IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2612 OF 2010

1. Vishwambhar Bhaurao Kadam,
(Since died)

2. Smt. Bharatbai w/o Vishwambhar Kadam,
Age : 54 years, Occu : Household,
R/o. Takali (Rao), Tq. Latur,
District : Latur. ..Appellants

Versus

1. Sidhraj s/o Sidram Reddy,
Age : Major, Occu : Driver,
R/o Auti Ploting Omerga,
Tq. Omerga, Dist. Osmanabad.

2. New India Assurance Co. Ltd.,
Through its Branch Manager,
Office Chandra Nagar, Latur,
Tq. & Dist. Latur ..Respondents

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Advocate for Appellants : Mr. N.D. Kendre
Advocate for Respondent No.2 : Mr. A.C. Choudhari

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : JULY 03, 2026

PRONOUNCED ON : JULY 10, 2026

JUDGMENT :-

1. The appellants/original claimants impugn judgment and award dated 25.08.2009 passed by Motor Accident Claims Tribunal, Latur in Motor Accident Claim Petition No.257 of 2007, whereby claim is partly allowed.

2. The appellants son, Pandurang Kadam, lost his life in motor vehicular accident dated 19.07.2007. At the time of accident, he was proceeding as pillion rider on two-wheeler. The offending truck bearing Registration No. MH-20-B-9015 and motorcycle collided

with each other. The incident was reported to police. Thereupon FIR was lodged against truck driver. The spot panchnama was drawn, post-mortem was conducted. The appellants filed M.A.C.P. No.257 of 2007 raising claim for compensation of Rs. 10 lakh against owner and insurer of truck. They contended that Pandurang was serving as salesman and earning Rs.8,000 per month. He had qualification of D.Ed. They were dependent on his income. The claim was contested by respondent no.2/insurance company by filing written statement. The Tribunal framed issues. The appellant no.2 recorded her evidence and also relied upon her witness, Ram Ithape. The Tribunal on evaluation of evidence recorded finding of composite negligence of truck driver and motorcycle rider and considered notional income at the rate of Rs.36,000/- p.a. 2/3rd dependency of claimants and passed award of Rs.1,66,000/- along with interest at the rate of 7.5% p.a.

3. Mr. Kendre, learned advocate appearing for appellants submits that Tribunal committed serious error while considering present case by applying principles of contributory negligence, although same is governed by principles of composite negligence. The Tribunal misapplied multiplier based on age of claimants instead of age of deceased. The notional income of deceased is wrongly assumed as Rs.3,000/- per month. Nothing is considered towards future prospects. Partly sum is awarded towards non-pecuniary heads. As

such, on all those counts, award needs to be modified and enhanced compensation needs to be granted.

4. Mr. Choudhari, advocate appearing for respondent/insurance company supports impugned award.

5. Having considered submission advanced by learned advocates appearing for respective parties, it can be observed that there is no dispute about accidental death of son of appellants namely Pandurang. He was a pillion rider on motorcycle which collided with offending truck. The FIR was lodged against truck driver. The Tribunal assumed 50% negligence on part of motorcycle rider, deducted 50% of amount assuming case to be governed by principles of contributory negligence. Apparently, aforesaid approach of Tribunal was inconsistent with tort law. There is difference between contributory and composite negligence. In case of contributory negligence, the person who has contributed to accident, cannot claim compensation for injuries sustained by him in accident to the extent of his own negligence. However, in case, person who has suffered but not contributed to accident, his case is governed by composite negligence and when accident is by two or more other persons, he is entitled to recover compensation from joint tortfeasor. In such case, liability of joint tortfeasor is joint and several. It is also settled that in such case, it is a choice of claimants to raise claim against anyone of joint tortfeasor.

6. In backdrop of aforesaid principles of law, when Tribunal had arrived at conclusion that truck driver was equally responsible for accident along with rider of motorcycle, claim for compensation ought to have been determined applying principles of composite negligence and claimants ought to have been awarded 100% compensation without applying any deduction based on finding of negligence of motorcycle rider. The aforesaid legal principles have been restated by the Hon'ble Supreme Court in the case of ***Khenyei vs New India Assurnace Co.Ltd.& Ors*** reported in ***(2015) 9 SCC 273***.

7. The appellants are coming with a case that Pandurang was aged about 24 years. He was their bachelor son and holding qualification of D.Ed. He was serving with Reliance Company at Aurangabad and earning Rs.8,000/- per month. The Tribunal observed that no evidence has been adduced to prove income of deceased. However, fact remains that he was possessing D.Ed. qualification. The certificate to that effect is proved through evidence of PW-1. Looking to qualification, notional income of deceased Pandurang could not have been fixed, as if he is an unskilled workman.

8. This Court finds that instead of Rs.3,000/- per month as considered by the Tribunal, it would be appropriate to assume notional income of deceased @ Rs.4,000/- per month. So far as multiplier is concerned, it is well settled that multiplier has to be

applied with reference to age of deceased and age of parents would be irrelevant. Looking to age of deceased Pandurang, appropriate multiplier would be 18 in facts of present case. However, since appellants are parents and deceased was a bachelor, their dependency can be assumed to 50%. True that notional income of deceased needs addition towards future prospects at the rate of 40%, appellants are also entitled for non-pecuniary damages which are not properly compensated by Tribunal.

9. In result, this Court finds that assessment needs to be redetermined in light of law laid down by Hon'ble Supreme Court in case of ***National Insurance Company Limited Vs. Pranay Sethi,*** reported in ***(2017) 16 SCC 680*** in following manner.

Sr. No.	**Head**	**Entitlement**
01	Monthly Income	Rs. 4,000/-
02	Future Prospects (40%)	Rs. 1600/-
03	Total Income (Column 1+2)	Rs. 5600/-
04	After Deduction ½	Rs. 2800/-
05	Multiplier	18
06	Loss of Dependency	Rs.06,04,800/- (Rs.2800 x 18 x 12)
07	Loss of Consortium	Rs.80,000/- (Rs.40,000 each)
08	Loss of Estate	Rs.15,000/-
09	Loss of Funeral Expenses	Rs.15,000/-
10	Interest	7.5%
11	Total Compensation	**Rs.07,14,800/-**
12	After Deduction of MACT Compensation	**Rs.05,48,800/-** (Rs.07,14,800 – Rs. 01,66,000/-)

10. In light of aforesaid calculation, appeal is partly allowed.

11. The appellants/claimants are held entitled for total compensation of Rs. 7,14,800 including NFL along with interest at the rate of 7.5% p.a.

12. The compensation amount received/paid under award of Tribunal be appropriated.

13. Since appellant no.1 has expired, compensation amount be released in favor of appellant no.2 on payment of deficit Court fees, if any.

14. The award be drawn up accordingly.

(S.G. CHAPALGAONKAR, J.)

Mujaheed//