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CNR No.	MHSN170036632020

IN THE COURT OF MOTOR ACCIDENT CLAIMS TRIBUNAL, VITA.
(Presided over by R.R.Bhagwat, Member, MACT, Vita)

M.A.C.PNo.69/2024
 (Old M.A.C.PNo.70/2020)

Exh.No.52

1. **Smt.Leelabai Kaka Bhise,**)
 Age 62 Years, Occu.Household,)
)
2. **Sou.Anuradha Kailas Surve,**)
 Age 28 Years, Occu.Household,)
 R/o.Chachegaon, Tal.Karad, Dist.Satara.)
)
3. **Sou.Yojana Chandrakant Suryagandh,**)
 Age 26 Years, Occu.Household,)
 R/o.Vadegaon, Tal.Sangola,)
 Dist.Solapur.)
)
4. **Ku.Pallavi Ramesh Magade,**)
 Age 24 Years, Occu.Education,)
)
5. **Ku.Rohit Ramesh Magade,**)
 Age 19 Years, Occu.Education)
)
6. **Ku.Rohan Ramesh Magade,**)

... Claimants

Age 16 Years, Occu.Education,)
 (Being Minor; Claimant No.1 is)
 guardian))
 Cl.No.1,4 to 6 R/o.Bhambarde,)
 Tal.Khanapur, Dist.Sangli.)
)

... Claimants

VERSUS

1. **Shri Sukhdev Ganpati Chandanshive,**)
 Age 30 Years, Occu.Trader,)
 R/o.666, Matang Samaj,)
 At Post & Tal.Kavathe-Mahanka,)
 Dist.Sangli.)

2. **Bajaj Allianz General Insurance Co.Ltd.,**)
 Bajaj Allianz House, Air Port Road,)
 Yerwade, Pune-411 006.)
)

... Opponents

3. **Shri Umesh Maruti Wandre,**)
 Age 35 Years, Occu.Driver,)
 R/o.Deshing, Tal.Kavathe Mahankal,)
 Dist.Sangli.)
)

Claim Rs.22,20,000/- U/Sec. 166 of M.V.Act.

Shri R.M. Bhale, advocate for claimants.

Shri S.B.Dhole, advocate for opponent No.1

Shri S.H. Pathak, advocate for opponent No.2.

Shri R.B. Salunkhe, advocate for opponent No.3.

J U D G M E N T

(Delivered on 31/01/2025)

1. The claimants have filed death claim under section 166 of the Motor Vehicles Act,1988 (the M.V.Act).

2. The claimants have pleaded their case, in brief, as under :-

On 18.02.2020, at about 10.30 p.m. the deceased was riding the motorcycle bearing No.MH-10-CY-3581 as a pillion rider towards Vita from Canteen of Adarsh College, situated at MIDC, Vita by the left side of Tasgaon-Vita road. One Sandip Madane was riding the motorcycle with moderate speed and following traffic rules. He was having valid and effective driving license with 15 years driving experience. When, he reached near in front of James Showroom, near Arch and the land of Mahadev Korade, in the jurisdiction of Vita, opponent No.3 was coming from opposite side by driving Bolero Pick-up vehicle bearing No.MH-10-BR-9106 with fastest possible speed and violating the traffic rules. As he was driving rashly and negligently, he lost the control over the Bolero pick up vehicle and dashed to the motorcycle to its front side by coming to extreme wrong side. He dragged the motorcycle up to 181 ft from the spot of incident. He fled away from the spot after the accident without informing the accident to the nearest police station. The eye witnesses and brother of the motorcycle caught hold opponent No.3 with his Bolero Pick up vehicle near Mahadev Mala on Tasgaon road and they handed over him to the police. After due investigation, the Vita Police Station registered Crime No.64/2020 against the opponent No.3 for the offence punishable under section 279, 337, 338, 304(2) of the Indian Penal Code and Section 184 of the Motor Vehicles Act

and also submitted the charge-sheet to the Ld. JMFC, Vita. In the said accident deceased Jayashri Magade was initially admitted in the Rural Hospital, Vita. Thereafter, she was shifted to Omshri Hospital, Vita where she died while taking treatment on the same day. The deceased was 45 years old. She was working as a cook in Canteen of Adarsh College at Vita and she was earning Rs.12,000/- per month. Accordingly, the multiplier is applied and calculation of compensation is made. 1/4th deduction is made towards personal expenses considering number of claimants dependents upon the deceased. Future prospects is calculated at the rate of 25%. They prayed to allow the claim accordingly.

