

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 1919 OF 2005
WITH
CIVIL APPLICATION NO. 1962 OF 2005**

United India Insurance Co. Ltd.,	)	
R/o. Bharati Vidyapeeth Bhavan,	)	
5 th Floor, L.B.S. Road, Pune-30.	)	...Appellant/Applicant (Orig. Opponents No.3)

Versus

- | | | | |
|----|-----------------------------------|---|--|
| 1. | Ashok Mahadeo Kalaskar, |) | |
| | Age 35 yrs, Occup. Nil, |) | |
| | R/at 64/2/3, H.B. Colony |) | |
| | Gorakshen Road, Akola. |) | |
| 2. | Krishna D. Jaigude, |) | |
| | Age adult, Occup. Business, |) | |
| | R/at Sabale Chawl, Hanuman Road) |) | |
| | Service Road, Vile Parle, |) | |
| | Mumbai-57. |) | |
| 3. | Ashok Maruti Salvi, |) | |
| | Age Adult, Occup. Business, |) | |
| | R/at B/6/31, Dnyaneshwar Nagar |) | |
| | Shivadi, Wadala, Mumbai-31. |) | |
| 4. | Indira Arvind Londhe, |) | |
| | Age 48 yrs, Occup. Household, |) | |
| | R/at Post Anjansindhi, |) | |
| | Tq. Dhaman Gaon, Dist. Amravati.) |) | |
| 5. | Prabha Laxman Javalekar, |) | |
| | Age 45 yrs, Occup. Household, |) | |
| | R/at Flat No.27, Dimension |) | |
| | House, United Western HSG Soc. |) | |

Karvenage, Pune-32.)
(Deleted as per order dated 03.08.2006)

6. Shobha Sadanand Khadkulkar,)
Age 42 yrs, Occup. Household,)
R/at Besera HSG. Soc. Gorakshan)
Road, Akola.)

7. Asha Nandkumr Somwanshi,)
Age 38 yrs, Occup. Household,)
R/at P.M.C. Colony, Sambhhaji)
Nager, Wakadewadi, Pune-5.)
(Deleted as per order dated 03.08.2006)

8. Usha Avinash Saswadkar,)
Age 32 yrs, Occup. Household,)
R/at Post Loni Kalbhor, Tal. Haveli)
Dist. Pune.) ...Respondents
(Respdt. No.1 is orig. Applicant
Respdt. Nos.2 to 8 are orig.
Opponents No.1,2,4,5,6,7 & 8
respectively)

Mr. Sachin Raje for the Appellant/Applicant.

Mr. Makarand Shinde a/w. Mr. G. P. Shinde for Respondent No. 1.

CORAM : S. M. MODAK, J.

DATED : 16th SEPTEMBER 2026

JUDGMENT :

1. The only issue canvassed in this Appeal is entitlement of compensation by a brother of the deceased. For the reason, he is not dependent upon the income of the deceased Mr. Rangarao. Original

Respondent Nos. 4 to 8 are the married sisters of Claimant and they have given no objection in favour of the Claimant (para 5 of the judgment). The submission is that when there is no evidence about dependency, the Tribunal ought not to have considered the principle of dependency. The Tribunal has considered the Gross Total Income of the deceased Mr. Rangarao as Rs.12,000/- and treated 50% deduction towards personal expenses and considered 50% as a loss of dependency to the claimant. This portion of the Award is under challenge on behalf of the Insurance Company.

2. Considering the limited issue involved, I have heard learned Advocate Mr. Raje for the Appellant and learned Advocate Mr. Shinde for the Respondent No.1-Claimant. With their assistance, I have gone through the record.

3. The deceased was travelling on a scooter, whereas, the bus insured with the Appellant gave a dash on 26th July, 1999. The deceased Mr. Rangarao died. He was working in Gadge Maharaj Mahavidyalaya, Murtizapur, Akola as a Superintendent. To prove his income from salary, a witness Mr. Shrikant is examined. He has proved the salary certificate. The details are as follows :-

Sr. No.	Particulars	Amount
1)	Basic Pay	Rs. 10,100/-
2)	D.A.	Rs. 2,222/-
3)	H.R.A.	Rs. 505/-
4)	Scooter Allowances	Rs. 200/-
Total		Rs. 13,027/-

4. The Tribunal has deducted the scooter allowance and HRA and considered the Gross Total Income as Rs.12,000/-.

5. In respect of dependency, learned Advocate Mr. Raje has invited my attention to the evidence of the Claimant. During cross-examination, he has answered that “I can earn my labour for my own maintenance”. According to Mr. Raje, if such answer is given, it cannot be said that he is depending upon the income of the deceased.

6. Whereas, the learned Advocate Mr. Shinde has invited my attention to the answer given during chief-examination. He has said, “I was depending on the income of the deceased Mr. Rangarao”.

