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**(2022) 08 BOM CK 0076**  
**In the Bombay High Court**  
**Case No : First Appeal No. 181 Of 2018**

Latabai And Others

APPELLANT

Vs

Tata Motors Ltd And Others

RESPONDENT

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**Date of Decision :** 30-08-2022

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 173

**Citation :** (2022) 08 BOM CK 0076

**Hon'ble Judges :** Pushpa V. Ganediwala, J

**Bench :** Single Bench

**Advocate :** A.R. Rishi

**Final Decision :** Disposed Of

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## Judgement

Pushpa V. Ganediwala, J

1. Heard.

2. This is the claimants' appeal under Section 173 of the Motor Vehicles Act, 1989, against the judgment and Award dated 09/02/2015, in Claim Petition No.75/2012, passed by the Chairman, Motor Accident Claims Tribunal, Gondia, whereby the learned Tribunal allowed the Claim Petition and directed respondent Nos.1 to 3 to pay jointly and severally the amount of compensation of Rs.1,00,000/- to the claimants / appellants alongwith interest @7% per annum from the date of filing of the Petition i.e. from 13/08/2012, till realization including the amount towards "no fault liability". The grievance of the claimants / appellants in this appeal is only with regard to enhancement of compensation.

3. The facts, in brief, can be stated as under :

Appellant No.1 is the wife of the deceased and the appellant Nos.2 and 3 are his children. The deceased died in a motor vehicular accident occurred on 19/11/2011 at Arjuni Tah. Arjuni, District Gondia, involving a truck, bearing temporary Registration No. JH-05 / A-4834/Z/11, Chassis No.

MAT395004B2R25704, Engine No. B 5.9 145 1011K63188199. The cause of the accident is stated to be due to rash and negligent driving of the truck, which was insured with respondent No.3 - New India Assurance Co. Ltd. At the time of accident, the deceased was riding a bicycle. The legal heirs of the deceased filed a Claim Petition against the owner, driver and insurer of the offending truck and claimed compensation of Rs.6,75,000/- under various heads. However, for the purposes of payment of Court fees, they restricted their claim upto Rs.1,00,000/-. The respondent No.3, in its written statement, denied the contents in the Claim Petition in toto and in its specific pleadings, took the defence of contributory negligence on the part of the deceased and that the driver of the truck was not holding a valid driving licence at the time of the accident.

4. The learned Tribunal framed necessary issues and recorded evidence as adduced by the parties. The learned Tribunal, on the basis of oral and documentary evidence on record, recorded the findings that deceased Kailash S/o Siku Uike, died in the motor vehicular accident involving truck bearing Registration No. JH-05 / A-4834/Z/11, due to the rash and negligent driving of respondent No.2. Therefore, the appellants are entitled for compensation of Rs.1,00,000/- with interest.

5. This judgment of the learned Tribunal is assailed in this appeal by the appellants/claimants and sought the enhancement of the compensation.

6. I have heard learned counsel Shri A.R. Rishi, appearing for the appellants. Despite service, none appeared for respondent No.1 i.e. owner of the truck. The learned counsel Shri Sachin Zoting, for the respondent No. 3, the Insurance Company is also not present in spite of sufficient opportunity was granted on earlier occasions.

7. The learned counsel for the appellants Shri A.R. Rishi submits that in the Claim Petition the appellants have categorically claimed Rs.6,75,000/- towards compensation and restricted their claim for the purposes of payment of court fees to Rs.1,00,000/-. It is submitted that the learned Tribunal without considering the principal of 'just compensation' and without considering the settled position of law, as laid down by the Hon'ble Apex Court has awarded meager compensation of Rs.1,00,000/- to the appellants. The learned counsel submits that the appellants are entitled for compensation as per the judgment in the case of in the case of National Insurance Company Limited vs Pranay Sethi and others (2017) 16 SCC

8. I have considered the submissions and perused the record. Since the judgment and award of the learned Tribunal is not challenged by the owner, driver nor insurer of the vehicle, therefore, the finding with regard to occurrence of the accident due to rash and negligent driving of the driver of the offending vehicle owned by respondent No.1 - Tata Motors Ltd. and insured with respondent No.3 - the New India Assurance Co. Ltd. has attained finality.

9. The only question for consideration of this Court is, whether the appellants / claimants are entitled for enhancement of compensation in terms of the exposition of law in the case of National Insurance Company Limited vs Pranay Sethi (supra).

10. Now, it is well settled that it is the duty of the Court to grant 'just compensation' to the victims of motor accidents. The appellants / claimants in the Claim Petition claimed Rs.5,000/- as monthly income of the deceased. The appellant No. 1, the wife of the deceased in her evidence on affidavit has stated that deceased was earning Rs.5000/- by doing labour work. There is no effective cross-examination on the earnings of the deceased. In her cross-examination she has denied that deceased was earning Rs.50/- or Rs.60/- per day. However, she has not placed on record any documentary evidence to show that deceased was earning Rs. 5000/- per month.

11. Considering the fact that the deceased was doing labour work, it cannot be expected from a widow wife of a labourer to produce any documentary proof to substantiate income of her husband. As stated earlier, there is no effective cross examination of this witness to belie her statement with regard to the income of the deceased. I do not see any good reason not to believe her statement. Considering the evidence on record so also the object of the enactment of the statute of the Minimum Wages and rising price index, in my considered view, income of Rs.5000/- to a labour could not have been an exorbitant amount.

12. The deceased was maintaining the family of four persons. The accident is of the year 2012. There is nothing on record to indicate that the wife of the deceased, the appellant no. 1 herein was also an earning member of the family. At the relevant time, the deceased was riding a bicycle and the offending truck due its rash and negligent driving gave a violent dash to the deceased and due to which he died. The amount of compensation can certainly not fill the vacuum in the family having two minor children, caused by untimely death of the deceased. However, it would certainly help the widow wife to provide proper education and nourishment to the children for the time being.

13. Therefore, by taking into account the monthly income of the deceased at Rs.5000/- per month and at the relevant time as per the evidence on record the deceased was of age 38 years, the appellants / claimants are entitled for compensation towards conventional and non-conventional

Sr. No.

Particulars

Calculation

1

Monthly income

Rs.5000/-

2

Plus 40% Future prospectus

Rs.2000/-

Total

Rs.7000/-

4

1/3rd deducted as personal expenses

Rs.7000/3 = Rs.4666/-

5

Compensation after multiplier of 16 is applied

4666 X 12 X 15 = Rs.8,39,880/-

6

Loss of estate

Rs.15000/-

7

Loss of consortium (40,000 X 3)

Rs.1,20,000/-

8

Funeral expenses

Rs.15,000/-

TOTAL

Rs.9,89,880/-

14. For the aforesaid reasons, the appellants / claimants are entitled for compensation of Rs.9,89,880/- with interest @7% per annum from the date of the application till its realization, which includes NFL amount.

Respondents No.1 to 3 are jointly and severally liable to pay compensation of Rs.9,89,880/- with interest @7% per annum, including NFL amount from the date of the petition till its realisation.

15. The Respondent No. 3 -the Insurance Company is directed to deposit the aforesaid amount with the Registry of this Court within 12 weeks and thereafter the appellants-claimants are permitted to withdraw the same subject to the payment of deficit court fee in this appeal and in the proceedings before the

Tribunal, if not already paid.

16. Appeal stands disposed of. No order as to costs.