled for the enhanced compensation of **Rs.9,60,486/-**. Accordingly, following order is passed :

ORDER

- I. First Appeal No.1964 of 2015 is dismissed.
- II. First Appeal No.2900 of 2015 is partly allowed.
- III. Impugned judgment and award dated 31-01-2014 passed by the Member, MACT, Ahmednagar in MACP No. 807 of 2008 stands modified.

- IV. The Appellants in First Appeal No.2900 of 2015 (original opponent nos.4 and 5) i.e. Mrunalini Amit Makasare and Tanvi @ Arpita Amit Makasare are entitled for enhanced compensation of **Rs.9,60,486/-** along with interest @ 7.5% per annum from the date of petition till the date of realization of the amount.
- V. Respondent nos.1 to 3 (original opponent nos.1 to 3) to pay enhanced compensation amount of **Rs.9,60,486/-** to Appellants in First Appeal No. 2900 of 2015 within 12 weeks from today along with interest @ 7.5% per annum from the date of petition till its realization.
- VI. Out of enhanced compensation of **Rs.9,60,486/-**, an amount of **Rs.3,60,486/-** be paid to Appellant No.1 – Mrunalini Amit Makasare and the remaining amount of **Rs.6,00,000/-** be deposited in any Nationalized Bank by way of two Fix Deposits of Rs.3,00,000/- each in the name of Appellant No.2 Tanvi @ Arpita Amit Makasare for a period of three months each.
- VII. Respondent nos.1 to 3 (original opponent nos.1 to 3) to deposit the amount of enhanced compensation along with interest thereon in this Court within 12 weeks from today.
- VIII. On deposit of amount by the Respondent nos.1 to 3 (original opponent nos.1 to 3), the Appellant no.1 Mrunalini Amit Makasare is permitted to withdraw her share along with interest, if any.

- IX. Appellant no.2 - Tanvi @ Arpita Amit Makasare is entitled to withdraw **Rs.6,00,000/-** of her share after maturity of the FDs.
- X. Modified award be prepared accordingly.
- XI. Claimants to pay Court fees on enhanced compensation as per Rules.
- XII. The Appeals are disposed of in above terms.
- XIII. The applicants in Civil Application No.11764 of 2024 are permitted to withdraw the amount lying in this Court alongwith interest, to the extent of their shares as determined by the Tribunal. Civil Application No.11764 of 2024 is accordingly disposed of.
- XIV. Pending Civil Application is disposed of.

(**ABHAY S. WAGHWASE**)
JUDGE