7. To buttress his submission, Mr. Raje has relied upon the observations in case of *Manjuri Bera vs. Oriental Insurance Company Ltd. & Anr.*¹. The issue involved in that Appeal was whether married daughter of the deceased can claim compensation under Section 166 of the Motor Vehicles Act, 1988 (“**The M.V. Act**”). It was pleaded on behalf of the Insurance Company that a married daughter cannot be treated as dependent upon the deceased. The said plea was accepted and the claim petition was dismissed. This decision was confirmed by the High Court when the matter went to Hon’ble Supreme Court. The Hon’ble Supreme Court has interpreted the meaning of “legal representative” and “heir”. The Hon’ble Supreme Court has also considered the provisions of Section 140 of the Act being no fault liability and Section 166 of the Act, being the fault liability. Similarly, in paragraph 10 of the aforesaid

¹ AIR 2007 SCC 1474

decision, the Hon'ble Supreme Court has considered the provisions of Section 2(11) of Code of Civil Procedure, 1908 (CPC). It is inclusive in character and the scope is wide and it is not confined to legal heirs only. Whereas, as per the provisions of Section 166(c), when there is a death, a claim petition can be filed by all or any of the legal representatives of the deceased. In paragraph 10 of the said decision, the observations in case of ***Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai & Anr.***² are referred. A legal representative is the one who suffers on account of death of a person due to motor vehicle accident and need not necessarily be wife, husband, parent or child. As per Section 166(c) of the Act, it is a legal representative who can file an application, as observed, he need not be a legal heir.

8. This observation is further clarified by the Hon'ble Supreme Court in case of ***National Insurance Company Ltd. vs. Birender & Ors.***³ It was a case of compensation under Section 166 of the Motor Vehicle Act. The Claimants were major sons of the deceased and they were married. Deceased was their mother who was government employee and Claimants/sons were working as agricultural labourers and they were largely depending upon earning of their mother. They were entitled to apply for compensation but quantum of compensation would depend upon their dependency on the deceased. There is distinction between “*right to apply for compensation*” and “*entitlement to compensation*”. The observations of ***Manjuri Bera (supra)*** were also considered.

9. If we consider these judgments, it is clear locus to apply for

² 1987 ACJ 561 SC

³ (2020) 11 SCC 356

compensation is one aspect and entitlement to compensation is another aspect. It is true, the provisions of Section 166 lays down categories of persons who can apply for compensation. Whereas, Section 168 of the M.V. Act lays down the procedure to be followed by the Tribunal and also casts an obligation on the Tribunal to determine amount of just compensation. It also casts an obligation on the Tribunal to specify :-

- a) persons entitled to compensation;
- b) who shall pay the compensation.

10. If we read both the provisions together, we may find that the persons who fall within purview of legal representatives can apply for compensation and if they satisfy the test of entitlement, then only they can be awarded as compensation. There are various parameters for ascertaining quantum of compensation. Ultimately, if it is a death claim, then apart from ascertaining income of the deceased, next question to be determined is “*whether deceased is spending entire income on himself or spending some part for him and spending some part on others*”. These “other” are called as dependents. In order to have uniformity, the Hon’ble Supreme Court in the case of ***National Insurance Company Limited vs. Pranay Sethi & Ors.***⁴ and ***Sarla Verma (Smt) & Ors. vs. Delhi Transport Corporation & Anr.***⁵ has laid down categories of dependents, percentage of personal expenses and loss of income to the dependents. This is the stage where the Tribunal has to determine the persons who are dependents. Who are the dependents is a question of

4 (2017) 16 SCC 680

5 (2009) 6 SCC 121

facts. Once the dependents are identified, the Tribunal has to determine personal expenses and loss of income as per guidelines given by the Hon'ble Supreme Court.

11. On this background, if evidence is scrutinized, we may find that the legal representative can apply for compensation. He need not be heir. In this Appeal, Claimant is brother of the deceased. Certainly, he can represent estate of the deceased. So first test under Section 166(c) of the M.V. Act is satisfied.

12. Second test is whether he has suffered on account of death of the deceased. Considering this analogy, if we go through the facts, it is clear that the Claimant is the brother of the deceased. He has said that he was depending on the income of the deceased Mr. Rangarao. No doubt, he has answered that "I can earn my labour for home maintenance", it cannot be said that he has not fulfilled the test of dependency. The physical capacity to earn is one aspect and dependency on the income of the deceased is another aspect. Even the relatives of the deceased are having physical capacity to earn, does it mean to say that they are not to be treated as dependent ? The answer is certainly no. The relationship of the deceased with Claimants is not disputed. In spite of the physical capacity to earn, when he says that he is depending on the income of the deceased, he has fulfilled the test laid down in the case of *Gujarat Road Transport Corporation (supra)*. Except giving a suggestion that he was not dependent. I do not find any answer in the cross-examination which weakens his evidence.

