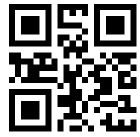


2026:BHC-AUG:12402

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 157 OF 2012

1. Smt. Kamal Madhukar Madane,
   Age : 40 years, Occu. : Nil.

2. Manisha Babanrao Shinde,
   Age : 22 years, Occu. : Household,
   R/o. Hingani, Tq. Shrigonda,
   Dist. Ahmednagar.

3. Usha Mahesh Shingade,
   Age : 20 years, Occu. : Household,
   R/o. Khar, Mumbai.

4. Santosh Madhukar Madane,
   Age : 19 years, Occu. : Education,

5. Satish Madhukar Madane,
   Age : 17 years, Occu. : Education,

   All R/o. Rui Chattishi, Tq. Nagar,
   Dist. Ahmednagar.

6. Lalu Madhukar Madane,
   Age : 15 years, Occu. : Education,
   Nos.5 & 6 Minor, under guardianship
   of mother appellant no.1.

   Appellant No.1, 4, 5 and 6 R/o. Wangdari,
   Tq. Shrigonda, Dist. Ahmednagar. **... Appellants**

Versus.

1. Smt. Amarjeetkaur W/o. S Rajendra Singh,
   Age : Major, Occu. : Business,
   R/o. 21, T.P. Nagar, Indor, Madhya Pradesh.

2. United India Insurance Co. Ltd.
   Ahmednagar Divisional Office,
   Market Yard, Kisan Kranti Building,
   At & Post. Ahmednagar, Dist. Ahmednagar. **... Respondents**

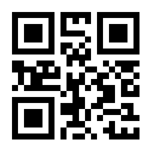
.....
Mr. S. K. Shinde, Advocate for Appellants.
Mr. A. B. Gatne, Advocate for Respondent No.2.
.....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 16 MARCH 2026
PRONOUNCED ON : 24 MARCH 2026

JUDGMENT :

1. Original claimants in M.A.C.P. No.270 of 2002 are appellants herein and they are primarily dissatisfied by the finding of contributory negligence and grant of inadequate compensation.

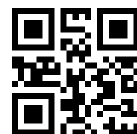
2. Learned counsel for appellants would point out that, above referred M.A.C.P. was instituted for compensation on account of demise of Madhukar in road traffic accident dated 20.11.2001. He pointed out that, he suffered dash by a truck bearing no. MP-09-KB-4354. According to him, there was overwhelming evidence and even charge-sheet was filed against truck driver. However, according to him, learned Tribunal has erred in attributing 25% contributory negligence to deceased also. It is his submission that, such findings are recorded in absence of concrete evidence on record and on assumption and presumptions. According to him, truck driver being charge-sheeted was solely responsible, therefore, above findings to the contributory liability are sought to be set aside.



3. As regards to compensation is concerned, learned counsel pointed out that, there was evidence about deceased earning from agricultural income and milk business, but learned Tribunal has not correctly appreciated the said pleadings. It is his further contention that, learned Tribunal failed to award 25% towards future prospects. According to him, dependency being of 5, there ought to have deduction of one-fourth (¼) amount towards personal expenses. He further pointed out that, even non pecuniary damages are not granted and thereby he placed on record calculation pursis along with written notes of arguments and urged to award compensation.

In support of above contentions of erroneous findings of consortium, he placed reliance on the judgment of this Court (Nagpur Bench) in the case of ***Pravin v. Smt. Pushpabai*** in First Appeal No. 23 of 2022; the judgment of this Court (Aurangabad Bench) in the case of ***New India Insurance Co. Ltd. v. Ranjana Bajirao Kakad and Ors.,*** in First Appeal No.3649 of 2018; and the judgment of this Court (Nagpur Bench) in the case of ***Smt. Sangita and Ors. v. Maharashtra State Road Transport Corporation and Ors.*** in First Appeal No.1958 of 2019.

4. In answer to above, learned counsel for Insurance



Company would justify the findings and conclusion drawn by learned Tribunal and according to him, there is no need for interference in the same.

5. After considering the above submissions and on going through the papers, it is seen that, M.A.C.P. No. 270 of 2002 was filed on behalf of heirs of one Madhukar, who was proceeding on motorcycle bearing No.MPJ-2932 over Daund to Ahmednagar road. In the vicinity of village Madhe-wadgaon, his motorcycle was suffered dash by a truck bearing No.MP-09-KB-4354 coming from opposite directions, causing him fatal injuries.

