IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO.1383 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant
(Org. Insurer)

Vs.

1. Smt.Pranali Sandeep Madavi,
Age 25 yrs., Widow of the deceased
2. Kum. Piyal Sandeep Madavi,
Age 5 yrs, Daughter of the deceased,
3. Kum.Amey Sandeep Madavi,
Age 4 yrs, son of the deceased,
4. Smt.Vandana @ Adimaya Tukaram Madavi,
Age 48 yrs, mother of the deceased
Respondent Nos.2 & 3 being minor through
their mother and next friend Smt.Pranali
Sandeep Madavi, Respondent No.1.
All residing at 3/118, Triveni MHB,
V.N.Poorav Marg, Chunabhatti, Sion,
Mumbai- 400 022.
5. Mr.Gangaram Baburao Thorat,
A/p. Chandoli BK, Tal.Ambegaon,
Dist.Pune-410 503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

WITH

FIRST APPEAL NO.1179 OF 2015

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant
(Org. Insurer)

Vs.

1. Smt.Vandana @ Adimaya Tukaram Madavi
Age 48 yrs, Widow of the deceased,
2. Mr.Sachin Tukaram Madavi
Age 25 yrs, Son of the deceased
Both residing at 3/11, Triveni, MHB,
V.N.Poorav Marg, Chunabhatti, Sion,
Mumbai – 400 022.
3. Mr.Gangaram Baburao Thorat,
A/p. Chandoli BK, Tq.Ambegaon,
Dist. Pune – 410 503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents.

WITH

FIRST APPEAL NO.1458 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.

Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant
(Org. Insurer)

Vs.

1. Smt.Dipeeka Pandurang Madavi,
Age 42 yrs, Widow of the deceased,
2. Kum.Neha Pandurang Madavi,
Age 17 yrs, Daughter of the deceased,
3. Kum.Nishad Pandurang Madavi,
Age 14 yrs, Son of the deceased,
Respondent Nos.2 and 3 being minor
through their mother and next friend
Smt.Dipeeka Pandurang Madavi, Respondent No.1.
All residing at 43/4, Pendarkar Chawl,
Kanjuri-Chunabhatti, Sion, Mumbai – 400 022.
4. Mr.Gangaram Baburao Thorat
A/p Chandoli BK, Tal.Ambegaon,
Dist.Pune-410503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

WITH

FIRST APPEAL NO.1382 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant
(Org. Insurer)

Vs.

1. Mr.Janardan Hasha Madhavi
Age 48 yrs, Father of the deceased,
2. Smt.Sujata Janardan Madhavi
Age 45 yrs, Mother of the deceased,
Both residing at 6/226, Parnkuti MHB,
V.N.Poorav Marg, Chunabhatti, Sion,
Mumbai – 400 022.
3. Mr.Gangaram Baburao Thorat
A/p Chandoli BK, Tal.Ambegaon,
Dist.Pune-410503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

WITH

FIRST APPEAL NO.1370 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant
(Org. Insurer)

Vs.

1. Kum.Ankit Jayprakash Yadav,
Age 11 yrs, Minor through father and Next
Friend Shri.Jayprakash Sitaram Yadav,
Residing at Flat No.3/107, Triveni MHB,
V.N.Poorav Marg, Chunabhatti, Sion,
Mumbai – 400 022.
2. Mr.Gangaram Baburao Thorat
A/p Chandoli BK, Tal.Ambegaon,
Dist.Pune-410503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

WITH

FIRST APPEAL NO.1453 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant
(Org. Insurer)

Vs.

1. Smt.Dipeeka Pandurang Madavi,
Age 42 yrs,
Residing at 43/4, Pendarkar Chawl,
Khanjuri-Chunabhatti, Sion,
Mumbai- 400 022.
2. Mr.Gangaram Baburao Thorat
A/p Chandoli BK, Tal.Ambegaon,
Dist.Pune-410503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

WITH

FIRST APPEAL NO.1449 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant
(Org. Insurer)

Vs.

