

CNR No.
MHPU01-014037-2020

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M.A.C.P No.1/2021
Judgment



RECEIVED ON : 20.12.2020
REGISTERED ON : 05.01.2021
DECIDED ON : 24.04.2023
DURATION : 2Ys.3Ms.20Ds.

BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS
TRIBUNAL, PUNE AT PUNE
(Presided over by B. P. Kshirsagar)

MACP No.1/2021
EXH No. 43

- 1- Smt. Chhaya Ganesh Kasbe
Age 35 years old, Occ : Household
 - 2- Hrishikesh Ganesh Kasbe
Age 14 years old, Occ : Student
 - 3- Arushi Ganesh Kasbe
Age 12 years old, Occ : Student
- (Applicant Nos. 2 and 3 are minor
hence claiming through applicant
No. 1 their mother)

- 4- Bhimrao Pandhari Kasbe
Age 65 years old, Occ : labour

All R/o Laxminagar, Yerwada, Pune.**Applicants**

Versus

- 1- Kamannand Mahalappa Hekade
Age major , occ : Transport
(Registered owner of Truck
A/P Ratnagiri Housing Society,
RH08, B-10 G Block, near Sai
Garden, MIDC Pune 411019.

2- Divisional Manager.
ICICI Lombard General Insurance
Company Limited.
Office No. 206-219 2nd floor,
Shohrabh Hall, near Heritage House,
Bundgarden Road, Pune 411001.

.....Opponents

Advocate for Applicants : Shri. A. B. Patani
For opponent No.1 : Exparte
Advocate for opponent No. 2 : Shri. S. L. Dravid

Claim Application under Section
166 of the Motor Vehicles Act.
Claim Rs. 1,00,000/-

J U D G M E N T

(Delivered on this 24th Day of April 2023)

1- Vide the present petition under Section 166 of the Motor Vehicles Act, the claimant sought for compensation Rs. 1,00,000/- on account of accidental death of Ganesh Bhimrao Kasbe.

2- The petition in short, is as under :

Deceased Ganesh Bhimrao Kasbe age 33 years old doing scrap business earning Rs. 15,000/- per month was riding his motor-cycle bearing registration No. MH-14-FK-7166 on 24.02.2020. On Alandi Vishrantwadi Road, the offending Vehicle Truck bearing Registration No. MH-14-GU-5599 came from back side with excessive speed and dashed the motor-cycle causing his death.

3- Claimants being legal representatives filed present

petition for compensation Rs. 1,00,000/-.

4- Opponent No. 1 owner of the offending vehicle came to be proceeded exparte.

5- Opponent No.2 filed written statement vide Exh. 20. It is submitted that, deceased did not have driving licence, there was no insurance of the motor-cycle and therefore, petition be dismissed.

6- Vide Exh.21, issues were framed. Same are reproduced here and my findings are recorded against each of them for the reasons recorded hereinafter.

Sr. No.	Issues	Findings
1	Does applicants prove that Ganesh Bhimrao Kasbe died due to the accidental injuries, which took place on 24.02.2020 at about 12.05. a.m. in front of Hendre Bhel Shop, near Vishrantwadi Chowk, Vishrantwadi, Pune due to rash and negligent driving of Truck bearing registration No. MH-14-GU-5599 ?	In the affirmative
2	Whether applicants prove that they are entitled for compensation? If yes, to what extent and from whom ?	Yes. <u>Rs. 24,77,000/-</u> from opponent Nos. 1 and 2 jointly and severally.
3	What order and Award ?	As per final order

REASONS

7- Claimant examined Smt. Chhaya as witness No.1 and Mahesh Satish Kale as witness No.2.

8- Opponents did not lead any evidence.

9- Heard Ld. Counsel Patani for the claimant and Ld. Counsel for the opponent No.2 filed written notes of argument vide Exh.43.

10- Ld. Counsel Patani relied upon judgment of Hon'ble Bombay High Court in the case of **Sushila and another V/s National Insurance Company Limited and others reported in 2018 ACJ 2820.**

11- Ld. Counsel Dravid for opponent No. 2 relied upon following 2 judgments:

(i) **Oriental Insurance Company Limited V/s Sangita Dattatraya Jamdade and others reported in 2006 ACJ 971.**

(ii) **Harendra Nath Halder and others V/s New India Assurance company Limited and another reported in 2006 ACJ 975**

As to Issue No. 1

12- The claimant has produced and proved on record

statement of informant at Exh. 27, FIR Exh. 28, Spot panchanama Exh. 29, postmortem report Exh. 30, medical notification of death Exh. 31.

13- Admittedly none of the witness examined by the claimants is the eye witness.

14- On the basis of police papers, it can be safely held that, deceased died due to negligent driving of the offending vehicle by opponent No.1.

15- Accordingly, Issue No.1 is answered in the affirmative.

As to Issue No. 2:

16- Claimants being legal representatives are entitled to claim compensation from opponents being owner and insurer of the offending vehicle.

17- Claimants claimed that, claimant was earning Rs. 15,000/- per month through scrap business. There is no document to support the same.

18- Witness No.2 Mahesh Kale is also dealing in scrap business and he used to purchase scrap from the deceased and

used to pay Rs.20,000/- to Rs. 22,000/- per week. According to this witness deceased was earning Rs. 80,000/- to 88,000/- per month.

