



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 401 OF 2014

M/s. IFFCO-TOKIO General Insurance Co.Ltd.
Having its Corporate office at 4 & 5th Floor
IFFCO Tower, Plot No.3,
Sector 29 Gurgaon 122001 (Hry),
Mumbai Office at AFL House, 2nd Floor,
Lokbharti Complex, Marol Maroshi Road,
ANDHERI (E), Mumbai 400 059 and
Branch office A1 Building, 10,
Shahid Jeetsingh Marg, New Delhi-110 067
and Serving Divisional Office at Kalda Cornor,
Aurangabad 431005
Through it's Vice President (Legal) and
Constituted Attorney.

.. APPELLANT

VERSUS

- 1] Smt. Suvarna w/o. Rajabhau Ghodke,
Age 30 years, Occ. Household,
R/o. Padsah, Tq. Uttar Solapur,
Dist. Solapur
Presently residing at Raghuchiwadi,
Tq. & Dist. Osmanabad.
- 2] Kum. Sandhya Rajabhau Ghodke [Minor]
Age 9 years, Occ. Education,
R/o. As above.
- 3] Prathamesh Rajabhau Ghodke,
Age 6 years, Occ. Education (Minor)
R/o. As above.
- 4] Kum. Trupti Rajabhau Ghodke,
Age 5 years, Occ. Education (Minor),
R/o. As above.

- 5] Rambhau Vithoba Ghodke,
Age 60 years, Occ. Nil,
R/o. Padsali, Tq. Uttar Solapur,
Dist. Solapur.
- 6] Sau. Kalawati Rambhau Ghodke,
Age 55 years, Occ. Household,
R/o. as above.
- 7] Mr.Saurab Jeet Singh,
Age Major, Occ. Business,
R/o. BG 534, Sanjay Gandhi TPT Nagar,
New Delhi 110 042.
(Owner of Truck No.RJ14/GB6314)

..RESPONDENTS

...
Mr.VN.Upadhye, Advocate for the appellant.
Adv.PD.Dadpe h/f. Adv.Sayali Tekale, Advocate for the
respondent nos.1 to 4 and 6.

...
CORAM : ARUN R. PEDNEKER, J.

Reserved on : 06.09.2024

Pronounced on : 01.10.2024

JUDGMENT :

1] By the present appeal, the appellant – Insurance Company challenges the judgment and order dated 11.12.2012 passed by the Motor Accident Claims Tribunal, Osmanabad in MACP No.12 of 2009, granting claim to the dependents of the deceased, who had met with an accident with truck while driving an auto-rickshaw.

Brief facts leading to the filing of the present Appeal are as under :

2] One Rajabhau @ Rajaram Rambhau Ghodke was resident of Padsali, Taluka Uttar Solapur, District Solapur. He owned auto-rickshaw bearing MH-04/AR-7503. On 23.07.2008 at 23.00 hours, he met a friend Bapu Baban Thorat and both of them went to Thane for filling up gas in the auto-rickshaw and the deceased was driving the auto-rickshaw in moderate speed. Truck bearing No.RJ-14/GB-6314 came from opposite side in high speed and dashed Rambhasu Ghodke's rickshaw. In the accident, Rambhau Ghodke died on the spot. A crime was registered against the driver of the truck. The claimants [widow, two minor daughters, one minor son and parents of the deceased, total 06] filed an application before the Motor Accident Claims Tribunal, claiming compensation against the owner of the truck and the Insurance Company of the truck. Before the Tribunal, evidence was adduced by the claimants.

