

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

FIRST APPEAL NO. 1037 OF 2006

New India Assurance Company Limited,
having Head and Registered office at
New India Assurance Building, 87, M. G.
Marg. Branch Office at Latur,
Divisional Office at Aurangabad. .. Appellant

Versus

1. Manisha W/o Maruti Ade,
Age : 29 Years, Occu. : Household,
2. Rahul S/o Maruti Ade,
Age : 20 Years,
3. Rakesh S/o Maruti Ade,
Age : 19 Years,
4. Pritam S/o Maruti Ade,
Age : 10 Years, Minor, under
the guardianship of Sanju Pawar.
5. Aishwarya Maruti Ade,
Age : 5 Years, Minor, under
the guardianship of mother
Manisha Maruti Ade.
6. Muktabai W/o Tukaram Ade,
Age : 54 Years, Occu. : Nil,
All R/o Mumbai at present Latur,
Dist. Latur.

Respondent No. 2, 3 were shown as

minor on the date of filing of Claim
Petition i. e. 11.9.2002 now they have
become majors, therefore, shown as
major.

7. Mujawar Nisar Akbarsab,
age major, Occu. : Business,
R/o Deulwadi, Tq. Udgir,
Dist. Latur. .. Respondents

Shri S. L. Kulkarni, Advocate for the Appellant.
Shri R. P. Adgaonkar, Advocate for Respondent Nos. 1 to 6.

**WITH
CROSS OBJECTION STAMP NO. 4648 OF 2015
IN
FIRST APPEAL NO. 1037 OF 2006**

1. Manisha W/o Maruti Ade,
and others .. Objection
Petitioners

Versus

1. Mujawar Nisar Akbarsab,
and another .. Respondents

Shri R. P. Adgaonkar, Advocate for the Objection Petitioners.
Shri S. L. Kulkarni, Advocate for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 15TH SEPTEMBER, 2015.**

ORAL JUDGMENT :

. Present appeal is filed by the Insurance Company against

the award passed by the Motor Accidents Claim Tribunal U/Sec. 166 of the Motor Vehicles Act. The original claimants have also filed cross objection for enhancement of compensation amount.

2. Mr. Kulkarni, the learned counsel for the Insurance Company submits that, the Tribunal has granted exorbitant compensation amount. The Tribunal has considered salary to be Rs. 5,000/- per month without proof of the same. The learned counsel submits that, net salary ought to have been considered instead of gross salary. The compensation cannot be awarded as bonanza. Exorbitant compensation amount is awarded.

3. Mr. Adgaonkar, the learned counsel for the respondents/claimants submits that, in fact, the Tribunal has awarded less amount of compensation. The salary certificate is produced on record. The deceased was working as clerk with the Khadi Gramodyog. His salary was Rs. 11,203/- per month at the time of accident of the deceased. Only professional tax of Rs. 200/- per month could have been deducted from the salary. According to the learned counsel there are six claimants. As such, the deduction for personal expenses ought to be 1/6. The learned counsel submits that, the future prospectus has also not been considered as is laid down by the Apex Court in the case of **Smt. Sarla Verma and ors. Vs. Delhi Transport Corporation and anr.** reported in **AIR 2009 S.C. 3104.**

Towards non pecuniary damages also very paltry sum of Rs. 15,000/- is awarded. Towards loss of love and affection Rs. 50,000/- each is required to be awarded. Rs. 50,000/- each to the claimants are required to be awarded towards loss of consortium as awarded by the Apex Court in the case of **Asha Verman and others Vs. Maharaj Singh and others** reported in **2015 All SLR 1476**.

4. I have considered the submissions canvassed by the learned counsel for respective parties.

5. The appeal filed by the Insurance Company is only on the ground of quantum. All other facts are undisputed.

6. It is matter of record that, the deceased was working in Khadi Gramodyog. The date of accident is 02nd August, 2002. The Tribunal has considered the age of deceased from 38 to 42 years. I may consider the age of deceased as 42 years for the purpose of applying the multiplier. As per the salary certificate produced on record after deducting profession tax the salary per month of the deceased would be Rs. 10,500/- per month. Considering the dependency deduction towards personal expenses would be 1/4. Even if I consider contribution to the family per month of Rs. 7,000/- loss of dependency would be Rs. 84,000/- per year. The multiplier of 14 would be applicable, if the

age of deceased would be 42 years, the loss of dependency would come to Rs. 11,76,000/-. As far as future prospects is concerned, considering the judgment of **Smt. Sarla Verma and ors. Vs. Delhi Transport Corporation and anr.** referred to supra 30% more compensation can be considered towards future prospects. It is a matter of record that the deceased was permanent employee of the Khadi Gramodyog. The same would come to Rs. 3,52,800/-. The amount towards loss of dependency would come to Rs. 15,28,800/-. Considering the time lag I would award amount of Rs. 50,000/- to each claimant Nos. 1 to 5 for loss of love and affection and Rs. 25,000/- as far as claimant No. 6 is concerned i. e. Rs. 2,75,000/-. As such, the amount of compensation which the claimants would be entitled to would come to Rs. 18,03,800/-.

7. In the result I pass following order.

8. The impugned judgment and award passed by the Tribunal is modified. It is held that the claimants are entitled for total compensation amount of Rs. 18,03,800/- inclusive of amount paid under no fault liability. Original respondent Nos. 1 and 2 in the claim petition shall jointly and severally pay total compensation amount of Rs. 18,03,800/- to the claimants along with interest at the rate of 7.5% per annum from the date of petition till its realization. The amount already paid shall be adjusted as on the

date said payment is made. The claimant No. 1 is entitled to receive 25% of the total compensation amount, whereas claimant Nos 2 to 6 are entitled to 15% each of the total compensation amount. The first appeal and cross objection accordingly are disposed of. No costs.

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Sept. 15