1. Smt.Smita Pradeep Jasood
Age 45 yrs,
Residint At Dr.Bhute Nursing Home,
Mahanti Park, Aziz Baug, Opp.Sita Estate,
Mahul Road, Chembur, Mumbai.
2. Mr.Gangaram Baburao Thorat
A/p Chandoli BK, Tal.Ambegaon,
Dist.Pune-410503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

WITH

FIRST APPEAL NO.1450 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant
(Org. Insurer)

Vs.

1. Smt.Vandana @ Adimaya Tukaram Madavi,
Age 45 yrs,
Residint At Dr.Bhute Nursing Home,
Mahanti Park, Aziz Baug, Opp.Sita Estate,
Mahul Road, Chembur, Mumbai.
2. Mr.Gangaram Baburao Thorat
A/p Chandoli BK, Tal.Ambegaon,
Dist.Pune-410503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

WITH

FIRST APPEAL NO.1451 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant
(Org. Insurer)

Vs.

1. Kum. Aditya Pradeep Jasood,
Age 11 yrs, minor through mother and Next
Friend Smt.Smita Pradeep Jasood,
Both residing at Dr.Bhute Nursing Home,
Mahanti Park, Aziz Baug, Opp.Sita Estate,
Mahul Road, Chembur, Mumbai.
2. Mr.Gangaram Baburao Thorat
A/p Chandoli BK, Tal.Ambegaon,
Dist.Pune-410503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

WITH

FIRST APPEAL NO.1452 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,

Bank Street, Fort, Mumbai-400 023 … Appellant

(Org. Insurer)

Vs.

1. Miss Sampada Janardan Madavi,
Age 24 yrs,
Residing at Flat No.6/226, Parnakuti,
MHB, Chunabhatti, Sion,
Mumbai – 400 022.
2. Mr.Gangaram Baburao Thorat
A/p Chandoli BK, Tal.Ambegaon,
Dist.Pune-410503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

WITH

FIRST APPEAL NO.1455 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant

(Org. Insurer)

Vs.

1. Kum. Nishad Pandurang Madavi,
Age 14 Yrs,
minor through mother and next friend
Smt.Dipeeka Pandurang Madavi,
Residing at 43/4, Pendarkar Chawl,
Khanjuri-Chunabhatti, Sion,

Mumbai- 400 022.

2. Mr.Gangaram Baburao Thorat
A/p Chandoli BK, Tal.Ambegaon,
Dist.Pune-410503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

WITH

FIRST APPEAL NO.1459 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant
(Org. Insurer)

Vs.

1. Kum. Kunal Pradeep Jasood,
Age 14 yrs, minor through mother and next
friend Smt.Smita Pradeep Jasood,
Both residing at Dr.Bhute Nursing Home,
Mahanti Park, Aziz Baug, Opp.Sita Estate,
Mahul Road, Chembur, Mumbai.

2. Mr.Gangaram Baburao Thorat
A/p Chandoli BK, Tal.Ambegaon,
Dist.Pune-410503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

WITH

FIRST APPEAL NO.1456 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant
(Org. Insurer)

Vs.

1. Kum.Neha Pandurang Madavi,
Age 17 yrs, minor through mother and next
friend Smt.Dipeeka Pandurang Madavi,
Residing at 43/4, Pendarkar Chawl,
Khanjuri-Chunabhatti, Sion,
Mumbai – 400 022.
2. Mr.Gangaram Baburao Thorat
A/p Chandoli BK, Tal.Ambegaon,
Dist.Pune-410503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

WITH

FIRST APPEAL NO.1368 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant

(Org. Insurer)

Vs.

1. Mr.Pradeep Narayan Jasood,
Age 50 yrs,
Residing at Yogayog Co. Op.Hsg. Soc.,
3rd Floor, R.No.555, Shivainagar, Thane.
2. Mr.Gangaram Baburao Thorat
A/p Chandoli BK, Tal.Ambegaon,
Dist.Pune-410503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

WITH

FIRST APPEAL NO.1454 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant
(Org. Insurer)

Vs.

