



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 195 OF 2011
WITH
CIVIL APPLICATION NO.3244 OF 2018
WITH
CIVIL APPLICATION NO.3623 OF 2013
IN FA/195/2011

National Insurance Co. Ltd.,
Having its Head Office &
Registered Office at 3 Middleton
Street, Kolkatta, a Branch Office
at Dhule and a Divisional Office
at Hazari Chambers, Station Road,
Aurangabad, Now through the
Divisional Manager, Aurangabad

... **Appellant**
[Orig. Oppnt No.3.]

Versus

1. Kailaschand S/o. Manakchand Bhartiya,
Age : about 56 years, Occu. : Business,
R/o. Torkheda, Tq. Shahada,
Dist. Nandurbar.
2. Kum. Preeti D/o. Kailaschand Bhartiya,
Age : about 26 years, Occu. : Education,
R/o. Torkheda, Tq. Shahada,
Dist. Nandurbar.
3. Dipak S/o. Kailaschand Bhartiya,
Age : about 17 years - a minor,
U/g of His father Kailaschand
Manakchand Bhartiya,
Respondent No.1 herein.
4. Sapankumar S/o. Shubhash Bos,
Age : Adult, Occu. : Driver,
R/o. 'Quarter No. L-4/55, Tapti Road,
Sanchi-Jamshedpur.
5. Sardar Gurdayalsing S/o. Vryamsing,
Age : Adult, Occu. : Business & Owner
of Truck No. NL-05/A-7051,

... Orig. Petitioners/
Claimants Nos.1 to 3

... Orig. Opponent No.1

R/o. Merapani, Dist. Vodna (Nagaland).

... Orig. Opponent No.2

6. Ghisalal S/o. Tulsiramji Jaiswal,
Age : Adult, Occu. : Business & the
Owner of Ambassador Car No.MP-09/
HB-2533, R/o. Mahu (M.P.)
Died, through his LRS.

- 6(a). Smt. Manorama wd/o. Ghisalal Jaiswal,
Age : Major, R/o. Mahu (M.P.)

... Respondents

....

Mr. Sudhir V. Kulkarni, Advocate for Appellant.

Mr. M. M. Bhokarikar, Advocate for Respondent Nos.1 to 3.

....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12 MARCH 2026

PRONOUNCED ON : 24 MARCH 2026

JUDGMENT :

1. Original defendant no.3 Insurance Company in Claim Petition No. 112 of 2001 challenges the judgment and award dated 27.04.2004 passed by learned Additional Member, Motor Accident Claims Tribunal at Shahada, by which death claim has been partly allowed.

2. In short, heirs of deceased Bebibai set up above claim petition, on the premise that, on 14.12.1998, while deceased was traveling in a Car bearing No.MP-09-HB-2533, i.e. vehicle owned by respondent no.4, and when it was in the vicinity of Malaswada Shivar, the car was given dash by a truck bearing NL-5-A-7051

coming from opposite direction and Bebibai suffered fatal injuries and died on the spot itself, and therefore, claim was set up by her husband and two children against the driver, owner of the car, owner of truck as well as insurer of truck. After appreciating the oral and documentary evidence, learned Tribunal vide above judgment and award granted maintenance to the tune of Rs.3,09,500/- along with interest at the rate of 9% per annum and claim petition was dismissed against original respondent no.1 driver of the truck as well as original respondent no.4 owner of the car, and thereby respondent nos.2 and 3 i.e. owner of the offending truck and its insurer, were held liable to jointly and severally pay the above compensation.

Feeling aggrieved by the above, Insurance Company has come up in appeal challenging the judgment and award. Even claimants have sought just compensation on the ground that inadequate compensation has been granted. Admittedly, no cross objection/appeal has been filed by claimants.

3. Learned counsel for Insurance Company has placed on record written notes of arguments and would also submit that, learned Tribunal has erred in not considering contributory negligence of car driver also to the extent of 50% because, according to him, there is no dispute that accident had taken place in the

middle of the road, and moreover, claimant has admitted that, there was head-on collision between two vehicles approaching each other from opposite directions. He also questions grant of excess compensation in absence of evidence. Third ground of challenge is that learned Tribunal erred in applying multiplier in view of the age of deceased.

