



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1524 OF 2011

1. Smt. Shobha wd/o Sampat Shinde,
Age 43 years, Occu. Household,
2. Sujay s/o Sampat Shinde,
Age 24 years, Occu. Education,
3. Dinesh s/o Sampat Shinde,
Age 22 years, Occu. Education,
4. Smt. Sakhubai wd/o Pandurang Shinde,
Age 87 years, Occu. Nil.

All R/o Shekaiwadi, at Post & Tq. Akole,
Dist. Ahmednagar

...Appellants

VERSUS

1. Gajendra s/o Hanumantappa Mandhare,
Age Major, Occu. Driver,
C/o Divisional Controller,
N.W.K.R.T.C., Haveri Division,
Haveri, Karnataka
2. The Managing Director,
N.W.K.R.T.C.,
Central Office, Haveri Division,
Gokul Road, Hubali, Karnataka

...Respondents

Mr. S. T. Shelke, Advocate for Appellants

Mr. Manoj Shinde h/f Mr. M. K. Goyanka, Advocate for Respondent No.2

CORAM : ABHAY S. WAGHWASE, J

RESERVED ON : FEBRUARY 16, 2026

PRONOUNCED ON : FEBRUARY 18, 2026

JUDGMENT:

1. This Appeal is preferred under Section 173 of Motor Vehicle Act, 1988 (for short “**the Act**”) by original claimants taking exception to the judgment and order dated 06.04.2011 passed in MACP No. 147/2007.

2. Claimants are wife, children and parent of deceased Sampat Pandurang Shinde, who died in motor vehicular accident occurred on 19.06.2007. It is the case of the claimants that, on 19.06.2007 at about 05.00 pm deceased was proceeding on motorcycle bearing no. MH-17-P-2852. When he reached Nashik Pune Road, a bus bearing No. KA-27-F-239 came from opposite direction and while overtaking gave dash to motorcycle of deceased in rash and negligent manner. In the said accident, deceased sustained serious head injury. As a result of fatal injuries, deceased died on the spot.

Claimants being widow, children & parent filed above claim Petition before Tribunal at Ahmednagar claiming compensation of Rs.9 lacs. It is the case of the Claimants that, deceased was aged about 40 years at the time of accident and by doing agricultural work, he was earning Rs.1 to 1.5 lacs p.a., by doing electric fitting work, he was earning Rs.70,000/- p.a. and by doing milk selling business, he was earning Rs.1 lacs p.a.

3. Respondent No. 1 though appeared in the claim Petition, failed to file written statement. Respondent No. 2 has contested the claim petition and filed written statement at Exhibit 19 denying the claim and contentions of the claimants.

4. After framing of the issues at Exhibit 20, Claimant No.1 – Shobha Sampat Shinde led her evidence at Exhibit 29. Tribunal by impugned judgment and award directed Respondents to pay sum of Rs.2,92,000/- along with interest at 7.5% per annum. Since compensation granted by the Tribunal is found to be inadequate, Claimants/Appellants preferred this Appeal.

5. Learned Counsel for the Claimants/Appellants seeks enhancement of compensation on the ground that, Tribunal has failed to take into consideration the income of the deceased to the tune of Rs.6,000/- p.m. That, Tribunal has also not considered the future prospects of the deceased & has also erred in applying multiplier of 12 instead of 15 in view of judgment of Hon'ble Apex Court in case of **National Insurance Co. Ltd vs. Pranay Sethi**, (2017) 16 SCC 680. That, Tribunal has erred in deducting 1/3rd income towards personal expenses of the deceased instead of deducting 1/4th. That, even consortium ought to have been paid at Rs.40,000/- per claimant in view of the judgment of the Hon'ble Apex Court in case of **Magma General**

Insurance Co. Ltd vs. Nanu Ram and Ors, 2018 ALL SCR 2001. Finally, by relying upon the judgment of Hon'ble Apex Court in case of **Mohammed Siddique and Another vs. National Insurance Company Limited and Others**, (2020) 3 SCC 57, it is vehemently submitted that, Tribunal has erred in considering contributory negligence of the deceased in occurrence of accident when, in fact, driver of the bus was driving vehicle in rash and negligent manner.