3] The claimant no.1, widow, deposed that the deceased was driving his rickshaw on the left hand side of

the road and friend of the deceased, namely, Bapu Thorat was also driving his rickshaw behind him. The Truck bearing No.RJ-14/GB-6314 came from opposite side and dashed her husband's rickshaw. Thereafter, the truck driver took the truck down the road, left the truck and ran away from the spot. FIR was registered by Bhaurao Chandu Dudhale, another rickshaw driver. After investigation, the Police has filed charge sheet against the truck driver. Considering the evidence on record, the Tribunal held that the truck driver was negligent in driving. The Tribunal also held that the deceased was earning Rs.300/- a day i.e. Rs.9000/- per month. His age was 33 years and by the judgment and order dated 11.12.2012, the Tribunal has granted compensation of Rs.13,16,000/- to the claimants. Against the said judgment and order, the present First Appeal is filed by the Insurance Company.

4] The learned counsel for the appellant submits that there was head on collision between two vehicles and as such the responsibility ought to have fixed on both

vehicles. The learned counsel for the appellant has relied upon the judgment in the case of **Ranjana Prakash & Ors. Vs. Divisional Manager & Anr.** reported in [2011] 14 SCC 639 to contend that 30% income has to be deducted towards income tax. However, the judgment is not applicable to the instant case as the deceased is not in income tax bracket. He has also relied upon the judgment in the case of **Kalpana Madhu Gavali and Ors. Vs. Maharashtra State Road Transport Corporation** reported in MANU/MH/3837/2023 to contend that interest should not be paid on the future prospects. He has also relied upon the judgment in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi** reported in [2017] 16 SCC 680 to contend that judicial discipline is required to be maintained and consistent view be taken by the Court in granting compensation. He has also relied upon the judgment in the case of **Sandhya Educational Society and another Vs. Union of India and others** reported in [2014] 7 SCC 701 to contend that a coordinate Bench has to take consistent view of this Court with earlier judgments.

5] On perusal of the evidence of Bapu Baban Thorat at Exh.46, so also, the spot panchanama at Exh.47, it appears that the dead body of the deceased is away from the centre of the road and is towards the left side. The auto rickshaw was near the centre of the road and the time of accident was 3.00 a.m. However, as per the evidence on record, the truck driver came from the opposite side in a high speed. The deceased was driving the auto rickshaw in moderate speed. The dead body of the deceased appears towards left side. The Police statement / FIR indicates that the truck driver was driving at excessive speed. Thus, it is difficult to conclude that the rickshaw driver was negligent in driving. The finding of fact of the Tribunal is based on police paper and in absence of evidence being led by the truck owner, its difficult to interfere with the same. The charge sheet is filed in the matter against the truck driver. Therefore, I accept the findings rendered by the Tribunal that it was the truck driver, who was responsible for the accident.

6] This Court in the case of **Kalpna Madhu Gavali and Ors. Vs. Maharashtra State Road Transport Corporation** reported in **MANU/MH/3837/2023** has observed at para no.19 as under :

19. Coming to the reliance placed by the learned Counsel for the Respondent Corporation on the decision of Jammu and Kashmir and Ladakh at Srinagar High Court in the case of National Insurance Company Limited vs. Mst. Aisha Bano and Ors. (supra), which decision has placed reliance on a similar view taken by the Guwahati High Court in the cases of Khusboo Chirania Kanta Chirania @ Kanta Chirania vs. Kamal Kumar Sovasaria MANU/GH/1269/2018 : 2018 Supreme (Gau) 966 and Nasima Begum vs. Keramat Ali 2019 Supreme (Gau) 507, while submitting that, if this Court was inclined to consider future prospects, then in any event, compensation granted under the head of loss of future prospects should not be subjected to payment of any interest thereon, I am in agreement with the said submission. I am in agreement with the reasoning given In paragraph 12 of the said decision that future prospects are with regard to probable Income to be received in the future and as such, there is no requirement to compensate the claimant by way of future interest for the loss that is to occur in future as the future is yet to happen. The said paragraph 12 is usefully quoted as under:

