<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY</u>

<u>BENCH AT AURANGABAD</u>

FIRST APPEAL NO.1093/2010
WITH
CIVIL APPLICATIONS NOS.
7056/2015 AND 2183/2015

The New India Assurance Company Ltd., a Subsidiary of the General Insurance Corporation of India And a company incorporated under the Companies Act Having its regional office at Seminary Hall Buldg.Nagpur, and one of its Divisional Office at Adalat Road, Aurangabad. Through its Senior Divisional Manager Shri Vishwas Bansi Gayakwad, age 52 yrs., occu.service.
...<u>Appellant</u>..
(Org.res.no.3)

<u>Versus</u>

1] Vimalbai Govindrao Kawle,
age 32 yrs., occu.household
r/o Kawlewadi Tq.Parali Vaijinath
Dist.Beed.

2] Sachin Govindrao Kawle,
age 10 yrs., u/g of respondent no.1

3] Sarika Govindrao Kawle,
age 8 yrs., u/g of respondent no.1

4] Kalpana Govindrao Kawle,
age 6 yrs., u/g of respondent no.1.

5] Mangal Govindrao Kawle,
age 3 yrs., u/g of respondent no.1

6] Ravi Govindrao Kawle,
age 1.5 years u/g of respondent no.1

7] Abhiman Bhikaji Dhumal,
age major occu.agri.
r/o Telgaon Tq.Wadwani Dist.Beed.

8] Shaikh Rahim Shaikh Amir,
age major, occu.Not known,
r/o Didrud Tq.Majalgaon. Dist.Beed.
...Respondents...
(Nos.1 to 6 org.claimants
Nos.7 & 8 org.res.nos.1 & 2)

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Shri Ajit Kadethankar, Advocate for appellant.
Shri K.J. Suryawanshi, Advocate for respondent nos.1 to 6.

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CORAM: N.W. SAMBRE, J.

DATE: 07.07.2015

ORDER :

1] Heard learned counsel appearing for the parties.

2] Civil Application No.7056/2015 is for restoring the appeal to its original position. As the contentions in the application are not objected, the Civil Application No.7056/2015 stands allowed in terms of prayer clauses (B) and (C) and disposed of. The First Appeal No.1093/2010 is taken up for final disposal at the stage of admission with the consent of learned counsel appearing for the parties.

3] The appellant – Insurance Company has questioned the award delivered by the Motor Accident Claims Tribunal, Ambajogai, on 5.5.2007 in Motor Accident Claim Petition No.30/2002 wherein the Insurance Company was directed to pay an amount of Rs.3,74,200/- towards the compensation alongwith other benefits.

4] The learned counsel for the appellant has raised two-fold contentions :

a] In view of the evidence of claimants' witness Ashok, who was examined at Exhibit 40/C, the income of the deceased should have been taken into account to the extent of Rs.36,000/- for initial six months i.e. during crushing season and Rs.18,000/- for remaining period i.e. during non-crushing season. According to him, the Tribunal has considered the annual income of the deceased as Rs.54,000/- and as such has committed an error.

b] As the accident took place in the centre of the road, saddling of 60% liability on the present appellant is erroneous, which should have been only

50% as both the vehicles were equally held responsible and hence contributory negligence should have been considered in view of the spot panchanama (Exh.31) and complaint (Exh.30).

4] In support of his contentions, the learned counsel for the appellant has taken me through the evidence of PW2 Suresh and also the findings recorded by the Tribunal.

5] While countering the above contentions, the learned counsel for the claimants – respondent nos.1 to 6 herein, would urge that the Tribunal has rightly taken into account annual income of the deceased to be Rs.54,000/- in view of the evidence that was brought on record by PW2. He would urge that the said witness has in clear terms deposed that the deceased was drawing Rs.6,000/- per month salary during the crushing season and for non-crushing season, he was getting Rs.100/- per day i.e. Rs.3,000/- per month as wages. According to him, if the Tribunal has taken into account the annual income of Rs.54,000/-, the same is based on above referred evidence. He would further urge that the degree of negligence, which was weighed for awarding compensation to the extent of 60% from the appellant – Insurance Company is based on interpretation of complaint (Exh.30) and spot panchanama (Exh.31). He supports the award and seeks dismissal of the appeal.

6] Having analyzed the rival submissions, it is noticed that the Tribunal has considered the documentary evidence i.e. Exhibits 30 and 31, copy of the complaint and spot panchanama for drawing the conclusion as regards the contributory negligence of the deceased and the other vehicle driver. Based on the same, the Tribunal has proceeded to award the compensation to the claimants by saddling 60% liability on the present appellant. The basis for saddling the said liability on the appellant was the interpretation of documents i.e. Exhibits 30 and 31. Based on the scheme of Chapters XI and XII of the Motor Vehicles Act and the social aspect, I am of opinion that the Tribunal has rightly taken into account the said documentary evidence and has saddled 60% liability on the appellant.

7] So far as annual income of the deceased is concerned, admittedly it has been brought on record that the deceased was earning Rs.6,000/- per month during crushing season and Rs.3,000/- per month during non-crushing season. The Tribunal has taken into account the same to be basis for reaching to a conclusion of annual income at Rs.54,000/-. Such a conclusion is based on the evidence of PW2 who was examined at Exhibit 40/C. The other suggestions given by the appellant – Insurance Company to the said witness has not resulted in elucidating any other adverse material.

8] In view of above, in my opinion, the Tribunal has rightly appreciated the entire evidence and as such has awarded the compensation in question.

9] No case is made for interference in appellate jurisdiction. The appeal stands dismissed with no order as to costs.

10] Civil Application No.2183/2015 is filed by respondent nos.1 to 6, who are applicants - claimants, for withdrawal of the amount. In view of dismissal of present appeal, applicant nos.1 to 4 are entitled to withdraw to the extent of $1/6^{th}$ of the share from the amount deposited by the Insurance Company. So far as the applicant nos.5 & 6 are concerned, their amount be deposited in any Nationalized Bank and the withdrawal of the same shall be allowed to them upon attaining their age of majority. Civil Application No.2183/2015 is disposed of accordingly.

(N.W. SAMBRE, J.)