



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1541 OF 2013

1. Smt. Anuja w/o Lalit Somani,
Age : 36 years, Occu : Household,
R/o. Vishnu Nagar, Parbhani.
2. Lakhan s/o Lalit Somani,
Age : 11 years, Occu : Education,
R/o. As Above.
3. Ku. Tulsi d/o Lalit Somani,
Age : 8 years, Occu : Education,
R/o. As Above.

Appellant no. 2 and 3 being minor
U/g of their real mother
i.e. appellant no. 1 herein.

4. Ramprasad s/o Narayandas Somani
Age : 68 years, Occu : Nil,
R/o. As Above.
5. Sow. Padma w/o Ramprasad Somani
Age: 62 years, Occu : Household,
R/o. As Above.

... Appellants
(Orig. Claimants)

Versus

1. Shaikh Shakil s/o Sk. Yasin,
Age: 32 years, Occu : Business,
R/o: Arab Galli, Gangapur,
Dist. Aurangabad.
2. The Oriental Insurance Co. Ltd.,
Through its Branch Manager,
Daulat Building, Shivaji Road,
Parbhani.

... Respondents
(Orig. Respondents)

.....
Mr. Swapnil S. Rathi, Advocate for Appellants
Mr. R. F. Totala, Advocate for Respondent No.2 (Through V.C.)
.....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 10 APRIL 2026
PRONOUNCED ON : 17 APRIL 2026

JUDGMENT :

1. Instant appeal is by original claimants, who instituted Motor Accident Claim Petition before The Motor Accident Claims Tribunal, Parbhani bearing M.A.C.P. No. 06 of 2009 on account of death of one Lalit Somani, in a road traffic accident dated 23.10.2008.

The appeal is directed challenging the Tribunal's findings about deceased also 50% contributory negligent, and secondly, grant of meager compensation and non consideration of future prospects.

2. Learned counsel for appellants would point out that, on 23.10.2008, husband of appellant no.1 and father of remaining appellants was traveling in a Honda City Car on 23.10.2008, on Parbhani - Basmat Road, his vehicle was given dash by a jeep coming from opposite direction in a rash and negligent manner and excessively high speed. That, deceased succumbed to the fatal injuries, and therefore, his heirs set up above claim petition. Learned counsel pointed out that, deceased was a young man of 35 years of age at the time of accident and deceased had flourishing medical

practitioner. Because of untimely death, appellants - original claimants set up above claim petition demanding Rs.54,00,000/- under various heads.

3. He further submitted that, learned Tribunal in absence of any evidence and on conjectures and surmises recorded a finding that deceased was also equally negligent along with jeep driver. According to him, there was no basis to record such finding. According to him, merely because another vehicle i.e. bus was overtaken, is not itself sufficient to draw above inference. He submitted that, bus driver had given side to the deceased to proceed ahead and only thereafter deceased had gone ahead of the bus, but offending jeep driver had come in excessively high speed and was completely responsible for the dash. He pointed out that, not only driver of the offending vehicle fled from the spot, but also crime is registered against him and he was duly charge sheeted, but such aspects are not taken into account by the learned Tribunal and resultantly, according to him, finding of learned Tribunal holding deceased also to be contributory negligent is erroneous and needs interference.

4. On the point of quantum, he would submit that, claim was set up to the tune of Rs.54,00,000/-. That, deceased had acquired post

graduation in Orthopedic and had set up a hospital at Parbhani. However, learned Tribunal merely considered monthly income of deceased to the tune of Rs.20,000/- per month. According to him, even amount has not been granted under future prospects in view of law laid down in *National Insurance Company Limited vs. Pranay Sethi and others*, 2017 (16) SCC 680. On above both counts, he urges for indulges of this court.

5. In answer to above, learned counsel Shri Totala would justify the award to be correct and legally valid. On the point of finding of contributory negligence, he invited attention of this court to the observations of learned Tribunal in paragraph 13 and would strenuously submit that, it is clearly emerging from the record that deceased had attempted to overtake a bus and had suffered accident. His such act was rightly therefore considered as contributory negligence. On the point of future prospects, it is his submission that, deceased was self employed and not entitled for future prospects.

6. In light of the aforesaid submissions and counter submissions, the record and evidence are put to scrutiny. There is no dispute that the deceased sustained fatal injuries in an accident while traveling in a car on 23.10.2008.

On one hand, it is the case of the claimants that the jeep

driver was solely responsible for the accident and that the entire liability ought to have been fastened upon the said driver. It is further contended that there is no cogent evidence on record to justify the finding that the deceased contributed to the accident to the extent of 50% by way of contributory negligence.