"12. The third and last contention raised by the learned Counsel for the Appellant is that the portion of compensation granted under the head of loss of future prospects should not have been subjected to payment of any interest thereon. This argument of the learned Counsel carries force due to

the fact that the future prospects are relatable to an income to be received in the future and, as such, there could not be any loss to the claimants for the payment of future prospects at the time the deceased met with the accident. The reason for awarding interest on the compensation amount, minus the future prospects, is due to the fact that, though the loss of dependency starts from the date of accident, the compensation amount is computed on the date of the award of the Tribunal, interest is awarded to compensate the loss of money value on account of lapse of time, such as the time taken for the legal proceedings and for the denial of right to utilize the money when due. However, future prospects are with regard to probable income to be received in the future and, as such, there is no requirement to compensate the claimant by way of future interest for the loss that is to occur in the future, as the future is yet to happen. Further, future prospects are given for the entire future and, as such, the claimant is getting compensation in a lumpsum under the future prospects prior to the occurrence of future event(s). Thus, with regard to future prospects, this Court is of the view that there cannot be any interest on future prospects as the same relates to an income to be given in the future. The same view has been taken by the Gauhati High Court in cases reported as 'MANU/GH/1269/2018 : 2018 Supreme (Gau) 966'; and '2019 Supreme (Gau) 507', therefore, the contention of the learned Counsel for the Appellant is accepted that the component of compensation under the head of loss of future prospects is not to be subjected to interest."

7] On the submission that interest cannot be granted on future prospect reference can be made to the judgment of the Hon'ble Supreme Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors** in Civil appeal No.9581 of 2018 [arising out of SLP [Civil] No.3192 of 2018], decided on 18th September, 2018, the Hon'ble Court has granted compensation as under :

Head	Compensation awarded
i. Income	Rs.6000/-
ii. Future prospects	Rs.2,400/- (i.e. 40% of the income)
iii. Deduction towards Personal expenditure :	Rs.2800/- [i.e. 1/3rd of (Rs.6000/- + Rs.2,400/-)
iv. Total income	Rs.5600/- [i.e. 2/3rd of Rs.6000/- + Rs.2,400/-]
v. Multiplier	18
vi. Loss of future income	Rs.12,09,600/- [Rs.5600/- x 12 x 18]
vii. Loss of love and affection :	Rs.1,00,000/- (Rs.50,000/- each)
viii. Funeral expenses :	Rs.15000/-
ix. Loss of estate :	Rs.15,000/-
x. Loss of Filial Consortium :	Rs.80,000/- (Rs.40,000/- payable to each of Respondent Nos. 1 and 2)
Total awarded :	Compensation Rs.14,25,600 alongwith Interest @ 12% p.a. from the date of filing of the Claim petition till payment.

8] The above computation of compensation in **Magma General Insurance Co. Ltd.** [supra] is quoted to indicate that the interest is granted from the date of filing of the claim petition even on future prospect. As such, the argument of the appellant that the interest should not be granted on future prospect is not acceptable in view of the judgment of the Hon'ble Supreme Court.

9] In the case of **Jitendra Khimshankar Trivedi & Ors. Vs. Kasam Daud Kumbhar & Ors** in Civil Appeal No.1415 of 2015 [arising out of SLP (Civil) No.4969/2014), decided on 3rd February, 2015, the Hon'ble Supreme Court has granted interest on the enhanced amount [which includes future prospect and consortium] from the date of filing of the claim petition.

10] The Hon'ble Supreme Court in the cases of **Sandhya Educational Society** [supra], **Magma General Insurance Co. Ltd.** [supra], **S. Vasanthi and another Vs. Adhiparasakthi Engineering College and another** reported in

[2022] 15 SCC 316, Mohd. Sabeer @ Shabir Hussain Vs. Regional Manager, U.P. State Road Transport Corporation in Civil Appeal Nos.9070-9071 of 2022 [arising out of Special Leave Petition (Civil) Nos.481-482 of 2019], decided on 9th December, 2022, and also in the case of **R. Valli & Ors. Vs. Tamil Nadu State Transport Corporation Ltd.** In Civil Appeal No.1269 of 2022 [arising out of SLP [Civil] No.20913 of 2018], decided on 10th February, 2022, the Hon'ble Supreme Court has granted interest on future prospects.