1. Smt.Pranali Sandeep Madavi,
Age 25 yrs,
Residing at 3/118, Triveni MHB,
V.N.Poorav Marg, Chunabhatti, Sion,
Mumbai – 400 022.
2. Mr.Gangaram Baburao Thorat
A/p Chandoli BK, Tal.Ambegaon,
Dist.Pune-410503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

WITH

FIRST APPEAL NO.1457 OF 2013

The New India Assurance Co. Ltd.
D.O.No.151607, Karnavat Building,
Vada Road, Rajgurunagar, Pune.
Through Mumbai Regional Office-I,
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai-400 023 … Appellant
(Org. Insurer)

Vs.

1. Kum.Amey Sandeep Madavi,
Age 4 yrs., minor through mother and next
friend Smt.Pranali Sandeep Madavi,
Residing at 3/118, Triveni MHB,
V.N.Poorav Marg, Chunabhatti, Sion,
Mumbai- 400 022.
2. Mr.Gangaram Baburao Thorat
A/p Chandoli BK, Tal.Ambegaon,
Dist.Pune-410503.
(Owner of Motor Tax Cruiser No.MH-16/R-964) … Respondents

APPEARANCES :-

Mr.Devendranath S. Joshi for the Appellant.
Mr.T.J.Mendon for Respondent No.1.
Mr.Pradeep J. Thorat for Respondent (Owner of Motor Trax Cruiser).

CORAM : MRS.MRIDULA BHATKAR, J.

DATE : NOVEMBER 21, 2015.

ORAL JUDGMENT :

. Admit.

2. By consent all appeals are heard finally at the stage of admission. Service waived by Respondents.

3. In all these 16 Appeals the New India Assurance Company Ltd. (hereinafter referred as “Insurance Company”) the Appellant was the original Opponent in all respective claim applications filed by the original Claimants who are the party Respondents respectively in all these appeals. The death claims and injury claims preferred by the original Claimants arose due to one and the same accident. Therefore, the facts in respect of the accident and the defence taken by the Appellant Insurance Company and reasoning given to the same by the learned Member of Tribunal is also same. On the basis of income and age of the deceased quantum is fixed on death claims and in injury claims depending on the nature of the injury and loss of income and nature of the job compensation is determined. Therefore, all these appeals are heard together by consent and they are disposed of by one and the common Judgment as it is found time saving and convenient. However while disposing these appeals each case is considered separately.

4. The accident took place on 30th January, 2005 at around 5.00 am on Nashik-Pune Road, near Sinnar. The Respondent Gangaram

Baburao Thorat was the owner of the motor Tempo Trax Cruiser bearing No.MH-16/R-964. The said Tempo Trax was hired by the families of the original Applicants to go to Shirdi from Mumbai. On the date of the incident when Tempo Trax reached at Sinnar, opposite Sai Samarth Hotel, the driver lost his control over the vehicle and dashed against a Neem tree. The driver at the relevant time was driving vehicle in rash and negligent manner and so he lost control over the vehicle. Due to this impact, two persons who were traveling in the tempo, died on the spot. Many of them were injured and out of them two died subsequently. Thus, the accident caused four deaths.

5. The legal heirs of the deceased persons filed death claims which are MACP No.1600 of 2005 (FA No.1383 of 2013), MACP No.1564 of 2005 (FA No.1179 of 2015), MACP No.1603 of 2005 (FA No.1458 of 2013) and MACP No.1602 of 2005 (FA No.1382 of 2013). The other 12 persons, who were injured, filed claim applications in the Tribunal towards injury claim. It is informed by the learned Counsel for the Insurance Company that the persons who were injured, filed the injury claims, out of which 12 applications which were decided by the Tribunal are before this Court, as they are challenged by filing respective appeals.