4. Thus, here, sole ground of challenge in the appeal is, non consideration of contributory negligence of the car driver also, who was also rash and negligent and himself died in the said accident along with deceased Bebibai.

5. On going through the record, it is emerging that, present appellant Insurance Company - original respondent no.3 before the Tribunal has not adduced distinct evidence from its side. It is emerging from their pleadings by way of written statement (Exh.18) that, there is simpliciter denial of all averments in the claim petition, and it is put-forth that the truck driver was proceeding in a slow and moderate speed, but the driver of the car was rash and negligent and thereby solely responsible, and in the alternative, a plea is raised that an inference of composite negligence be drawn.

6. In support of plea of contributory negligence, it is tried to be projected that as the accident had taken place in the middle of the

road, drivers of both the vehicles, i.e. car and truck, are equally responsible, more particularly, there being head-on collision.

It is emerging from the spot panchanama that, after the collision, the truck toppled and fell on the car crushing the vehicle and its incumbents.

7. It is fairly settled position for fixing liability, best and valuable piece of evidence is the spot panchanama, which is at Exh.7/2P. Taking the circumstances at the scene of accident and the above position of the truck, after turning turtle, directly falling on the car, is a sufficient indicator to draw a particular inference. With such situation, unless the speed of truck would have been excessive or on the higher side, the truck would not have assumed such a position after the collision.

8. It is tried to be pointed out that, witness PW1 Kailaschand had admitted that there was head-on collision in the middle of the road. But, admittedly, this witness is not an eye witness to the accident. Both, driver of the car as well as wife of PW1 has unfortunately died in the accident. Driver of the truck has not stepped in the witness box, and therefore, adverse inference can be drawn against him. Consequently, taking into account the fact that, truck had fallen and landed over the car, is a sufficient to draw

inference that truck was with excess speed and being heavy vehicle, its driver lost control. For said reasons, as put-forth by learned counsel for appellant - insurance company, it cannot be said that, it was either contributory negligence or composite negligence.

9. Learned counsel for respondents - original claimants urged to enhance compensation, it to be meager.

10. Here, admittedly, there is no distinct appeal by claimants for seeking enhanced compensation on the ground that inadequate compensation was granted. However, in such circumstances, in the case of *United India Insurance Co. Ltd. v. Kunti Binod Pande & Ors.*, (2020) 1 Bom CR 629, in paragraph 34, this Court observed that, "A Division Bench of this Court in case of *National Insurance Co. Ltd. v. Vaishali H. Devare & Ors.*, (2013) 1 Mah LJ 411, has held that even if there is no cross- appeal or cross-objection preferred by the claimants, the exercise of determining the just compensation will have to be carried out. Such adjudication can be made even without taking recourse to Rule 33 of Order XLI of Code of Civil Procedure.

In similar line, in the case of *Manager, National Insurance Co. Ltd. v. Shri Nilesh Suresh Bhandari & Ors.* 2022 SCC Online Bom 4749, the learned Single Judge of this Court considered the aforesaid observations in *Kunti Binod Pande & Ors.* (supra) and in paragraph

17 observed that,

"17. I am in complete agreement with the view expressed in Kunti Pandey (supra), since it is the duty of the Court dealing with a claimant who has incurred a disability on account of an un-fateful event, I do not deem it fit to decline consideration of the claim of the claimant for enhancement of compensation in absence of any independent Appeal or cross Appeal being filed by the claimant."

11. In the case of ***Solapur Municipal Corporation & Anr. v. Rupali Rahul Pawar & Anr.*** in First Appeal No.476 of 2016. In this case this Court considered the decisions in ***A.P.S.R.T.C. Rep. by its General Manager & Another v. M. Ramadevi and Others***, MANU/SC/7008/2008 and ***Nagappa v. Gurudayal Singh and Ors.***, (2003) 2 SCC 274, and in paragraph 15 held that, *"It is thus well settled that the Tribunal/Court is under an obligation to award just compensation and there is no embargo in enhancing the compensation in the absence of appeal or cross objection. ..."* As a result, this Court enhanced the compensation of Rs.12,58,000/- to Rs.16,06,200/-. Said decision is in line with the earlier decision in ***Kelkar and Kelkar v. Shripad Narayan Gore And Ors.***, 2019 SCC Online Bom 4140, therein reference was made to the decisions in ***Ranjana Prakash and Ors. v. Divisional Manager and Ors.***

MANU/SC/0897/2011, *Nagappa* (supra) and *National Insurance Co. Ltd. v. Pranay Sethi and Others*, (2017) 16 SCC 680.

