IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 FIRST APPEAL NO.4413 OF 2016

1 Gulab Motiram Badgujar,
Age 44 yrs., Occ. Agri.,
R/o Sakali, Tq. Yawal,
Dist. Jalgaon.
**Since deceased through his legal representatives** -

1A) Yogita wd/o Gulab Badgujar,
Age 43 yrs., Occ. Housewife,
R/o Sakali, Tq. Yawal,
Dist. Jalgaon.

1B) Durgesh Gulab Badgujar,
Age 18 yrs., Occ. Education,
R/o Sakali, Tq. Yawal,
Dist. Jalgaon.

1C) Apeksha d/o Gulab Badgujar,
Age 12 yrs., Occ. Education,
Since minor, U/G of mother,
R/o Sakali, Tq. Yawal,
Dist. Jalgaon.

2 Ramesh Ramji Mahajan,
Age 55 yrs., Occ. Agri.,
R/o Sakali, Tq. Yawal,
Dist. Jalgaon.

… **Appellants**

… **Versus** …

1 Rukayyabi Mohammad Iqbal,
Age 67 yrs., Occ. Housewife,
R/o Taha Nagar, Idgah Road, Faizpur,
Tq. Yawal, Dist. Jalgaon.

2 Fatmabi Shaikh Kutuboddin,
Age 35 yrs., Occ. Housewife,

R/o Taha Nagar, Idgah Road, Faizpur,
Tq. Yawal, Dist. Jalgaon.

3 Yusuf Shaikh Kutuboddin,
Age 15 yrs., Occ. Education,
R/o Taha Nagar, Idgah Road, Faizpur,
Tq. Yawal, Dist. Jalgaon.

4 Shamir Shaikh Kutuboddin,
Age 13 yrs., Occ. Education,
R/o Taha Nagar, Idgah Road, Faizpur,
Tq. Yawal, Dist. Jalgaon.

5 Sabir Shaikh Kutuboddin,
Age 11 yrs., Occ. Education,
R/o Taha Nagar, Idgah Road, Faizpur,
Tq. Yawal, Dist. Jalgaon.

6 The Manager,
The United India Insurance Company Limited,
Mansingh Market, 2nd Floor,
Near Railway Station, Jalgaon,
Tq. & Dist. Jalgaon.

… **Respondents**

...

Mr. B.K. Patil, Advocate for appellants

Mr. M.M. Bhokarikar, Advocate for respondent Nos.1 and 2

Mr. S.R. Bagal, Advocate for respondent No.6

...

**WITH**
**CIVIL APPLICATION NO.5790 OF 2021**
**WITH**
**CIVIL APPLICATION NO.7752 OF 2024**
**WITH**
**X-APPEAL (STAMP) NO.18081 OF 2024**

...

**CORAM : ROHIT W. JOSHI, J.**

**DATE : 03rd SEPTEMBER, 2026**

**JUDGMENT** :

. Present appeal has preferred against Judgment and Award dated 06.01.2016 passed by learned Member, Motor Accident Claim Tribunal, Jalgaon in Motor Accident Claim Petition No.450/2009. Learned Tribunal has held respondent Nos.1 and 2 to be jointly and severally liable to pay amount of Rs.6,20,000/- with interest @ 7% per annum towards compensation to the claimants in the claim petition and has exonerated respondent No.3 / Insurance Company. Original respondent Nos.1 and 2 have filed present appeal challenging Judgment and Award to the extent to which respondent No.3 in claim petition i.e. Insurance Company is exonerated from the liability. (Hereinafter, appellant No.1 will be referred as "Tractor owner", appellant No.2 will be referred as "Trolley owner", respondent Nos.1 to 5 will be referred as "claimants" and respondent No.6 will be referred as "Insurance Company").

2 The claimants have also filed cross objection in order to seek enhancement in the amount of compensation awarded by learned Tribunal.

3 It is the case of claimants that on 28.02.2009 deceased Shaikh

Kutuboddin Mohd. Iqbal was travelling in a rickshaw bearing RTO registration No.MH-19/AE 2657 from Yawal to Kingaon when he was hit by a tractor attached with trolley bearing RTO registration No.MH-19/AN 450 and MH-19/E 2436 respectively. It is stated that rickshaw in which the deceased was travelling turned turtle and the deceased died on the spot of accident. Claimant No.1 is mother, claimant No.2 is widow and claimant Nos.3 to 5 are children of deceased. It is stated that deceased was working as mason with one Shaikh Ismoddin Shaikh Ainoddin and was drawing salary of Rs.4,500/- per month. It is further stated that he used to work as a Cook and used to earn Rs.2,000/- per month by selling eatables on holidays. The deceased was 32 years old at the time of his demise. The claimants claimed compensation under Section 166 of the Motor Vehicles Act, 1988.