6. The defence taken by the Insurance Company in these claim petitions is that the owner of the insured vehicle i.e. Opponent No.1 in

the claims has breached the terms and conditions of the policy. The learned Counsel Mr.Joshi appearing for the Insurance Company has submitted that the Tempo Trax was travelers' vehicle and as per the conditions of the policy only 9 persons were allowed to travel in the said vehicle excluding the driver. Thus the capacity of the said vehicle was considered 9+1 i.e. for 10 persons. In the present case more than 9 persons were travelling in the said Tempo Trax. The number of persons was thus nearly 17 to 18 persons who were travelling at the time of the accident. The learned Counsel further submitted that in the event of breach of the policy the Insurance Company is not to be made liable to pay the amount of the compensation. He submitted that the learned Chairman of the Tribunal has considered this aspect. However, the learned Chairman has not given a precise finding. As liability of Insurance Company is only upto the 9 claims the learned Chairman has not clarified out of these 16 claims in which claims Insurance Company is liable to the amount paid towards compensation and in which claims it can recover from the owner. He submitted that the Insurance Company is not at all liable to pay any amount to any claimant due to the breach of the policy and the policy is required to be construed scrupulously as per the terms and conditions of the policy.

7. He relied on the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of **General Assurance Society Ltd. Vs. Chandmull Jain & Another** reported in AIR 1966 SC 1644.

He further submitted that even if the Court is inclined to grant compensation to 9 persons as 9 travelers are insured in the said vehicle, then the Insurance Company be allowed to recover the excess amount of claim from the owner the amount which is deposited or paid by the Insurance Company towards the compensation given to non-insurer travelers who are beyond the number which is specified in the policy. On this point he relied on the ratio laid down in **National Insurance Co. Ltd. Vs. Anjana Shyam and Others** reported in (2007) 7 SCC 445. He submitted that the issue in which cases the amount is to be recovered from the owner by the Insurance Company ought not to be kept undecided by the Tribunal.

8. Heard the submissions made by the learned Counsel Mr.Mendon for the original claimants and also the submissions of the learned Counsel Mr.Thorat for the original Respondent No.1 i.e. Insurer owner. The learned Counsel submitted that Insurance Company is to be held liable for 9 claims as the lives of the 9 travelers are insured.

9. It is a case of overloading passengers which is a usual phenomenon in India. The conditions of the policy that only 9+1 travelers were permitted is not disputed. As held in the case of **General Assurance Society Ltd. Vs. Chandmull Jain & Another** (supra), the policy is a contract of a commercial transaction and it is to be construed strictly and cannot be given any different meaning. Thus,

in the present case the capacity of the persons traveling in the Tempo Trax vehicle was 9 travelers + 1 driver i.e. 10 persons. However in the present case the vehicle was not upturned or slided because it was overloaded, but was collided with a tree because driver lost control over the vehicle. The cause and the nature of the accident is also material when there is overloading. Moreover under the policy 9 persons are insured and therefore the Insurance Company is liable to pay the compensation to the 9 travelers. Thus it is proper to direct Insurance Company to pay the claim of the higher amount of the claimants and the amount which is on the lower side payable to the original applicant is also to be paid by the Insurance Company initially. However the Insurance Company is entitled to recover the said amount from the insurer owner. The learned Chairman of the Tribunal has also taken the same view. However he has not specified the amount from which claims are recoverable by the Insurance Company. On this point, I rely the ratio laid down in **National Insurance Company Limited Vs. Anjana Shyam and Others** (Supra). In the said case, the Supreme Court had an opportunity to deal with a similar issue of overloading of passengers, as out of 90 passengers, 26 lost their lives and some were injured. To determine whether Insurance Company was liable to pay and then how to determine whose claim is to be satisfied, was the similar issue. The Supreme Court in the said case has held in as follows :

> “As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident. It serves a social purpose. Keeping that in mind, we

> think that the practical and proper course would be to hold that the Insurance Company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy."

Thus, in view of the findings given by the Hon'ble Supreme Court, in the present case also, as 9 passengers were injured, in the 9 applications where the compensation is on the higher side are to be considered as covered under the impugned policy of Tempo Trax that the Appellant is liable to pay the said compensation.