3. Opponents No.1 and 3 appeared in the matter. Opponent No.1 could not file written statement within limitation period. Though opponent No.1 has placed on record written statement with delay condonation application, it is not considered. Opponent No.3 failed to file written statement.

4. **Opponents No.2 filed written statement at Exh.25 in which it is pleaded as under :-**

It is admitted that opponent No.1 owned vehicle involved in the accident having registration No.MH-10-BR-9106 insured with opponent No.2. Other statutory defences are taken in written statement. Protection under section 147 of the Motor Vehicles Act is sought. Mandatory duty of Vita Police Station as

per section 158(6) of the M.V.Act to forward documents to the insurer is explained after elaborately explaining provisions of M.V.Act. It is submitted that the claimants will have to prove all aspects including negligence on the part of opponent No.3 who was driving the said tempo at the relevant time. Income of the deceased is not disputed. It is prayed to dismiss the claim with cost.

5. I have framed issues at Exh.49. The claimants have filed evidence affidavit of claimant No.5 Rohit Ramesh Magade at Exh.26. They also relied on documents filed with list Exh.3. The claimants also examined PW2 Dhanaji Sambhaji Madane at Exh.41 and closed evidence vide pursis Exh.44. Opponent No.2 closed evidence vide pursis Exh.46.

6. **Ld.Counsel R.M.Bhale for the claimants submitted as under :-**

He reiterated contents of claim and oral and documentary evidence on record. He submitted that income of the deceased may be considered as Rs.10,000/- per month. Claimants No.2 to 4 are married daughters and claimant No.1 is died. Therefore, award may be passed in favour of claimants No.5 and 6 only. He prayed to allow the petition.

7. **Ld. Counsel Shri S.H. Pathak for opponents No.2 advanced arguments as under :-**

He reiterated contents of Written Statement and submitted that 1/3rd deduction towards personal expenses may be considered. There is no documentary proof to show that deceased was 45 years of age at the time of incident. There is no fault on the part of opponent No.3 in the alleged accident and accident in question occurred due to rash and negligent driving of motorcyclist. He prayed to dismiss the claim.

8. I have framed the issues at Exh.49. I reproduced the same below. I record my findings against each issue for the reasons to follow: -

Sr.	ISSUES	FINDINGS
1.	Whether the claimants prove that late Jayashree Ramesh Magade died in motor vehicle accident dt. 18.02.2020 in which motorcycle bearing No.MH-10-CY-3581 driven by deceased and Bolero Pick Up bearing No.MH-10-BR-9106 driven by opponent No.3 and owned by opponent No.1 were involved ?	In the affirmative.
2.	Whether the claimants prove that the accident took place due to rash and negligent driving of Bolero Pick Up bearing No.MH-10-BR-9106 driven by opponent No.3 and owned by opponent No.1 ?	In the affirmative.
3.	Whether the claimants are entitled for compensation ? If yes, to what extent ?	Yes, As per final order.

4.	What order and Award ?		As per final order.

REASONS

As to Issues No.1 and 2 :-

9. The claimants have filed evidence affidavit of claimant No.5 Rohit Ramesh Magade at Exh.26 and CW.2 Dhanaji Sambhaji Madane at Exh.41 who was driving the motorcycle. Both of them reiterated contents of Exh.1. Both of them deposed in consistence with the pleadings of the claim. CW.1 has no personal knowledge about the accident. He had denied all the material suggestions given by the contesting opponents. CW2 Dhanaji stated that he had seen the accident and also caught the Bolero pick up vehicle along with its driver opponent No.3. The allegations made in the charge-sheet are similar to those made by the claimants in this petition. It is true that mere filing of the charge sheet does not prove the rashness and/or negligence of the accused, but the claimants are not only banking upon the charge-sheet, but also led evidence of eye witness namely; CW2 Dhanaji Madane in addition to their own. It is true that he is brother of deceased Sandip, but such fact would not discredit his testimony, unless something is brought in his cross examination for disbelieving his evidence. Though it is defence of opponent No.2 that accident took place due to rash and negligent driving of the deceased, he has not examined opponent No.3 i.e. driver of the Bolero Pick-up vehicle. Moreover, opponent No.3 has not filed his written statement and

denied the contentions in the claim. It also reveals from the spot panchanama that spot of accident was 1ft from western side of the road and 21 ft from eastern side of the road. There were brake marks of the Bolero pick-up vehicle for 19 ft and there are also marks of dragging the motorcycle. It also states that the road runs south to north. All these circumstances corroborate the claimant's case.

