

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

FIRST APPEAL NO. 1785 OF 2014

M/s Shriram General Insurance
Company Ltd. .. Appellant

Versus

Sangita Shivaji Sable and others .. Respondents

Shri S. G. Chapalgaonkar, Advocate for the Appellant.
Shri R. B Deshpande, Advocate for Respondent Nos. 1 and 2.
Shri G. R. Syed, Advocate for the Respondent No. 3.

CORAM : S. V. GANGAPURWALA, J.

DATE : 23RD OCTOBER, 2015.

PER COURT :

. Mr. Chapalgaonkar, the learned counsel submits that, The Tribunal has applied the principle as laid down in the case of Master Mallikarjun V/s. the Divisional Manager, National Insurance Co. reported in **AIR 2014 SC 736**. However, the same is in respect of injury claim. In the present matter it is a case of death claim. The learned counsel submits that, the same analogy cannot be applied. The learned counsel relies on the judgment of Apex Court in a case of R. K. Malik Vs. Kiran Pal reported in **2009 AIR SCW 4381** submits that at the most Rs. 2,25,000/- would be considered to be notional loss of dependency and considering the non pecuniary damages towards loss of love and affection and funeral

expenses the amount should have been paid by the Tribunal .

2. Mr. Deshpande, the learned counsel submits that, in case of death of 10 year old boy the Apex Court in a case of **Kishan Gopal and another Vs. Lala and others** reported in **2013 ACJ 2594** has held that in a such case the compensation ought to be Rs. 4,50,000/- plus Rs. 50,000/- under conventional heads and total compensation of Rs. 5,00,000/- was awarded.

3. I have considered the submissions canvassed by the learned counsel for respective parties, so also, I have gone through the judgment delivered by the Tribunal.

4. It is a death claim. Naturally, the principle as is applied for computing the compensation in respect of injury claim can not be applied. In the present case, the Tribunal has applied the principle laid down by the Apex Court in injury claim.

5. The deceased was a 14 year old boy. Considering the said aspect of the matter and the ratio laid down by the Apex Court in a case of **Kishan Gopal and another Vs. Lala and others** referred supra, I would follow the same course and award Rs. 4,50,000/- assessing notional income of the deceased plus Rs. 50,000/- under conventional heads, total Rs. 5,00,000/-.

6. In light of the above, the judgment and award passed by

the Tribunal is modified. It is held that, the original opponents are jointly and severally liable to pay compensation amount of Rs. 5,00,000/- to the claimants with interest at the rate of 6% per annum from the date of petition till realization. The first appeal accordingly is disposed of. No costs.

7. The claimants are entitled to withdraw the amount deposited by the present appellant as per the judgment of this Court. The excess amount is allowed to be withdrawn by the appellant Insurance Company.

[S. V. GANGAPURWALA, J.]

bsb/Oct. 15