6. Learned Counsel for the Respondent No. 2 opposed the above contentions by pointing out the evidence on record, which according to him, indicates that, income of the deceased has rightly been considered by Tribunal. It is his submission that, Tribunal has rightly deducted the 1/3rd income towards personal expenses of the deceased. He further submitted that, deceased also responsible for occurrence of accident as he is driving motorcycle rash and negligently and without following traffic rules. On these amongst other contentions, he seek dismissal of the Appeal.

7. There is no dispute about the occurrence of the accident and involvement of the offending vehicle therein. Tribunal has held that, the accident has occurred due to the negligence of the driver of the bus so also deceased also negligent, however, held that, the claimants are entitled for compensation after deducting amount towards contributory

negligence.

8. The issues, which arises for consideration at the hands of this Court, are in respect of non consideration of future prospects, consortium & other heads, deduction of 1/3rd amount towards personal expenses & deceased can be held to be guilty of contributory negligence.

9. The claimants have contended that the deceased was earning income from multiple sources. However, the Tribunal has considered the deceased's income only to the extent of Rs. 3,000/- per month, i.e., from agricultural work.

10. In this regard, it is pertinent to note that, the claimants, in support of their case, examined two independent witnesses. Claimant Witness No. 2, in his examination-in-chief, stated that, the deceased owned two cows and one calf and was selling approximately 30 liters of milk per day. At that time, the price per liter of milk was between Rs. 14 and Rs. 15. He also issued a certificate regarding the deceased's milk business, which is marked as Exhibit 32. However, in cross-examination, this witness retracted from his earlier statement.

Similarly, Claimant Witness No. 3 stated in his examination-in-chief that, he undertook contracts for electrical fitting and plumbing work and used to assign electrical fitting work to the

deceased. He deposed that, the work assigned to the deceased was worth Rs. 15,000/- to Rs. 20,000/-, and after paying a 50% share to his co-worker, the deceased was earning Rs. 8,000/- to Rs. 10,000/- per month. However, this witness also retracted from his statement during cross-examination. In view of this, Tribunal was justified in ignoring income from these source.

However, the learned Tribunal has gravely erred in failing to consider the agricultural income of the deceased while assessing the compensation. The claimants had specifically pleaded and deposed that, the deceased was earning approximately Rs. 1,50,000/- per annum from agricultural activities. Even otherwise, having regard to the prevailing agricultural conditions and minimum earning capacity at the relevant time, the deceased could reasonably have earned at least Rs. 6,000/- per month from agricultural operations.

The Tribunal, without assigning cogent reasons, discarded this material aspect and assessed the income on a notional basis, which has resulted in gross under-assessment of compensation. It is a settled principle of law that, while determining just compensation, the Court must take into consideration all sources of income of the deceased, including agricultural income, if supported by oral and documentary evidence.

In view of above, in considered opinion of this Court, the conclusion reached by Tribunal with regard to monthly income of deceased is not just & proper, needs interference and income of deceased needs to be considered at Rs.6,000/- p.m.

11. Insofar as the question of non-grant of future prospects is concerned, the evidence on record clearly establishes the age of the deceased at the time of death. The wife of the deceased, in her deposition, has specifically stated that, the deceased was 40 years old at the time of the accident. Her testimony remains unshaken and there is no material brought on record to discredit the same.

12. Further, the inquest panchnama prepared contemporaneously with the incident also records the age of the deceased as approximately 40 years. Being a document prepared in the regular course of duty, the inquest panchnama carries corroborative evidentiary value with regard to the particulars of the deceased, including age. Thus, both oral and documentary evidence consistently point to the deceased being about 40 years of age at the time of death.

13. In view of the settled principles laid down by the Hon'ble Apex Court in **Pranay Sethi** (Supra), addition towards future prospects is permissible, even in the case of self-employed or fixed salary persons,

depending upon the age bracket of the deceased. Hence, future prospects are also required to be considered and it should be granted @ 50% when deceased is aged between 40 to 50 years and self employed. Admittedly, deceased was aged about 40 years at the time of accident and hence, 50% addition needs to be given.

14. So far as grant of multiplier is concerned, admittedly, deceased was 40 years of age. In view of judgment of Hon'ble Apex Court in case of **Sarla Verma** (supra) and **Pranay Sethi** (supra), it can safely be held that, Tribunal has erred in awarding less multiplier looking to age of deceased. Considering above judgments and age of deceased, multiplier of 15 would be justified.