10. In First Appeal No.1370 of 2013 injured Ankit Jayprakash Yadav was 11 Years and in First Appeal No.1451 of 2013 Aditya Pradeep Jasood is also 11 Years of age at the time of accident. Amount of the compensation in these two first appeals being on the higher side is included in the 9 appeals which is covered under the policy of 9 passengers and wherein the Insurance Company is held liable to pay the compensation. The learned Counsel for the Respondents pointed out that the two injured Ankit Jayprakash Yadav and Aditya Pradeep Jasood were minors and below 12 Years of age and if a child is below 12 years of age, then he is considered as a half ticket passenger and therefore Ankit Jayprakash Yadav and Aditya Pradeep Jasood constitute one person and therefore one more claim can be covered under the policy. The Insurance Company opposed these submissions.

11. A child below 12 Years of age does not require a full ticket and is allowed to travel on half ticket because the child requires less

space and Ankit Jayprakash Yadav and Aditya Pradeep Jasood were below 12 Years of age. They required space occupied by one person and so one more person could have been accommodated in the Tempo Trax and therefore claim of one more person can be logically covered under the number of insured passengers in the Insurance Policy and therefore the compensation awarded in the First Appeal No.1452 of 2013 in the injury claim of Sampada Janardan Madavi where compensation awarded is 40,000/- is also liable to be covered in the policy and to be paid by the Insurance Company, hence it is not recoverable from the owner.

12. It is useful to produce a table disclosing the names of the Claimants and the amount of compensation awarded in those respective Death & Injury petitions for ready reference.

Sr.No.	MACP No.	FA No.	Names of Claimants	Amount Awarded
1	1600/2005	1383/2013	Pranali Sandeep Madavi (D)	996000
2	1564/2005	1179/2015	Vandana Tukaram Madavi (D)	466923
3	1603/2005	1458/2013	Dipeeka Pandurang Madavi (D)	406000
4	1602/2005	1382/2013	Janardan Hasha Madavi (D)	371000
5	1559/2005	1370/2013	Ankit Jayaprakash Yadav (I)	348033
6	1566/2005	1453/2013	Deepika Pandurang Madavi (I)	347494
7	1561/2005	1449/2013	Smita Pradeep Jasood (I)	174500
8	1562/2005	1450/2013	Vandana Tukaram Madavi (I)	51632
9	1563/2013	1451/2013	Aditya Pradeep Jasood (I)	47181
10	1565/2005	1452/2013	Sampada Janardan Madavi (I)	40000
11	1568/2005	1455/2013	Nishad Pandurang Madavi (I)	25000
12	1604/2005	1459/2013	Kunal Pradeep Jasood (I)	24500
13	1569/2005	1456/2013	Neha Pandurang Madavi (I)	24000

14	1599/2005	1368/2013	Pradeep Narayan Jasood (I)	22500
15	1567/2005	1454/2013	Pranali Sandeep Madavi (I)	21000
16	1601/2005	1457/2013	Amey Sandeep Madavi (I)	10000

The defence taken by the Insurance Company is discussed above. After going through the Judgments in these matters, I did not find any fault in the Judgments and awards passed by the learned Chairman of the Tribunal in the First Appeal Nos.1370/2013, 1453/2013, 1450/2013, 1451/2013, 1452/2013, 1455/2013, 1459/2013 1456/2013, 1368/2013, 1454/2013 and 1457/2013.

13. In FA No.1449 of 2013, the injury claim preferred by Smita Pradeep Jasood towards injury claim and the amount of Rs.1,74,500/- was granted by the Tribunal. The learned Counsel submitted that in this case the Insurance Company disputes the quantum awarded to the claimant especially on awarding. The Tribunal has committed error in awarding Rs.15,000/- each for 4 fractures and calculated the compensation of Rs.60,000/-. Additionally for pain and suffering, it has awarded Rs.50,000/- lumpsum. The medical record discloses that the lady was 55 Years old and at middle age, she suffered 4 fractures in her leg and hip bone and therefore the amount which is awarded for her pain and suffering in fact should have been calculated as Rs.1,10,000/- and it was not necessary for the learned Tribunal to give breakup of this amount. No need to give the breakup of Rs.60,000/- as Rs.15,000/- for

these fractures and Rs.15,000/- for pain and suffering. Thus calculated the amount as Rs.1,10,000/- lumpsum is to be considered for pain and suffering of the fractures and it is not excessive. Thus no need to change the quantum of amount.