4 The Trolley involved in accident was insured at the relevant time with respondent No.3/Insurance Company. The Tractor was not insured.

5 The owners of Tractor and Trolley filed common Written Statement vide Exh.26 and contested the claim petition by placing blame for the accident on the driver of the rickshaw. The insurance company filed its Written Statement vide Exh.19 denying the claim. It is stated that the claim against it was not maintainable since the rickshaw was not hit by the trolley. It was contended that the accident had occurred on account of head on

collision between the tractor and the rickshaw. Apart from this contention, objection with respect to non joinder of the owner and driver of the auto rickshaw was also raised. Objection was also raised with respect to non joinder of driver of tractor.

6 Learned Tribunal, by referring to the evidence on record held that the accident had occurred due to negligence of the driver of tractor. Learned Tribunal computed the total amount of compensation payable @ Rs.6,20,000/- including the amount of No Fault Liability awarded under Section 140 of the Motor Vehicles Act. The compensation is computed taking the monthly income of the deceased @ Rs.4,000/- per month. ¼th deduction is made towards personal expenses of the deceased and the multiplier of 16 is applied for computation of compensation against the head of Loss of Financial Dependence. In addition, an amount of Rs.44,000/- is paid towards funeral expenses, loss of estate and consortium. Accordingly, total compensation of Rs.6,20,000/- is awarded. Claim for future prospects is specifically rejected by learned Tribunal.

7 As regards the Insurance Company, learned Tribunal has exonerated the Insurance Company from making payment of compensation on the ground that the tractor, to which the trolley was attached, was not insured.

8 Mr. B.K. Patil, learned Advocate for appellants vehemently argued that trolley when it is attached to a tractor, the tractor and trolley both, constitute one single vehicle. He contends that even if the tractor is not separately insured, the insurance company of the trolley cannot escape from the liability to insure the claim. Learned Advocate has placed reliance on Judgment of this Court in the case of **United India Assurance Company Limited vs. Bhismillabee w/o Sk. Noor and others** in First Appeal No.1755 of 2011 decided at Aurangabad Bench on 10.05.2012, **National Insurance Company Limited vs. Smt. Chhaya Chandrakant Shegar** in First Appeal No.433 of 2016 decided at Principal Seat at Bombay on 10.05.2024, Judgment of the Karnataka High Court in the case of **D. Lakshmana Murthy s/o Doddahalappa and another vs. V. Rajesh s/o P. Venugopal and another** in M.F.A. No.418 of 1992 decided on 31.03.1998 and Judgment of the Hon'ble Supreme Court in the case of **The Royal Sundaram Alliance Insurance Company Limited vs. Smt. Honnamma and others** [AIR 2025 SC 2641].

9 Mr. M.M. Bhokarikar, learned Advocate for claimants supports the contention of the appellants/owners in this regard by placing reliance on Judgment of this Court in the case of **New India Assurance Company Limited vs. Ganesh Ramrao Nalkande and others** in First Appeal No.631 of 2007 decided at Nagpur Bench on 11.01.2019, Judgment of the Andhra Pradesh

High Court in the case of **The New India Assurance Company Limited vs. Nunna Veera Venkata Satyanarayan @ Sathibabu (died) and two others** [2012 ACJ 907] and **The New India Assurance Company Limited vs. Mamidi Mallamma and others** [2002 ACJ 1461].

10 Per contra, learned Advocate for Insurance Company supports the findings by learned Tribunal exonerating the insurance company by placing reliance upon the Judgment of the Karnataka High Court in the case of **The Legal Manager, HDFC Ergo General Insurance Company Limited vs. Umadevi and others** [2024:KHC-D:8757].

11 Learned Advocate Mr. M.M. Bhokarikar contends that the amount of compensation is not properly computed by learned Tribunal. He contends that learned Tribunal ought to have accepted the contention of the claimants that the monthly income of deceased was Rs.6,500/-. He argues that learned Tribunal has erred in not awarding compensation towards future prospects. Learned Advocate also states that compensation of Rs.2,00,000/- ought to have been awarded towards loss of consortium to the widow, mother and three children and in addition an amount of Rs.15,000/- each should have been awarded towards loss of estate and funeral expenses. He argues that total compensation against conventional heads is erroneously awarded at Rs.44,000/- only as against Rs.2,30,000/-.