6. On account of above road traffic accident and death of Madhukar, his heirs set up a claim, on the premise that, by doing agricultural business, deceased earned Rs.3,50,000/- per year and over Rs.8,000/- to 10,000/- from milk business. Above compensation was contested by the original respondent nos.1 and 2.

7. Now, in this appeal, there is challenge to the judgment and award on two grounds; firstly, erroneous findings recorded on the point of contributory negligence to deceased and secondly inadequate compensation.

Before the Tribunal, claimants seems to have adduced

evidence of claimant no.1 wife of deceased and a witness by name Bhaskarrao Thokal and had placed on record FIR, spot panchanama, inquest panchanama, post mortem report as well as 7/12 extracts and 8A extracts of agricultural land.

8. In view of the pleadings of Insurance Company, learned Tribunal seems to have proceeded to decide the extent of negligence and the extent of liability, and for the same, spot panchanama (Exh.25) seems to have been taken into account. The findings to that extent in paragraph no. 11 of the judgment, are as under : -

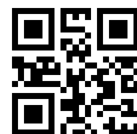
> *"11....... From the contents of spot panchanama (Exh.25) it is revealed that the dash of the motorcycle is received at the driver side of truck and there is major damage to the motorcycle on its right side. Therefore, it can be inferred that driver of the truck tried his level best to avoid head on collision between truck and motorcycle, but untimely, he could not avoid dash of the motorcycle. Thus, deceased must have contributed to some extent in happening of the accident."*

Therefore, it is emerging that, only on the strength of spot panchanama, the percentage of negligence is computed. 25% negligence seems to be attributed to deceased and remaining to the truck driver. Consequently, as pointed out, on the sole basis of spot panchanama Exh.25, above conclusion has been drawn.

9. Learned counsel for the claimants has placed reliance on the above rulings of this Court. In the ruling of ***Pravin v. Smt. Pushpabai*** (supra), deceased was proceeding with two pillion riders and therefore, this court had held that merely carrying two pillion riders by itself would not constitute contributory negligence unless it is establish that such fact directly contributed to the accident or its impact. By taking into account the facts in those case, this Court had held that, car was driven in rash and negligent manner. There was also evidence of Investigating Officer and answers given him in cross, were taken into account for holding that car driver was negligence. Here, there is no such type of material.

In the second ruling in the case of ***New India Insurance Co. Ltd.*** (Supra), there was accident involved in motorcycle and truck. In that case also, there was evidence of witness PW1, to whom during cross, suggestion was given, which was consistent in the written statement to the effect that deceased was riding motorcycle in the middle of the road and he had not taken the motorcycle to the side of the road, and therefore, having regard to such facts, this Court had set aside the findings recorded by Tribunal holding deceased to be 20% responsible.

In the third rulings in the case of ***Smt. Sangita*** (supra),

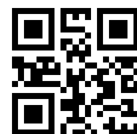


again like similar citation deceased was riding motorcycle along with two pillion rider, and therefore, like earlier rulings, again it was held that, merely riding with two pillion riders itself does not amount to contributory negligence unless it is proven that it cause or contributory to the accident or its impact.

Consequently, facts in cases which are relied above are distinct and cannot be relied upon.

10. Here, learned Tribunal has drawn inference solely on the basis of impact and damage caused to the right side of the truck. Except spot panchanama, there is nothing. No witness to the spot panchanama is examined to prove its contents. Therefore, here, there is no material other than damage caused to each of the vehicle. Consequently, in the light of such peculiar facts, the only inference that can be drawn is that rider of the motorcycle as well as truck driver both responsible. There is nothing to show that, the truck driver left his correct side and came towards the motorcycle, or the motorcycle went to the extreme right side resulting into the accident. Hence, the findings reached at by learned trial court cannot be faulted at as that is the only inference that could emerge in the given case.

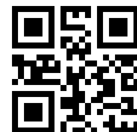
11. Learned counsel for original claimants pointed out that



learned Tribunal has not granted amount under the future prospects. Upon consideration, it is observed that the learned Tribunal ought to have considered for the loss of agricultural income of the deceased at least to the extent of Rs.7,000/- per month, and Rs. 5,000/- per month from the milk business, totaling Rs.12,000/- per month, i.e., Rs.1,44,000/-per annum for the purpose of calculating compensation.