10. Undisputedly, the deceased Sandip was riding the motorcycle along with two others including deceased. Therefore, there were triple seat on the motorcycle. It is violation of traffic rules, but the violation of such traffic rule is not ground to hold negligence of the motorcyclist unless there is evidence that either the accident could have been averted or the impact could have been minimized. It is so held by the Hon'ble Supreme Court in Anjana Narayan Kamble and others Vs. Branch Manager, Reliance General Insurance Co.Ltd., and another (2023 ACJ 346). Thus, the aforesaid discussion shows that the claimants prove that opponent No.3 was driving the Bolero pick-up vehicle rashly and negligently and by going to its wrong side gave dash to the motorcycle and caused death of the deceased. Therefore, the involvement of the vehicles is also proved. It is not disputed that Bolero pick-up vehicle was owned by opponent No.1 and insured with opponent No.2. Accordingly, I record my findings as to issues No.1 and 2 in the affirmative.

As to Issues No.3 & 4 :-

11. While determining compensation amount in cases of death, Hon'ble Supreme Court has laid down certain guidelines in para 19 in the case of **Sarla Verma & Ors vs Delhi Transport Corp.& Anr reported in (2009) 6 SCC 121** which reads as under :-

“Basically only three facts need to be established by the claimants for assessing compensation in the case of death : (a) age of the deceased; (b) income of the deceased; and the (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by the following well settled steps:

Step 1 (Ascertaining the multiplicand) The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependent family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier) Having regard to the age of the deceased and period

of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation) The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the 'loss of dependency' to the family.

Thereafter, a conventional amount in the range of Rs. 5,000/- to Rs.10,000/- may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5,000/- to 10,000/- should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also added.

12. If these guidelines are taken into consideration, it is necessary to consider age of the deceased. Age of the deceased is shown as 45 years in evidence affidavit of claimant Rohit. He has denied in his cross examination that the deceased was above 45 years. Aspect of age can be relied as per version of claimant Rohit. Therefore, the deceased was having age of 45 years on

the date of the accident.

13. After ascertaining age of the deceased, it is necessary to reach to the conclusion regarding actual income of the deceased. So far as income of the deceased is concerned, she was working as a cook in Adarsh Engineering College, Vita as per evidence of claimant Rohit and other witness Dhanaji Jadhav. Dhanaji has specifically stated that he along with his brother Sandeep were running the canteen in Adarsh Engineering College, Vita and salary of Rs.12,000/- per month was being paid to the deceased. This evidence can be taken into consideration. Though there is no documentary evidence regarding income of the deceased, she can be said to have been earning moderate amount per month by working as a cook. Income of the deceased can be taken as Rs.10,000/- per month. Therefore, yearly income of the deceased is found to be Rs.1,20,000/-

14. Claimants No.2 and 3 are married daughters. At the time of argument Ld. Counsel for the claimants submitted that claimant No.4 also married during pendency of the claim. Claimant No.1 died during pendency of the claim petition. No legal heirs of claimant No.1 are brought on record. In such circumstances, claimants No.5 and 6, who are sons of the deceased, can be said to be dependents upon the deceased. Considering number of dependents, 1/3rd amount from yearly

income of the deceased is liable to be deducted towards personal and living expenses of the deceased as per the observations in para 30 and 31 in the case of **Sarla Verma** (cited supra). If 1/3rd amount is deducted from the yearly income of the deceased, the amount of Rs.80,000/- is worked out as yearly income of the deceased as contribution to the dependent family constituting multiplicand.

15. Considering discussion in above paras and age of the deceased as **45** years on the date of the accident, multiplier can be applied as per table given in para 40 in the case of **Sarla Verma** (cited supra). Hon'ble Supreme Court has explained how to apply multiplier in para 42 of the citation in the case of **Sarla Verma** (cited supra) which reads as under :-

“We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

16. If the multiplier in para 42 in the case of **Sarla Verma** (cited supra) is applied, it is 14. In short, if yearly income of the deceased (multiplicand) Rs.80,000/- is multiplied by 14, amount

of Rs.11,20,000/- is worked out.

