

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.376 OF 2000

- 1] Smt.Rajani Madhukar Verulkar
Age 48 years, Occ-household
R/o Khadke Chawal, Shivaji Nagar
Jalgaon.
 - 2] Milind Madhukar Verulkar
Age 28 years, Occ
 - 3] Mukund Madhukar Verulkar
Age 26 years, Occ-Education
 - 4] Mahesh Madhukar Verulkar
Age 24 years, Occ-Education
- ..APPELLANTS
[ORIG.CLAIMANT NO.1 TO 4]

VERSUS

- 1] Smt.Mandabai w/o Dagadu Navkar
Deceased through her L.Rs.
 - 1A] Dagadu Sampat Navkar
Adult, Occ-Nil
 - 1B] Suresh Dagadu Navkar
Adult, Occ-Business
 - 1C] Bhaulal Dagadu Navkar
Adult, Occ-Driver
 - 1D] Pandurang Dagdu Navkar
Adult, Occ-Labour
- All Respondent nos.1A to 1D
R/o Koliwada, Avhane
Tal. & Dist.Jalgaon
- 1E] Pralhad Dagdu Navkar

Adult, Occ-Business
R/o Lahore, Tal. Pachora
Dist.Jalgaon.

- 1F] Smt.Hirabai w/o Mahadu Mahale
Adult, Occ-household
R/o Avhane, Tal. & Dist.Jalgaon.
- 1G] Smt.Nirma w/o Ishwar Kumbhar
Adult, Occ-household,
R/o Nashirabad, Tal. &
Dist.Jalgaon.
- 1H] Smt.Lata w/o Narayan Mahale
Adult, Occ-household
r/o Utran, Tal. Erandol
Dist.Jalgaon.
- 1I] Smt.Dhrupada w/o Kashinath More
Adult, Occ-household
R/o Shendurni, Tal. Jamner
Dist.Jalgaon.
- 2] Kashinath Genda Sapkale
Age Adult, Occ-driver
R/o Avane, Tal. & Dist.Jalgaon
- 3] New India Assurance Company
Branch No.2, Behind Kelkar
Market, Baliram Peth,
Jalgaon, Tal. & Dist.Jalgaon
- 4] Smt.Bhimabai Tulshiram Verulkar
Age 75 years, Occ-Nil,
R/o Shivaji Nagar,Jalgaon
(deceased)

Original Claimant No.5 is
died she was one of the dependents
on deceased Hence L.Rs. Need not be
brought.

.. RESPONDENTS
[Resp No.1A to 1 I
Ori.Resp.No. 1,
Resp.No.2,3,Ori
Resp.Nos.2 & 3)
Resp.No.4 ori.

Claimant No.5)

...
Shri Girish Rane, Adv. for appellant
Shri P.P.Chavan & P.P.Patil, Adv.s. for respondent Nos. 1A to 1H
Shri D.S.Kulkarni, Adv. For respondent no.3.
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FIRST APPEAL NO.581/2002

New India Assurance Company Limited
having its registered and Head Office
at New India Assurance Building, 87,
M.G.Marg, Fort, Mumbai 400 001 and
having Divisional office at Aurangabad
Branch office at behind Kelkar Market,
Baliram Peth Jalgaon, Taluka and
District Jalgaon.

..APPELLANT
[ORIG.RESPDT.NO.3]

VERSUS

- 1] Smt.Rajani Madhukar Verulkar
Age 45 years, Occ-household
R/o Khadke Chawal, Shivaji Nagar
Jalgaon.
- 2] Milind Madhukar Verulkar
Age 25 years, Occ
r/o as above
- 3] Mukund Madhukar Verulkar
Age 23 years, Occ-Education
r/o as above
- 4] Mahesh Madhukar Verulkar
Age 21 years, Occ-Education
r/o as above.
- 5] Smt.Bhimabai Tulshiram Verulkar
Age 85 years, Occ-Nil,
R/o as above.
[R.No.5 abated as per
Addl.R's Court's order

dtd. 18/11/03]

The claimant no.2 to 4 were shown as minors when claim petition was filed in 1990. They are now become major therefor, shown as major.

- 6] Smt.Mandabai w/o Dagadu Navkar
Age 40 years, occu-business
r/o Avane, Taluka and
Dist.Jalgaon.
(Since deceased) her legal heirs
brought on record as 1-A to 1-r.

Deceased through her L.Rs.

- A] Dagdu Sampat Navkar
Age 60 years, Occ-Nil
- B] Suresh Dagdu Navkar
Age 40 years, Occ-Business
- C] Bhaulal Dagdu Navkar
Age 38 years, Occ-Driver
- D] Pandurang Dagdu Navkar
Age 35 years, Occ-Labour
- E] Pralhad Dagdu Navkar
Age 32 years, Occ-Business
- F] Smt.Hirabai w/o Mahadu Mahale
Age 31 years, Occ-household
R/o Avhane, Tal. & Dist.Jalgaon.
- G] Smt.Nirma w/o Ishwar Kumbhar
Age 24 years, Occ-household,
R/o Nashirabad, Tal. &
Dist.Jalgaon.
- H] Smt.Lata w/o Narayan Mahale
Age 27 years, Occ-household
r/o Utran, Tal. Erandol
Dist.Jalgaon.
- I] Smt.Dhrupada w/o Kashinath More

Age 25 years, Occ-household
R/o Shendurni, Tal. Jamner
Dist.Jalgaon.
No.A to D r/o Koliwada, Tq. & Dist.
Jalgaon. No.E r/o Lohara, Tq. Pachora
Dist.Jalgaon

- 7] Kashinath Genda Sapkale
Age Major, Occ-driver
R/o Avane, Tal. & Dist.Jalgaon .. RESPONDENTS
[orig.claimants No.1 to 5]

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Shri D.S.Kulkarni,Adv. For appellants
Shri Girish Rane,Adv. for respondent nos.1 to 4.