12 Mr. M.M. Bhokarikar contends that the amount of compensation payable to the claimants can be enhanced in the appeal preferred by the owners, however, the claimants have filed cross objection by way of abundant caution. In support of his contention that amount of compensation can be enhanced in the appeal preferred by the owner, reliance has placed upon Judgment of the Hon'ble Supreme Court in the case of **Surekha wd/o Rajendra Nakhate and others vs. Santosh Namdeo Jadhav and others** [(2021) 16 SCC 467].

13 Learned Advocates for the vehicle owners and insurance company opposed the request of enhancement of compensation. It is contended that orders to the detriment of appellant cannot be passed in an appeal filed by the appellant. It is contended that it was necessary for the claimants to prefer a substantive appeal or cross objection in order to seek enhancement in the amount of compensation. It is further argued that in the cross objection is filed belatedly without any justifiable reason and, therefore, the same should be dismissed by rejecting the application for condonation of delay in filing cross-objection. It is also contended that in the event delay is condoned and cross objection is entertained, the claimants should not be held to be entitled to receive interest for the period of delay caused in filing cross objection.

14 In view of the rival submissions made above, following points arise for consideration in the present appeal.

i) Whether the Insurance Company of Trolley can be held liable to pay compensation when the Tractor, to which it was attached, was not separately insured ?

ii) Whether amount of compensation computed by the learned Tribunal is proper ?

iii) Whether claimants are entitled to interest over the enhanced amount of compensation, if any, for the period of delay in filing cross objection ?

15 **As to Point No.1** :

As noticed above, learned Tribunal has exonerated the insurance company of the trolley since the tractor was not insured. Learned Tribunal has held that since the trolley was attached to a tractor, which was not insured, the insurance company was entitled for exoneration from the liability, since attaching the trolley to a tractor which is not insured amounts to fundamental breach of the insurance policy.

16 The question that falls for consideration in the present appeal with respect to liability of insurance company of a trolley to honour accident claim even if the tractor to which it is attached is not insured has been

considered by this Court in its earlier decisions in the cases of **Bhismillabee w/o Sk. Noor** (supra), **Smt. Chhaya Chandrakant Shegar** (supra) and **Ganesh Ramrao Nalkande (supra)**. All these cases hold that even when a tractor is not separately insured, the insurance company of the trolley cannot be exonerated of its liability to honour the claim. It will also be appropriate to refer Judgment of the Hon'ble Supreme Court in the case of **Royal Sundaram Alliance Insurance Co. Ltd.** (supra), wherein it is held that in case where a tractor insured is attached with a trolley which is not insured, the insurance company of the tractor cannot be exonerated of the liability to honour the accident claim. In view of clear enunciation of law in the aforesaid Judgments, it will not be possible to take a different view of the matter as prayed by learned Advocate for the insurance company. Point No.1 is, therefore, answered holding that the insurance company of the trolley will be liable to honour the claim, even if the tractor to which it was attached was not insured.

17 **As to Point No.2** :

Learned Tribunal has held that the claimants had failed to lead cogent and proper evidence to prove the income of the deceased. Learned Tribunal considered the notional income of the deceased at Rs.4,000/- per month and computed the compensation accordingly. In view of five

dependents, learned trial Court has made ¼th deduction towards personal expenses of the deceased and has applied the multiplier of 16, since the deceased was 32 years old at the time of his demise.

18 Although the claimants failed to bring documentary evidence on record to establish the exact income of the deceased, they have stated that he was working as a Mason. They have also named the employer of the deceased in the evidence. The deceased has expired on 28.02.2009. He was supporting a family of six persons including himself. Having regard to the year in which the deceased expired and having regard to the general rate of wages prevailing at the relevant time, it can reasonably be assumed that he was earning around Rs.150/- per day. His monthly income should therefore be taken as Rs.4,500/- per month. Learned Tribunal has rightly made ¼th deduction towards personal expenses and the multiplier of 16 was also correctly applied. In view of the aforesaid, the total amount of compensation payable to the claimants on account of loss of financial dependency works out to Rs.6,48,000/-. The amount is computed as under :

| Sr. No. | Particulars | Amount |
|---|---|---|
| 01 | Annual income of the deceased (4500 x 12) | Rs.54,000/- |
| 02 | ¼th deduction towards personal expenses | Rs.13,500/- |
| 03 | Loss of annual financial dependence | Rs.40,500/- |
| 04 | Total compensation against loss of income by | Rs.6,48,000/- |

| | | |
|---|---|---|
| | applying multiplier of 16 | |

On this amount of Rs.6,48,000/- compensation against future prospects will have to be calculated.