14. Thus, in all the injury claims the learned Chairman has properly considered the injuries sustained by the claimants and medical expenses incurred by them. The evidence of the witnesses i.e. injured persons is also properly appreciated. I did not find much force in the arguments of the learned Counsel for the Insurance Company that the amount granted to the injured claimants is excessive and is to be reduced. I maintain the order of the tribunal in all these appeals.

15. In the case of FA No.1383 of 2013 deceased Sandeep was 35 Years and therefore multiplier 16 was applied. The learned Counsel has disputed the amount of the compensation mainly on the point that the salary of the deceased is not proved properly by the claimants and the Chairman of the Tribunal ought not to have accepted Rs.7,000/- has monthly salary of the deceased Sandeep. He submitted that salary slip of only one month i.e. January, 2005 is submitted which discloses payment of bonus and allowances of Rs.1,000/-. The learned Counsel submitted that the bonus is given once in a year. Bonus is a yearly benefit given to the employee. Moreover no more salary slips are produced. The learned Counsel for the original claimant has submitted

that while calculating the amount no amount for future prospects was not claimed and therefore not given. However, he submitted that it was necessary to consider 50% of the salary towards the future prospects and should have been added. He submitted that it is not considered and even if the amount taking the bonus is considered as Rs.3,000/-, the 50% of the same will be Rs.3,000/-. In view of the submissions of the learned Counsel for the parties, I am of this view that the amount of Rs.1,000/- though is a bonus and generally given once in a year as amount of future prospect is not taken into account while calculating the compensation, the amount of Rs.1,000/- need not be deducted as it would meet the equity and therefore no need to make any changes in the amount of compensation.

16. In FA No.1179 of 2015 the learned Counsel for the Insurance Company objects that no proof of the earning and employment is adduced by the claimant for death of Tukaram. On perusal of the Judgment especially paragraph 17 of the said Judgment, it is found that the Tribunal has accepted the evidence of the Applicant No.1 Vandana that deceased was earning Rs.5,200/- per month. He was a “Mason” and was earning Rs.5,200/-. A judicial note is to be taken that the labourers doing Masonry or Carpentary work or labourers on the construction site are not issued salary slips and they are not in a position to produce any documentary evidence to that effect. The deceased was doing Masonry work and his salary was fixed Rs.5,200/-

per month which is reasonable and I accept the same. Hence no interference is required by the findings given by the learned Tribunal in the quantum in FA No.1179 of 2015.

17. In FA No.1458 of 2013 the learned Counsel for the Insurance Company in this matter submitted that in paragraph 23 of the Judgment the learned Judge has committed error in taking 1/4th portion of the salary amount of the salary of the deceased. He submitted that there are three dependents and therefore instead of 1/4th the right portion of 1/3 ought to have been deducted. While considering these submissions the learned Counsel for original claimant pointed out that future prospect of this deceased is not considered. In this matter notional income of Rs.3,000/- is fixed as monthly income. The deceased was 50 years old and there were 3 dependents. In view of this as the income was fixed notionally there is no need for more deduction from 1/4th to 1/3rd. Hence the compensation awarded by the Tribunal is maintained.

18. In the Appeal No.1382 of 2013 the learned Counsel for the Insurance Company submitted that deceased Shailendra was 26 Years old at the time of death. Therefore the learned Chairman of MACT applied 17 as a multiplier and accordingly calculated the amount of the compensation. The learned Counsel for the Insurance Company has submitted that the multiplier 17 is on the higher side and that the learned Chairman has committed error in fixing 17 as a multiplier on

the basis of the age of the deceased. But the multiplier ought to have been determined on the basis of the age of the parents. He pointed out that the age of applicant father Janardhan Madavi was 48 Years and mother Sujata was 45 Years old at the time of filing application. He submitted that considering the ages of the parents even on the basis of the age of the Madavi i.e., 45, multiplier 14 is a correct multiplier and accordingly on the point of quantum, this point is to be appreciated and the amount of compensation is to be accordingly reduced. In support of his submissions, he relied on a catena of Judgments especially **General Manager, Kerala State Road Transport Corporation, Trivandraum Vs.Susamma Thomas (Mrs.) and Ors [1994 (2) SCC 176], U.P.State Road Transport Corporation and Ors. Vs. Trilok Chandra and Ors.[1996(4) SCC 363]** and also in **New India Assurance Co.Ltd Vs. Shanti Pathak (Smt.) & Ors. [2007(10) SCC1].**