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CORAM : S.V.GANGAPURWALA,J.

DATED : 21ST SEPTEMBER, 2015

ORAL JUDGMENT :-

First Appeal No.376/2000 is filed by claimants who had filed application for compensation u/s 110 of the Motor Vehicles Act on account of death of Madhukar who died in an accident. Whereas First Appeal No.581/2002 is filed by insurer of the offending truck on the ground that its liability is limited to Rs.1,50,000/- and the said Appeal is limited to the extent of Rs.16,000/-.

- 2] Mr.Rane, learned counsel submits that as far as liability of insurance company is concerned, it is unlimited liability. The tribunal has discussed in its judgment payment of extra premium of

Rs.16,000/- towards third party coverage. According to the learned counsel, tribunal has rightly discussed about the liability of the insurance company being unlimited inasmuch as insurance company has not stepped into witness box to verify the additional payment of premium. The Court has rightly drawn adverse inference against the insurance company. The learned counsel further submits that as far as quantum of compensation is concerned, the salary of the deceased at the relevant time was Rs.2015/- p.m. However, the tribunal has considered salary of the deceased as Rs.1720/- p.m. and the annual salary of the deceased is held at Rs.21,000/- which is against the record. The learned counsel submits that the tribunal ought to have considered salary as Rs.2000/- p.m. After deducting professional tax, the annual salary would come to Rs.24,000/-. Claimants were five in number, as such deduction towards personal expenses should have been made $\frac{1}{5}^{\text{th}}$. The multiplier of 11 is applicable as per judgment of Apex Court in the case of Sarla Verma. However, the tribunal has applied dual multiplier i.e. prior to retirement and after retirement which is not permissible. The learned counsel submits that towards loss of love and affection, loss of consortium, paltry sum of Rs.2000/- is awarded and for funeral expenses Rs.2000/- is awarded. The amount towards the loss of dependency after deducting $\frac{1}{3}^{\text{rd}}$ towards personal expenses applying multiplier of 11 comes to Rs.2,53,440/-. The learned counsel further submits that as per the judgment of Apex Court in the case of in the case of **Asha Verman and others V/s Maharaj Singh and others reported in 2015 AIR SCW 3577** Rs.1 lakh each towards loss of love and affection, so also loss of consortium is required to be awarded.

3] Mr.Kulkarni, learned counsel submits that the settled law is liability of insurance company is limited to the extent of Rs.1,50,000/-.

There is no contract to the contrary. The learned counsel relies on the judgment of Apex Court in the case of **National Insurance Co. Ltd. V/s Puja Roller Flour Mills (P) Ltd. And others reported in 2005 (II) SCC 386** and another judgment of Apex Court in the case of **National Insurance Co. Ltd. V/s Nathilal and others reported in 1999(I) SCC 552**.

4] The learned counsel submits that it was erroneous on the part of the tribunal to hold the appellants liable for Rs.1,50,000/-.

5] Mr.Chavan, learned counsel for the owner submits that the additional premium was paid for the unlimited liability of the third party. The same is rightly considered by the tribunal. The claimant is not entitled for further enhancement. The quantum has been rightly arrived at.

6] With the assistance of learned counsel, I have gone through judgment and record and proceeding. As far as liability of the insurance company is concerned, accident which was prior to the amendment, provisions of the old Act will be made applicable. In the said case, statutory liability of the insurance company is limited to Rs.1,50,000/- unless there is a contract to the contrary. In the present case, insurance policy is on record which is marked as Exh.120, written statement has been filed by the insurance company wherein it is specifically stated that no premium has been paid towards additional third party liability. In such circumstances, it was the burden upon owner to show that the additional premium was paid. The owner has not stepped into witness box in order to verify pleading about paying additional premium towards unlimited third party liability. In absence of that and in view of the insurance policy on record, it will have to be held that the liability of insurance

company was limited to Rs.1,50,000/-.

7] As far as quantum of compensation is concerned, naturally, the salary certificate after deducting professional tax will have to be considered. Considering the same, salary of the deceased can be considered as Rs.2000/- p.m. The deduction of 1/5th towards personal expenses will have to be granted as there are five dependents. That would make the amount Rs.1920/- p.m. multiplier of 11 will be applied considering the age of the deceased. For the loss of dependency claimants will be entitled to Rs.2,53,440/-. It would appear that only Rs.20,000/- is awarded on account of loss of love and affection and under all non pecuniary damages barring funeral expenses of Rs.2000/-. I would apply the yardstick as applied in the case of Asha Verman. In present case, the accident is of the year 1987. Considering above, I would award Rs.25,000/- to each claimant nos.1 to 4 on account of loss of love and affection and Rs.10,000/- to claimant no.5. The same would be Rs.1,10,000/-. I also award Rs.25,000/- to the claimant no.1 on account of loss of consortium and loss of estate. As such on account of non pecuniary damages, claimants would be entitled for additional Rs.1,35,000/-.

8] In the result, I pass following order :

The claimants are entitled for total compensation of Rs.3,88,440/-. The owner shall pay Rs.3,88,440/- to the claimant towards compensation. Out of said amount of Rs.3,88,440/- the insurance company is jointly and severally liable alongwith owner to pay Rs.1,50,000/- to the claimant. The amount already paid shall be adjusted as on the date the said payment is made. The said amount shall carry interest at the rate of 9% p.a. from the date of Petition till realisation.

First Appeals are accordingly disposed of. No costs.

[S.V.GANGAPURWALA,J.]

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