15. As far as the amount of consortium is concerned, in view of the judgment in case of **Magma General Insurance Co. Ltd** (supra), consortium @ Rs. 40,000/- towards per dependent needs to be allowed.

16. As far as issue with regard to deduction of 1/3rd income towards personal expenses is concerned, this position was made also clear by Hon'ble Apex Court in case of **Sarla Verma and Ors. v. Delhi Transport Corporation & Another**, (2009) 6 SCC 121, wherein, it is observed as under:

“14. Though in some cases the deduction to be made towards personal and living expenses is calculated on

the basis of units indicated in Trilok Chandra [(1996) 4 SCC 362], the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six."

In view of the above position, it can safely be held that, the Tribunal was not justified in deducting one-third of the income of the deceased towards personal and living expenses, as there were four dependents. The said deduction is not in consonance with the settled principles of law and, therefore, calls for interference by this Court.

17. Now, the last issue remains for determination is of contributory negligence. Here, fruitful reference can be made on the judgment of Hon'ble Apex Court in case of **Kumari Kiran Thr. Her Father Harinarayan vs. Sajjan Singh and Ors**, 2015 (3) MhLJ 626, wherein, Hon'ble Apex Court relying upon judgment in case of **Juju Kuruvila & Ors, vs. Kunjamma Mohan & Ors.**, (2013) 9 SCC 166, held in paragraph 13 as under:

13. With regard to the apportionment of contributory negligence at 25% on the part of the appellant-father and 75% on the driver of the offending tractor as

determined by the High Court, we refer to the judgment of this Court in Juju Kuruvila & Ors. v. Kunjamma Mohan & Ors.[5] as it is applicable to facts of the case on hand. In the above case, Joy Kuruvila (the deceased) had a head-on collision with a bus approaching from the opposite side. Joy Kuruvila sustained serious injuries and died on the way to the hospital. The Tribunal found that the accident occurred due to the rash and negligent driving of the bus driver. It apportioned the contributory negligence between the driver and the deceased in the ratio of 75:25%. On the basis of the pleadings & evidence on record, in the above said case, this Court has held thus on the negligence of the driver of the bus:-

“20.5. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

20.6. The post mortem report, Ext. A-5 shows the condition of the deceased at the time of death. The said report reflects that the deceased had already taken meal and his stomach was half-full and contained rice, vegetables and meat pieces in a fluid with strong smell of spirit. The aforesaid evidence, Ext.A-5 clearly suggests that the deceased had taken liquor but on the basis of the same, no definite finding can be given that the deceased was driving the car rashly and negligently at the time of the accident. The

mere suspicion based on Ext. B-2 “scene mahazar” and Ext. A-5 post-mortem report cannot take the place of evidence, particularly, when the direct evidence like PW3 (independent eyewitness), Ext. B-1 (FI statement) are on record.”

The observations made by this Court in the case of Juju Kuruvila (supra) surely apply to the fact situation on hand. Upon thorough examination of the facts and legal evidence on record in the present case, it cannot be said that the appellant-father was rash and negligent just on the assumption made by the Tribunal that the collision occurred in the middle of the road since the two vehicles were approaching from opposite directions of the road. However, the only aspect of the case on hand that we can reasonably assume is that the appellant-father would have taken sufficient caution while riding the motorcycle since he was travelling with his two minor children (appellant-minors). Further, upon examining the evidence produced on record, there is no proof showing negligence on the part of the appellant-father. Thus in our view, the contributory negligence apportioned by the High Court at 25% on the appellant-father and 75% on the driver of the offending tractor is erroneous keeping in view the legal principles laid down by this Court on this aspect in the above referred case. Thus, we are of the firm conclusion that the negligence is wholly on the part of the driver of the offending tractor since he was driving the heavier vehicle. Therefore, we set aside the 25% contributory negligence on the part of the appellant-father as apportioned by the High Court. (Emphasis supplied)

18. In this case, Hon’ble Apex Court has held that, there was no direct or corroborative evidence to establish rash or negligent driving on the part of the motorcycle rider. The finding of contributory negligence was based only on assumptions drawn from the position of the vehicles and the fact that the collision occurred mid-road, which is legally

insufficient. In the absence of proof showing negligence on the part of the motorcycle rider, he cannot be held responsible for the accident. Consequently, the entire negligence is attributable to the driver of the offending tractor, and the appellant-father bears no contributory negligence.