19 In view of the Judgment of Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi and others** [2017 AIR (SC) 5157] in case of a deceased being a self employed person of working against fixed salary, 40% amount is required to be paid towards loss of future prospects when the age of deceased is less than 40 years. The age of deceased was 32 years on the date of his demise and as such the said amount of future prospects works out to Rs.2,59,000/-.

20 Apart from this the claimants are also entitled to compensation against conventional heads. In view of Judgment of the Hon'ble Supreme Court in the case of **Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram and others** [2018 (18) SCC 130] each claimant will be entitled to Rs.40,000/- towards loss of consortium. The total amount payable towards consortium comes to Rs.2,00,000/-. Apart from the said amount, Rs.30,000/-, Rs.15,000/- each, is required to be paid towards funeral expenses and loss of estate.

21 In view of the above, total compensation payable to the claimants is computed as under :

| Sr. No. | Particulars | Amount |
|---|---|---|
| 01 | Loss of financial dependence | Rs.6,48,000/- |
| 02 | Loss of future prospects | Rs.2,59,200/- |
| 03 | Loss of consortium | Rs.2,00,000/- |
| 04 | Funeral expenses | Rs.15,000/- |
| 05 | Loss of estate | Rs.15,000/- |
| | **Total compensation payable** : | **Rs.11,37,200/-** |

22 **As to Point No.3** :

The owners of the tractor and trolley have filed Appeal in order to assail the Judgment and Award by learned Tribunal. The claimants did not file a substantive appeal challenging the Award in order to seek enhancement in amount of compensation awarded. The claimants have, however, filed a cross objection in order to seek enhancement amount of compensation. There is a delay of around 3010 days in filing cross objection as per office note dated 31.07.2024.

23 Learned Advocates for the vehicle owners and insurance company contend that the delay should not be condoned, however, the application for condonation of delay is allowed by separate order. Likewise, it is contended in the alternative that at least interest should not be awarded

for the period of delay.

24 Mr. M.M. Bhokarikar, learned Advocate for claimants argues that cross objection is filed by way of abundant caution. He contends that even in the absence of a substantive appeal or cross objection, the Court is under an obligation to award just, fair and reasonable compensation to the claimants. He argues that appropriate enhancement in compensation awarded by learned Tribunal can be granted even if the claimants do not prefer appeal. Learned Advocate, therefore, contends that the claimants will be entitled to receive the interest on the enhanced amount of compensation, even for the period of delay.

25 Here, it will be appropriate to refer two Judgments i.e. **Surekha wd/o Rajendra Nakhate and others vs. Santosh Namdeo Jadhav and others** [(2021) 16 SCC 467] and United India Assurance Company Limited vs. Dagdu Gangaram Lokhande in First Appeal No.2630 of 2016 decided on 14.07.2026. In the light of aforesaid decisions, the contention of Mr. M.M. Bhokarikar that just and fair compensation will have to be awarded to the claimants even in absence of substantive appeal or cross objection at their behest will have to be accepted. The said decisions categorically hold that obligation to award just and fair compensation to claimants in motor accident cases is imposed not only upon the Tribunal but also on this Court while

entertaining appeal arising out of Judgment and Award passed by the Tribunal even if the appeal is preferred by insurance company or vehicle owner. In view of the aforesaid Judgments this Court is of the opinion that compensation awarded to the claimants can be enhanced even in the absence of appeal or cross objection by the claimants. The claimants, cross objectors will be entitled to the enhanced amount of compensation along with interest even for the period of delay. However, due to the delay, instead of 7% interest as awarded by the learned Tribunal, interest on the enhanced amount of compensation is awarded @ 6% per annum.

26 In view of the aforesaid, following order is passed.

**ORDER**

1) First Appeal and cross objection are partly allowed.

2) The appellants and respondent No.6 i.e. original respondent Nos.1 to 3 are jointly and severally held liable to pay enhanced compensation of **Rs.5,17,200/-**, over and above compensation of Rs.6,20,000/- awarded by the Member, Motor Accident claims Tribunal, Jalgaon in Motor Accident Claim Petition No.450/2009.

3) The appellants and respondent No.6 i.e. original respondent

Nos.1 to 3 shall jointly and severally pay enhanced amount of compensation of Rs.5,17,000/- to respondent Nos.1 to 5 / original claimants with interest @ 6% per annum from 26.10.2009 i.e. the date of filing of Motor Accident Claim Petition No.450/2009 till realisation of the said amount.

4) Pending applications stand disposed of.

**( ROHIT W. JOSHI, J. )**

agd