12. As regards the above contention, learned Tribunal has made discussion in paragraph No.17, taken into account evidence of AW2 Bhaskararao, a Secretary of the milk federation, who issued Exh.39 and deposed that deceased was earning around Rs.6,000/- to Rs.6,500/- per month income. Learned Tribunal seems to have taken Exh.39 into account, but has proceeded to deduct amount towards livestock and an amount of Rs.2,000/- can be held as net income from milk business. In the circumstances, it would be just and proper to assess Rs.5,000/- per month as the income derived from the milk business.

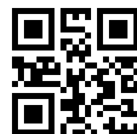
Though there is no independent evidence about actual agricultural earning and merely 7/12 extracts are placed on record. Consequently, learned Tribunal ought to have considered additional income from agriculture along with milk business, it would be just and proper to grant Rs.5,000/- towards agricultural income also.



Thus, total income from milk and agricultural business can be held to be Rs.10,000/- per month.

13. According to learned counsel for claimants though the number of claimants was of 5, the learned Tribunal deducted one-third; however, only one-fourth should have been deducted towards the personal expenses of the deceased. However, on going through the findings and conclusion drawn by learned Tribunal, on above issue is concerned, it is noticed that, discussion is made in paragraph no. 18 of the judgment and the same is as under :-

> *"From the above said income, the deceased might be spending some amount for his personal expenses. In this case, it is alleged that in all six applicants are depending on the deceased. The learned counsel Shri. Jadhav for opponent no.2 has vehemently argued that as applicant no.2 and 3 are married daughters of the deceased and applicant no.4 is major son, they are not dependent of the deceased. Applicant no.1 has categorically admitted in her cross examination that applicant nos.2 and 3 are married prior to accident. So, considering the fact that the applicant nos.2 and 3 are already married and the ages of the applicant nos.2 to 4, it can be inferred that they are not dependent on the deceased. One more thing cannot be overlooked at this juncture that there is agricultural land standing in the name of applicant no.4 also. Thus, there are only three dependents on the deceased i.e. applicant no.1 being widow and applicant nos. 5 and 6 being minor sons."*



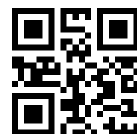
Therefore, in the light of above evidence, no fault can be found on the part of learned Tribunal in deducting one-third (1/3rd) towards personal expenses.

14. In view of the decision in ***National Insurance Company Limited v. Pranay Sethi and Others***, (2017) 16 SCC 680, it was held that where the deceased was 42 years old at the time of the accident and self-earning, 25% ought to be added towards future prospects.

15. In view of the ratio laid down in ***Pranay Sethi and Others (supra); Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and Others,*** (2018) 18 SCC 130, claimants are entitled for Rs.40,000/- each, i.e. 1,60,000/- towards consortium and loss of love and affection. Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

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

Sr. No.	Heads	Amount (Rs.)
1.	Annual Income (i.e. 10,000 x 12)	1,20,000/-
2.	Future Prospects 25% i.e. 30,000 (1,20,000 + 30,000)	1,50,000/-



3.	Less 1/3rd deduction towards personal expenses. (Rs. 1,50,000 – Rs.50,000)	1,00,000/-
4.	Multiplier of 14 (1,00,000 X 14)	14,00,000/-
5.	**Less 25% Contributory Negligence of deceased (Rs.14,00,000 – Rs. 3,50,000)**	**10,50,000/-**
6.	Loss consortium and Love and affection = 1,60,000/- Loss of Estate = Rs.15,000/- Funeral Expenses =15,000/-	1,90,000/-
7.	Transportation (Ambulance) Charges	3,000/-
8.	**Total compensation to be paid**	**12,43,000/-**
9.	Compensation awarded by Tribunal	4,31,000/-
10.	**Total Excess Compensation (i.e. Rs.12,43,000 – 4,31,000)**	**8,12,000/-**

17. In the result, the following order is passed :

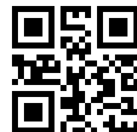
ORDER

(i) Appeal is partly allowed with proportionate costs.

(ii) Impugned judgment and award dated 07.09.2011, passed by the learned Member, M.A.C.T., Ahmednagar in M.A.C.P. No.270 of 2002, is modified.

(iii) Respondent nos.1 and 2 jointly and severally to pay enhanced compensation of Rs.8,12,000/- to claimants within 12 weeks from today along with interest @ 7.5% 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, appellants/claimants are permitted to withdraw the same.

(ABHAY S. WAGHWASE, J.)

Tandale