12. Learned counsel for original claimants has placed on record calculation pursis i.e. for just and fair compensation. Before the learned Tribunal, case was set up that, deceased Bebibai was the sole bread-earner of the family, who by conducting business of cloth and by doing tailoring work, earned over Rs.80,000/- to Rs.90,000/- per year, and thereby claim of Rs.5,00,000/- was set up. However, from the pleadings that approximate income allegedly earned by deceased was Rs.7,000/- to Rs.8,000/- per month. But, in the cross examination of PW1 Kailaschand, he has admitted that, there was no distinct cloth shop in the name of deceased, rather, he ran cloth shop that too in the residential house.

PW2 Bhalchandra was also examined. According to him, he was acquainted deceased for last five years and by rendering tailoring/cloth business, she earned Rs.7,000/- to Rs.8000/- per month.

After appreciating such respective cases, learned Tribunal, in paragraph 24, concluded and recorded a finding that, it was evident that Bebibai was doing tailoring work and cloth business, but there was no documentary proof of income and under such

circumstances, her income was held to be Rs.2,500/- i.e. over Rs.30,000/- per year. Such computations and figure is questioned before this Court on the ground that it is inadequate.

13. Admittedly, there was no concrete proof or documentary evidence about deceased Bebibai herself conducting said business, however, learned Tribunal held that though there was no distinct proof of such business, from the evidence of PW1 Kailaschand and PW2 Bhalchandra, inference was drawn that, she conducted said business and accordingly held her month income of Rs.2,500/-. Indeed, said figure seems to be on lower side. A person doing tailor work equally by also selling cloth might be earning more than the above quantum held by Tribunal. Therefore, it would be just and proper to consider income of deceased from both the business to the tune of Rs.3,000/- instead of Rs.2,500/- per month.

14. While considering the enhancement of 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."

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.

15. From the post mortem report, age of deceased reported to be 45 years. However, In view of the decision of the Hon'ble Apex Court in the case of *Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.*, (2009) 6 SCC 121, for said age group multiplier applicable is 14.

16. Learned counsel for original claimants has pointed out that learned Tribunal has not granted amount under the future prospects.

17. Further, in the considered opinion of this court, learned Tribunal has granted less amount towards loss of consortium, funeral expenses and loss of estate. In view of the ratio laid down in *Pranay Sethi* (supra); *Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram and Others*, (2018) 18 SCC 130, 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.

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

Sr. No.	Heads	Amount (Rs.)
1.	Annual Income (i.e. 3000 x 12)	36,000/-
2.	Future Prospects 25% i.e. 9,000 (36,000 + 9,000)	45,000/-

3.	Less 1/3 rd deduction towards personal expenses. (Rs. 45,000 – Rs. 15,000)	30,000/-
4.	Multiplier of 14 (30,000 X 14)	4,20,000/-
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	5,70,000/-
7.	Compensation awarded by Tribunal	3,09,500/-
8.	Total Enhanced Compensation (i.e. Rs.5,70,000 – 3,09,500)	2,60,500/-

18. In the result, the following order :

ORDER

(i) Impugned judgment and award dated 27.04.2004, passed by the learned Additional Member, Motor Accident Claims Tribunal, Shahada in Claims Petition No.112 of 2001, is modified.

(ii) Appellant - insurance company to pay enhanced compensation of Rs.2,60,500/- to original claimants within 12 weeks from today along with interest @ 9% per annum from the date of registration of claim petition till its realization.

(iii) Modified award be prepared accordingly.

(iv) Claimants to pay court fees on enhanced compensation as per rules.

(v) On deposit of the amount by Insurance Company, claimants are permitted to withdraw the same.

(vi) Appeal is disposed of in above terms.

(vii) Civil Application No.3244 of 2018 for withdrawal of amount is allowed in terms of prayer clause (b). Civil Application No.3623 of 2013 is also disposed of.

(ABHAY S. WAGHWASE, J.)