13. Mr. Raje tried to submit that loss of dependency is one aspect and loss of estate is another aspect. His submission is that the Claimant is entitled to loss of estate. I am not agreeable to this submission also. On facts, the Claimant has proved his dependency on the income of the deceased. Hence, the ground argued before me by Mr. Raje is not acceptable. There is no merit in the Appeal.

14. The submissions made on behalf of Respondent No.1 about incorrect calculation of compensation need to be considered. He made the following submissions :-

- a) First, the multiplier of 11 is wrongly considered. It ought to have been 13 on the basis of the observations in case of *Pranay Sethi (supra)* and *Sarla Verma (supra)*. According to him, the age of the deceased deposed by the Claimant is 50 years. It has come in Paragraph No.2 of his evidence, whereas, in post-mortem report, it is mentioned as 50 years. It is there in Paragraph No. 7 of the post-mortern report. Whereas, in the inquest panchanama on page no. 1, his age is mentioned as 51 years. The Tribunal has considered the age mentioned in the inquest panchanama while considering the multiplier. According to Mr. Raje, this is correct. Whereas, Mr. Shinde relied upon the observations of the Hon'ble Supreme Court in the case of *Sunita & Ors. vs. Vinod Singh & Ors.*⁶ in Paragraph No. 11, there is a discussion about considering the age

6 2025 ACJ 1147

mentioned in the post-mortern report being on the basis of scientific assessment. In this case, the Tribunal was wrong in considering the age of the deceased as 51 years, because there is a reference of his age as 50 years in other part of the evidence, which is not considered by the Tribunal. So, the multiplier has to be 13.

- b) According to him, the income ought to have been Rs. 12,827/- (Rs. 13,027/- minus Rs. 200/-) instead of Rs. 12,000/-. Only the Profession Tax of Rs. 200/- can be deducted and not the scooter allowance and the HRA which is done by the Tribunal. Even though, in the salary certificate at Exhibit-41, Profession Tax is not mentioned, according to Mr. Shinde, it ought to have been Rs. 200/- as per the rates prevailing at that time. He is right. So, the income from salary ought to have been Rs. 12,827/- instead of Rs. 12,000/-.
- c) According to him, there ought to be enhancement @ 10% in every 3 years, as observed in case of *Pranay Sethi (supra)*, in paragraph 61(xiii), he is right. In view of that, the compensation has to be enhanced.
- (d) According to Mr. Raje, the amount of income tax has to be deducted. Respondent No. 1 to satisfy the Tribunal at the time of withdrawal about the payment of income tax, then the Tribunal can permit him to withdraw the amount accordingly.

15. In view of that, the Award dated 05th October, 2004 passed in Claim Application No. 1063 of 1999 is modified and Respondent No. 1 is entitled for the following compensation :-

Salary (Rs. 13,027/- (-) Rs. 200/-)	Rs. 12,827/-
Personal Expenses 50%	Rs. 6,413/-
Dependency 50%	Rs. 6,413/-
Salary Rs. 6,413/- pm x 12 Months	Rs. 76,956/-
Salary Rs. 76,956/- x 13 Multiplier	Rs. 10,00,428/-
Add : 30% Future Prospect	Rs. 3,00,128/-
Add : Filial Consortium	Rs. 48,000/-
Add : Loss of Estate	Rs. 18,000/-
Add : Funeral Expenses	Rs. 18,000/-
Total	Rs. 13,84,556/-

16. It is true that the Tribunal has granted compensation of Rs. 4,50,000/- + Rs. 50,000/- towards no fault liability. The amount adjudicated by the Tribunal is Rs. 7,96,000/- + 9% interest. However, the Tribunal has restricted only to Rs. 5 lakh being the amount claimed by Respondent No. 1. This is not the proper approach. There is a responsibility on the Tribunal to arrive at the amount of just compensation.

17. Hence, the following order :-

ORDER

- (a) The Appellant is directed to pay Rs. 8,84,556/- (Rs. 13,84,556/- (-) Rs. 5,00,000/-) to the Respondent No. 1 within a period of eight weeks from the passing of the order along with 9% interest.
- (b) Appeal is dismissed.
- (c) Consequently, Civil Application does not survive and is disposed of accordingly.
- (d) The Respondent No.1 is permitted to withdraw the amount after considering the amount which he has already withdrawn and on payment of additional Court Fee.
- (e) The Respondent No. 1 to satisfy the Tribunal about payment of income tax, if any, by the deceased Mr. Rangarao by filing an affidavit whether Mr. Rangarao was liable to pay it, and if yes, whether he has paid it.

[S. M. MODAK, J.]