7. Here, there is evidence of very driver of the offending vehicle jeep at Exh.48, wherein he deposed that, the accident took place at the spot where there was 'U' turn. According to him, while he was negotiating the turn, the speed of his vehicle was around 40 kilometers per hour and suddenly a Honda City car came from opposite direction in excessively high speed and he claims to have taken his vehicle below the side of road, but still said Honda car came over his vehicle, which was its wrong side and he attributes total fault of Honda car driver i.e. deceased. His above testimony has not been shaken, rather in cross examination, in paragraph 3, it is brought that sufficient space was given by S.T. bus driver to pass through the road and the car came to the wrong side of the road from behind the S.T. bus. There is an admission about 'U' turn and accident occurred due to fault of driver of the Honda Car. Therefore, though driver of jeep admitted that he fled due to fright, that itself cannot be said to be a good ground to hold that he was totally negligent. When aspect of overtaking is not denied or disputed, indeed, there is fault

also on the part of deceased.

The finding recorded by the learned Tribunal with regard to contributory negligence appears to be based on a proper appreciation of the evidence on record. The material, including the spot panchanama and the circumstances of the accident, clearly indicates that the deceased attempted to overtake the S.T. bus at an 'L' turn and was on the wrong side of the road. In such circumstances, the conclusion drawn by the learned Tribunal attributing contributory negligence to the deceased cannot be said to be erroneous or perverse.

8. The second objection raised by the appellant is that the learned Tribunal has failed to award any amount towards future prospects. In this regard, it is pertinent to note the settled position of law laid down by the Hon'ble Apex Court in *Pranay Sethi* (supra), wherein it has been held that addition towards future prospects is a necessary component while determining just compensation. The deceased was 35 years old at the time of the accident and being professional, 40% needs to be added towards future prospects.

9. As regards to earning of deceased is concerned, his Income Tax Returns are on record. Though claimants asserted that he was earning Rs. 35,000/- per month, the very Income Tax Returns

of deceased are shown to be Rs.1,45,425/- for the year 2003-2004 (assessment year 2004-2005; Rs.1,64,520/- for the year 2004-2005 (assessment year 2005-2006) and gross income of Rs.2,20,057/- for the assessment year 2007-2008. Thus average income of three years as per Tribunal is Rs.1,80,000/-. Even in the calculation pursis placed before this court, the appellants have urged to consider and apply monthly income of deceased to the tune of Rs.20,000 per month and therefore, findings of Tribunal to that extent need not be disturbed with.

10. 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 no where 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.

11. 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 **Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram and Others**, (2018) 18 SCC 130, claimants are indeed entitled for Rs.40,000/- each, i.e. 2,00,000 /- towards consortium and loss of love

and affection. Rs.15,000/- each is awarded towards loss of estate and funeral expenses, aggregating to Rs.30,000/-.

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

Sr. No.	Heads	Amount (Rs.)
1.	Annual Income (i.e. 20000 x 12)	2,40,000/-
2.	Future Prospects 40% i.e. 96,000 (2,40,000 + 96,000)	3,36,000/-
3.	Less 1/4 deduction towards personal expenses. (Rs. 3,36,000 – Rs. 84,000)	2,52,000/-
4.	Multiplier of 16 (2,52,000 X 16)	40,32,000/-
5.	Loss consortium and Love and affection = 2,00,000/- Loss of Estate = Rs.15,000/- Funeral Expenses = 15,000/-	2,30,000/-
6.	Total compensation to be paid	42,62,000/-
7.	Contributory Negligence 50 : 50	21,31,000/-
8.	Compensation awarded by Tribunal	14,55,000/-
9.	Total Enhanced Compensation (i.e. Rs.21,31,000 – 14,55,000)	6,76,000/-
10.	Compensation to be paid by respondents	6,76,600/-

12. In the result, the following order :

ORDER

(i) Appeal is partly allowed with proportionate costs.

- (ii) Impugned judgment and award dated 03.09.2012 passed by the learned Ex-Officio Member of MACT/District Judge-2, Parbhani in M.A.C.P. No. 06 of 2009, is modified.
- (iii) Respondent Nos.1 and 2 to pay enhanced compensation of Rs.6,76,000/- to claimants within 12 weeks from today along with interest @ 8% 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 respondents, appellants/claimants are permitted to withdraw the same.

(ABHAY S. WAGHWASE, J.)