19. The learned Counsel for the Claimants has submitted that the learned Chairman has correctly calculated the amount of the compensation by determining of multiplier 17 on the basis of the age of the deceased. He relied on **Reshma Kumari and Ors. Vs. Madan Mohan and Anr. [2013 STPL(Web) 262 SC]** and also in the case of **United India Insurance Co. Ltd. Vs. K.M.Poonam and Ors. [2011 ACJ 917].**

20. In the case of **General Manager, Kerala State Road Transport Corporation, Trivandraum Vs.Susamma Thomas (Mrs.) and Ors** (Supra) the main issue before the Hon'ble Supreme Court was whether the multiplier method of computation was to be accepted as logically sound and whether it is correct and is to be accepted for determining the computation or not was the issue. The person who lost life was 38 Years old and the multiplier applied was 12, where the Hon'ble Supreme Court held that multiplier represents the number of years' purchase on which loss of dependency is capitalised. In the said Judgment the issue of the age factor of the parents or the deceased was not the issue before the Court. In the case of **New India Assurance Co.Ltd Vs. Shanti Pathak (Smt.) & Ors.** (supra), it was considered that on the basis of the age factor of the parents, multiplier is to be determined. However, thereafter in the case of **Reshma Kumari and Ors. Vs. Madan Mohan and Anr.** (Supra) the Hon'ble Supreme Court held in paragraph 34 as follows:

> 34]..... As regards the cases where the age of the victim happens to be upto 15 years, we are of the considered opinion that in such cases irrespective of Section 163A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed. This is to ensure that claimants in such cases are not the table in Sarla Verma should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the table in Sarla Verma should be followed.

21. Then in case of **Munna Lal Jain and Anr. Vs. Vipin Kumar Sharma and Anr. [2015 ACJ 1985]** the same issue and it relied on the position of **Reshma Kumari and Ors. Vs. Madan Mohan and Anr.** (Supra) and held that the multiplier is to be based on the age of the deceased and where age of the deceased is between 26 to 30 Years then multiplier is 17. In view of this, the submissions made by the learned Counsel cannot be accepted and multiplier 17 which is considered on the basis of the age of the deceased Shailendra is correct and no need to change the same and so the amount of compensation awarded is just, adequate and reasonable.

22. I place reliance on the case of **United India Insurance Co. Ltd. Vs. K.M.Poonam and Ors.** (Supra) where similar case of overloading for the liability under the policy was covered of 5 passengers in the Jeep. However in this case the driver carried 15 passengers and fell in the ditch and similar issue arose before the Court. The Hon'ble Supreme Court held that the liability of the Insurance Company is limited to 6 awards at the highest. However, the Insurance Company was directed to pay all the awards' amount and directed Insurance Company to recover the amount in excess of its liability from the owner insurer in execution without filing a separate suit. The defence of the Insurance Company in the present appeals is also appreciated on the same lines and the liability of the present Insurance Company is fixed upto 10 awards only and Insurance

Company is directed to pay the compensation in all the awards in all these First Appeals. However, Insurance Company can recover the excess amount of the awards which is lesser amount and other awards than the 10 awards in execution proceeding without filing a separate suit.

23. In respect of claims at Sr.No.11, 12, 13, 14, 15 and 16 the amount is to be recovered by the Insurance Company from the original owner of the insurer vehicle.

24. The statutory amount which is deposited at the time of filing of the appeal be transferred to the MACT, Mumbai and the original claimant shall pray for withdrawal of the amount after proof of their identity.

25. Hence all these appeals are disposed of.

(MRS.MRIDULA BHATKAR, J.)