17. After quantifying amount of compensation by applying multiplier, aspect of adding future prospects is required to be considered. Hon'ble Supreme Court in the case of **National Insurance Co. Ltd vs Pranay Sethi (2017) 16 SCC 680** has considered aspect of extending benefit of future prospects to self employed on fixed salary and made necessary observations in para 57 and 58. It is observed in concluding para 59.4 as under :-

“59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

18. If these observations are followed, addition of 25% of the established income should be made because the deceased was below the age of 45 years. It comes as Rs.2,80,000/-.

19. Considering established income of the deceased and addition of 25% amount towards future prospects, compensation amount required to be finalized is Rs.14,00,000/-.

20. So far as amount towards conventional heads is concerned, Hon'ble Supreme Court in para 54 in the case of

Pranay Sethi (cited supra) has laid down that under conventional heads namely, loss of estate, loss of consortium and funeral expenses amount of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- shall be paid respectively and above quantified amount should be enhanced by percentage on every three years and enhancement should be at the rate of 10% in a span of 3 years. Judgment in the case of **Pranay Sethi** (cited supra) is pronounced on 31.10.2017. Incident of the accident in the present claim petition occurred on **18.02.2020**. If the date of decision in the case of **Pranay Sethi** (cited supra) is considered, 10% increase in amount payable under conventional head is not required to be made as on 18.02.2020. Therefore, amount of Rs.15,000/-, Rs.40,000/- each and Rs.15,000/- towards loss of estate, loss of parental consortium and funeral expenses respectively are required to be paid.

21. In light of the above discussion, compensation amount can be shown in tabular format as under :-

S.No.	Particulars	Amount
1.	Yearly income of the deceased	Rs.1,20,000/-
2.	1/3rd deduction for personal and living expenses	Rs.40,000/-
3.	Yearly income of the deceased as contribution to the dependent family (multiplicand)	Rs.80,000/-
4.	Multiplier of 14 as the age of deceased was 45 Yrs. (Rs.80,000 x 14 = Rs.11,20,000/-)	Rs.11,20,000/-
5.	Future prospects 25%	Rs.2,80,000/-

6.	Parental consortium (Rs.40,000/-each)	Rs.80,000/-
7.	Loss of Estate	Rs.15,000/-
8.	Funeral Expenses	Rs.15,000/-
	Total compensation.(Total of Sr.No.4 to 9)	Rs.15,10,000/-

22. The interest is liable to be awarded on compensation amount. So far as rate of interest is concerned, average rate of interest of Nationalized Banks can be taken into account. Interest at the rate of 7% p.a. appears to be reasonable and it can be awarded.

23. Considering above discussion, compensation amount can be directed to be paid by opponents No.1 to 3 jointly and severally. Therefore, I record my finding as to issues No.3 & 4 accordingly and I proceed to pass the following order :-

ORDER

1. M.A.C.P No.69 of 2024 is allowed partly with costs.
2. Opponents No. 1 to 3 shall jointly and severally pay compensation amount of Rs.15,10,000/- (Rupees Fifteen Lacs Ten Thousand only) (inclusive of NFL amount) to the claimants No.5 and 6 with interest at the rate of 7% p.a. from the date of filing the petition till realization of full amount towards compensation.
3. Opponent No. 2 is directed to deposit the awarded amount to the credit of below-stated bank account of this Tribunal directly by

NEFT/RTS : -

Account Name : Civil Judge,Sr.Dn.,Vita.
Bank Name : State Bank of India
Branch : Mayani Road, Vita.
Account No. : 40034574626
IFS Code : SBIN0000285

4. Details of the deposit shall be informed to the Tribunal by email on address mahsanvitsc@aij.gov.in.
5. Amount of compensation shall be paid to claimants No.5 and 6 in equal proportion along with interest.
6. As per reasons recorded in para 34 of Judgment in MACP No.69/2020 opponent No.2 shall first satisfy the Award and then recover the same from opponent No.1 i.e. owner of offending vehicle.
7. Award shall be drawn up accordingly after receipt of deficit court fees, if any.

The petition is disposed of accordingly.
(Dictated and pronounced in open Court)

Vita
dt.31.01.2025

(R.R.Bhagwat)
Member
Motor Accident Claims Tribunal, Vita.