19- During his cross-examination, he admitted that, on the day of accident he was 18 years old, his monthly turnover is in lakhs. He has 8 to 9 scrap suppliers, however he did not pay income tax.

20- In the case of Oriental Insurance company (cited supra) Hon'ble Bombay High Court observed that the insurance company can raise every defence.

21- In the case of Harendra Nath Halder and others (cited supra) Hon'ble Calcutta High Court observed that, in the petition u/s 163A of the Motor Vehicles Act there is no need to prove wrongful act or negligent.

22- In the case of Sushila and another (cited supra) relied upon by the claimant Hon'ble Bombay High Court has accepted the oral evidence of employer to accept earning of deceased.

23- In the case in hand oral evidence of witness No. 2 Mahesh Kale shows monthly income of deceased to be Rs. 80,000/- to 88,000/-. Whereas according to claimant

deceased was earning Rs.15,000/- per month. As such testimony of claimant and witness runs contrary to each other on the earning of deceased.

24- Considering the nature of business of deceased and period of accident and his residence in city like Pune, his notional income is held to be Rs. 12,000/- per month.

25- Considering the age of deceased, 40% amount is required to be added towards future prospects in view of **National Insurance Company Limited V/s Pranay Sethi and others A.I.R. 2017 SC 5157**. There are four dependents as 1/4th amount is required to be deducted towards personal expenses. Looking to age of deceased at the time of accident, multiplier of 15 would be applicable in view of **Sarla Varma and others V/s Delhi Transport Corporation and another 2009 ACJ 1298**. So also, in view of judgment of Hon'ble Supreme Court in **The New India Assurance Company Ltd. V/s Smt. Somwati and others reported in Civil Appeal No.3093/2020** the dependent would be entitled for proportionate consortium.

26- As such the claimant is entitled for compensation as per following calculations.

Sr.No.	Head	Compensation awarded
i	Monthly Income	Rs.12,000/-
ii	Annual Income	Rs. 1,44,000/-
iii	Add- 40% Future Prospects	Rs. 57,600/-
iv	Net Annual Income	Rs.2,01,600/-
v	Less-1/4 Deduction towards personal expenditure	Rs. 50,400/-
vi	Total Income :	Rs.1,51,200/-
vii	Multiplier	15
viii	Loss of future income	Rs.22,68,000/- (Rs. 1,51,200/- X 15)
ix	Loss of spousal and filial consortium & Funeral Expenses and Loss of Estate	Rs.2,09,000/- (Rs.40,000/-x 4=1,60,000/- + 15,000/- + 15,000/- = 1,90,000/- + 10%)
	Total compensation.	Rs.24,77,000/-

Interest:

27- In view of judgment of K. Ramya and others V/s National Insurance Company Limited and another, reported in Civil Appeal No. 7046/2022 of Hon'ble Supreme Court, claimant is entitled for interest on the total compensation amount at the rate of 7.5% per annum from the date of petition till actual realization.

28- As per the directions issued by the Hon'ble Supreme Court in Writ Petition No. 534/2020 Bajaj Allianz General Insurance Company Limited V/s Union of India and

others, the insurance company has to deposit the amount of compensation by RTGS/NEFT in the Account of Member, MACT, Pune. As such the details of the said account are as follows.

Account Name	Member, Motor Accident Claim Tribunal, Pune.
Account Number	41365622240
Name of Bank	State Bank of India, Shivajinagar Court Branch, Pune.
IFSC Code	SBIN0061579

29- Hence, I answer Issue No. 2 accordingly and pass following order.

ORDER

- 1- The petition is partly allowed with proportionate costs.
- 2- The Opponents viz. Kamannand Mahalappa Hekade and Divisional Manager ICICI Lombard General Insurance Company Limited are directed to deposit in the account of Member, MACT given as above compensation amount of **Rs. 24,77,000/- (Rs. Twenty Four Lakhs Seventy Seven Thousand only)** inclusive of NFL amount along with interest @ 7.5% per annum from the date of petition till realisation of entire amount.
- 3- Out of total amount of compensation of Rs. 24,77,000/- along with interest, share of claimants would be as follows.
 - (a)-i 40% to claimant No. 1
 - (a)-ii 20% each to claimant Nos. 2 to 4

- (b) Out of amount of compensation coming to the share of claimant No.1, Rs.3,00,000/- be kept in Fixed Deposit Receipt in any Nationalised Bank for the period of three years and rest of the amount be paid to her by issuing account payee cheque, on due verification.
 - (c) Amount of compensation coming to the share of minor claimant Nos.2 and 3 be kept in Fixed Deposit Receipt in any Nationalised Bank till they attain majority.
 - (d) Amount of compensation coming to the share of opponent No. 4, be paid to him by issuing account payee cheque, on due verification.
- 4- Opponents shall bear their own costs.
 - 5- Claimants are directed to pay deficit court fees, if any, within one month from the date of order.
 - 6- Award be drawn up accordingly.

Pune
Date : 24.04.2023

(B. P. Kshirsagar)
Member,
Motor Accident Claims Tribunal,
Pune.

CERTIFICATE

I affirm that, the contents of the P. D. F. file order are same word to word as per original order.

Court Name	:	Shri.B. P Kshirsagar Member, M.A.C.T. & District Judge-13, Pune.
Name of Steno	:	Smt.S.V.Hirve
Date of order	:	24.04.2023
Order signed by P. O. on	:	26.04.2023
Date of PDF & Order uploaded on	:	26.04.2023