11] This Court has held in the case of **Kalpna Madhu Gavali** [supra] that interest on future prospects should not be paid. However, I have not applied the said judgment for the following reasons :

i] The Hon'ble Supreme Court in the various judgments, noted in para no.10 above, has granted interest on the future prospects and the same is not granted in exercise of powers under Article 142 of the Constitution of India.

ii] The entire compensation is computed based on loss of future income which includes future prospect.

iii] The compensation becomes payable from the date of filing of the claim petition and the interest is awarded by the tribunal from the date of filing of claim petition. The claim petition may be adjudicated within one year or may take 20 years up till the appellate stage. But, the amount becomes payable from the date of filing of the claim petition, as such, the interest is granted from the date of claim petition till it's realization.

12] The Hon'ble Supreme Court has consistently granted interest on future prospect from the date of filing of the claim petition. As such, the argument of the Insurance Company on that interest should not be granted on future prospect is rejected.

13] There is one more aspect on which I may agree with the counsel for the appellant that the amount of deduction ought to have allowed towards maintenance of

the vehicle. The evidence of the claimants is that the deceased was earning Rs.300/- per day i.e. Rs.9000/- per month, which is not improbable. However, it is not noted whether the income is after deduction of maintenance of Auto. As such, Rs.1000/- per month would be deduction towards maintenance of the rickshaw. On such deduction being made, I would consider the income of the deceased of Rs.8000/- per month and compensation is worked out as under :

Head	Compensation awarded
I. Income	Rs.8000/-
II. Future prospects	Rs.3200/- (i.e. 40% of the income)
III. Deduction towards Personal expenditure :	Rs.2240/- [i.e. 1/5th of Rs.8000 + Rs.3200 = Rs.11,200/- Rs.11,200 - Rs.2240 = Rs.8960/-
IV. Total income	Rs.8960/-
V. Multiplier	15
VI. Loss of future income	Rs.16,12,800/- [Rs.8960 x 12 x 15]
VII. Loss of consortium	Rs.2,40,000/- [Rs.40,000 each x 6 = Rs.2,40,000/-]
VIII. Funeral expenses :	Rs.15000/-
IX. Loss of estate :	Rs.15,000/-
Total awarded :	Compensation Rs.18,82,800/- alongwith interest @ 7.5% p.a. from the date of filing of the claim petition till payment.

14] The Hon'ble Supreme Court in the case **Jitendra** [supra] has observed at para no.13 as under :

13. ... The power of the courts in awarding reasonable compensation was emphasized by this Court in Nagappa vs. Gurudayal Singh & Ors, Oriental Insurance Company Ltd. vs. Mohd. Nasir & Anr., and Ningamma & Anr. vs. United India Insurance Company Ltd. As against the award passed by the tribunal even though the claimants have not filed any appeal, as it is obligatory on the part of courts/tribunals to award just and reasonable compensation, it is appropriate to increase the compensation.

15] Considering the judgments of the Hon'ble Supreme Court in case of **Jitendra** [supra], this Court is bound to grant just compensation and can enhance the compensation even in absence of counter-claim / appeal by the claimant.

16] The Insurance Company to deposit the enhanced compensation before the Motor Accident Claims Tribunal, Osmanabad within eight [08] weeks from the date of this judgment. Any amount deposited by the Insurance Company in this Court be transmitted to the Motor Accident Claims Tribunal Osmanabad. The amount deposited to be disbursed to the claimants by the Motor Accident Claims

Tribunal, by adjusting the amount already withdrawn. First Appeal is disposed of accordingly.

17] Civil Application, if any, does not survive and the same stands disposed of accordingly.

[ARUN R. PEDNEKER]
JUDGE

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