19. Bearing in mind the above position, facts and reasoning of the Tribunal are put to scrutiny.

In the present case, the findings recorded by the Tribunal in paragraphs 9 and 10 of the impugned judgment do not justify attributing contributory negligence to the deceased.

20. In paragraph 9, the Tribunal has relied upon the spot panchnama and has categorically observed that, while taking a turn, the bus had come about four feet on the wrong side of the road and dashed against the motorcycle. The spot panchnama, being a contemporaneous document prepared immediately after the accident, clearly indicates that the bus driver encroached upon the incorrect side of the road. Such encroachment constitutes a clear breach of the duty of care expected from a heavy vehicle driver. When a large vehicle like a bus moves to the wrong side while taking a turn, it creates an imminent and foreseeable risk to oncoming traffic. Therefore, the primary and proximate cause of the accident, as borne out from the documentary

evidence itself, is the negligent act of the bus driver.

21. In paragraph 10, the Tribunal has observed that the wife of the deceased admitted that the deceased was not wearing a helmet. However, merely because the deceased was not wearing a helmet, it cannot automatically be inferred that he contributed to the occurrence of the accident. Non-wearing of a helmet may have relevance while considering the nature or extent of injuries sustained, but it has no nexus with the causation of the collision itself. Contributory negligence must have a direct connection with the happening of the accident. In the present case, there is no material on record to suggest that the absence of a helmet in any manner caused or contributed to the accident. The accident occurred due to the bus coming to the wrong side and hitting the motorcycle; the question of helmet usage is wholly irrelevant to the manner in which the collision took place.

22. It is a settled principle of law that contributory negligence cannot be presumed; it must be established by cogent evidence showing that the victim's own negligence contributed to the accident. In the absence of any such evidence, and particularly when the spot panchnama clearly attributes fault to the bus driver, fastening any percentage of negligence upon the deceased is legally unsustainable.

23. Therefore, the Tribunal erred in drawing an inference of contributory negligence merely on the basis of the wife's statement regarding non-wearing of a helmet. The material on record unequivocally establishes that the accident occurred solely due to the rash and negligent driving of the bus driver, and consequently, the deceased cannot be held responsible for the accident in any manner.

24. In view of above and by following the dictum of Hon'ble Apex Court in case of **Magma General Insurance Co. Ltd, Sarla Verma & Pranay Sethi** (supra), this Court finds it appropriate to grant Rs.40,000/- each towards consortium plus 10% increase per three years, 50% addition towards future prospects, multiplier of 15 and enhanced amount for loss of estate and funeral expenses of Rs.15,000 plus 10% increase per three years. Hence, amount of compensation payable is determined as follows:

Sr. No.	Heads	Calculations in Rs.
1.	Annual Income Rs. 6,000 pm x 12 = Rs.72,000 + 50% addition towards future prospects= Rs.36,000/- Rs.72,000 (+) Rs. 36,000 = Rs.1,08,000/-	
2.	Rs.27,000/- divided by 1/4th of the personal expenses (Rs.1,08,000 – Rs. 27,000/-) = Rs.81,000	
3.	Multiplier Rs. 81,000 x 15	12,15,000/-
4.	Love and affection	15,000/-
5.	Loss of Estate	25,000/-
6.	Funeral expenses including increase	24,000/-
7.	Consortium including increase	2,56,000/-

8.	Hence, total compensation to be paid	Rs. 15,35,000/-
9.	Compensation awarded by Tribunal	Rs.2,92,000/-
10.	Total enhanced Compensation	Rs.12,43,000/-

25. As a result of above, Appeal stands allowed. Hence, the order:

ORDER

- (a) First Appeal is allowed. Impugned judgment and award dated 05.12.2006 passed in MACP No. 507 of 2000 is modified. Total compensation is Rs.15,35,000/- along with interest @ 7.5% per annum from the date of registration of claim petition till its realization.
- (b) Respondents are held jointly and severally liable to pay compensation to claimants.
- (c) Claimants to pay Court fee on enhanced compensation as per rules.
- (d) Rest of judgment and award of Tribunal to remain unchanged.
- (e) The difference of compensation amount be deposited within a period of six weeks.
- (f) Amount deposited (along with interest) by Respondents is permitted to be withdrawn by Claimants/Appellants.
- (g) No order as to costs.
- (h) In view of disposal of Appeal, pending applications, if any, stands disposed of.

(ABHAY S. WAGHWASE, J.)