



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1698 OF 2017
WITH
CIVIL APPLICATION NO.2225 OF 2025
IN FA/1698/2017

Reliance General Insurance Co. Ltd., }
Through its authorized Official, }
Adalat Road, Aurangabad } **... Appellant**
(Orig. Resp. No.2.)

Versus

- | | | | |
|----|--|---|---------------------------|
| 1. | Smt. Swati Changdeo Ghodekar, | } | |
| | Age : 30 years, Occu. : Household, | } | |
| 2. | Miss. Gauri Changdeo Ghodekar, | } | |
| | Age : 04 years, Occu. : Nil., | } | |
| 3. | Miss. Dnyaneshwari Changdeo Ghodekar, | } | |
| | Age : 1 ½ years, Occu. : Nil., | } | |
| | Resp Nos.2 and 3 minor through | } | |
| | their legal guardian mother – respondent no.1} | | |
| 4. | Datta Sahadu Ghodekar (Died) | } | LRS of Resp. No.4 |
| | Age : 70 years, Occu. : Nil., | } | i.e. Respondent |
| | Resp. No.1 to 4 R/o. Belwandi Bk., | } | Nos.1 to 3 are |
| | Tq. Shrigonda, Dist. Ahmednagar. | } | already on record. |
| 5. | Eknath Namdeo Dhamdhere, | } | |
| | Age : 40 years, Occu. : Business, | } | |
| | R/o. Talegaon Dhamdhere, | } | |
| | Tq. Shirur, Dist. Pune. | } | ... Respondents |
| | | | (Resp. No.1 to 4 is orig. |
| | | | claimants & Resp. No.5 |
| | | | Orig. Resp. No.1.) |

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Mr. A. S. Usmanpurkar, Advocate for Appellant.
Mr. V. S. Bedre, Advocate for Respondent Nos.1 to 3.
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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 05 MAY 2026
PRONOUNCED ON : 08 JUNE 2026

JUDGMENT :

1. This is an appeal by Insurance Company, who was original opponent no.2 in M.A.C.P. No. 133 of 2015, which was a claim set up by heirs of deceased Changdeo and decided by the learned Tribunal by judgment and award dated 06.03.2017.

2. Learned counsel for appellant would point out that, above numbed M.A.C.P. was filed by legal heirs of one deceased Changdeo Ghodekar, who was allegedly hit by truck bearing No. MH-12-KP-9294 while he was proceeding on his motorcycle bearing No.MH-16-BB-1564 on Belwandi to Belwandi Station Road. That, he succumbed to the accident injuries, whereby his wife, children and father set up above claim petition by invoking section 166 of Motor Vehicles Act and claimed compensation under various heads to the tune of Rs.38,05,000/-.

3. It is further pointed out that, said claim was allowed by the learned Tribunal, but in absence of any evidence on the point of income, learned Tribunal considered income to the tune of Rs.15,000/- per month. That, in fact, there was no supportive evidence by the claimants. That, deceased by working as mason earned Rs.5,00,000/- per annum. It was also claimed that there was agricultural income, but there was no distinct evidence to that extent.

4. Learned counsel further questioned the grant of compensation under both the heads, love and affection as well as consortium, when both heads were one and the same. Even he questions the grant of Rs.25,000/- for loss of estate and funeral expenses. He conceded that, there is no objection for grant of consortium and loss of love and affection in view of the recent judgment of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and Others***, (2018) 18 SCC 130 as well as the grant of future prospects to the extent of 40% in view of the law laid down by the Hon'ble Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and others***, 2017 (16) SCC 680. For above reasons, he seeks indulgence and to modify the award by allowing the appeal.

5. Justifying the judgment and award, learned counsel Shri Bedre would submit that, judgment and award is perfectly legal and in consonance with the evidence on record. According to him, in the capacity of mason, deceased earned so much amount. The learned Tribunal ought to have considered a higher monthly income from both agricultural income and masonry work. However, he admits that, judgment and award to the extent of future prospects and loss of consortium deserves to be granted in view of the settled law.

6. Here, admittedly, there is no distinct appeal or cross objection

by claimants for seeking enhanced compensation on the ground that inadequate compensation was granted. However, in view of the settled law laid down by the Hon'ble Apex Court in the case of *Nagappa v. Gurudayal Singh and Others*, (2003) 2 SCC 274 and *Jitendra Khimshankar Trivedi and Ors v. Kaasam Daud Kumbhar and Others*, (2015) 4 SCC 237, this Court can grant just compensation to the claimants.

7. As regards the earnings of the deceased, the deceased was a mason and a skilled person. There is also a 7/12 extracts on record (Exh.17). Consequently, learned Tribunal ought to have considered additional income from agriculture along with masonry work. Therefore, it would be just and proper to consider income of deceased from both the business to the tune of Rs.19,000/- per month.

8. While considering the compensation retrospectively on the basis of current judgments of the Hon'ble Apex Court, it is necessary for the Court to examine the scope and applicability of such judgment. This court in the case of *Reliance General Insurance Co. v. Manju wd/o Vikram Choudhary and others*, 2021(6) ALL MR 171, 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 v. 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 General Insurance, (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."

9. From the aforesaid observations, it is clearly evident that law laid down by the Apex Court applies not only to the prospective cases, but also to all pending proceedings and even in the pending appeals.

10. Learned Tribunal, as pointed out, has also granted future prospects 50% instead of 40%. The age of the deceased is reported to be 35 years. In view of the law laid down by the Hon'ble Apex Court in **Pranay Sethi** *(supra)*, 40% needs to be added towards future prospects.

11. Further, in the considered opinion of this Court, learned Tribunal has not properly granted amount towards loss of consortium, funeral expenses and loss of estate in view of the ratio laid down in ***Magma General Insurance Co. Ltd.*** (supra). Therefore, the claimants are entitled for Rs.40,000/- each, i.e.1,20,000 /- towards consortium and loss of love and affection. Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

12. In view of the aforesaid discussion, claimants are entitled for following compensation :

Sr. No.	Heads	Amount (Rs.)
1.	Annual Income (i.e. 19,000 x 12)	2,28,000/-
2.	Future Prospects 40% i.e. 91,200 (2,28,000 + 91,200)	3,19,200/-
3.	Less 1/3 rd deduction towards personal expenses. (Rs. 3,19,200 – Rs. 1,06,400)	2,12,800/-
4.	Multiplier of 16 (2,12,800 X 16)	34,04,800/-
5.	Loss consortium and Love and affection=1,20,000/- Loss of Estate = Rs.15,000/- Funeral Expenses =15,000/-	1,50,000/-
6.	Total compensation to be paid	35,54,800/-
7.	Compensation awarded by Tribunal	35,05,000/-
8.	Total Enhanced Compensation (i.e. Rs.35,54,800 – 35,05,000)	49,800/-

13. In the result, the following order :

ORDER

- (i) Appeal is partly allowed.
- (ii) Impugned judgment and award dated 06.03.2017 passed by the learned Motor Accident Claims Tribunal, Ahmednagar in M.A.C.P. No. 133 of 2015, is modified.
- (iii) Appellant - Insurance Company to pay enhanced compensation of Rs.49,800/- to respondent Nos.1 to 3 – original claimants within 12 weeks from today along with interest @ 9% per annum from the date of registration of claim petition till its realization.
- (iv) Modified award be prepared accordingly.
- (v) Claimants to pay court fees on enhanced compensation as per rules.
- (vi) On deposit of the amount by Insurance Company, claimants are permitted to withdraw the same.
- (vii) Civil Application No.2225 of 2025 is disposed of.

(ABHAY S. WAGHWASE, J.)