

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 119 OF 2001.

Smt. Kusum W/o Abhimanyu Patil,
Age : 40 years, Occu : Household,
R/o : "Anita Benglow, Plot No.18,
Bhoite Nagar, Jalgaon.
Tq. & Dist. Jalgaon.

... Appellant

Versus

- 1] Mr. Gautam Suryakant Mavin Kurve,
Age : 27 years, Occu : Truck Driver,
R/o A-23, Shrirang Housing Society,
Thane (West)
- 2] The New India Assurance Co. Ltd.,
(Notice to be served on Divisional
Manager the New India Assurance
Co. Ltd., Dhule, Divisional Office,
Rani Laxmibai Chowk, Dhule.
- 3] Abul Wasim Abdul Rashid Shaikh,
Age 25 years, Occu. Truck Driver of
MHV-6480 DL No. 2423/R/o. Maulan
Sahebpura, Amaraoti, Tal. & Dist.
Amaraoti. [Deleted]
- 4] Rajatbhai Wani,
Age 45 years, Transporters Reg.
owner of MHV-6480, R/o. Amaraoti,
Tal. & Dist. Amaraoti. [Deleted]
- 4-A] Noor Mohammad s/o. Mohammad Ismail,
Age 40 years, Occu. Transporter,
Reg. owner of MHV-6480,
R/o. Ratan Nagar, Maaraoti,
Talu and Dist. Amraoti.
[Dismissed vide Addl. Registrar's
order dated 24.6.2003.]
- 5] United India Insurance Co. Ltd.,
Amraoti, D.O. Badnera Road,

Amraoti, Dist. Amraoti.

- 6] Anil Abhimanyu Patil,
Age : 21 years, Occu : Student &
Agril., R/o "Anita" Benglow,
Plot No. 18, Bhoite Nagar,
Jalgaon, Tq. & Dist. Jalgaon.

... Respondents

Mr. N.B. Suryawanshi, Advocate for appellant.

Mr. S.G. Chapalgaonkar, Advocate for respondent No. 2.

Mr. D.V. Soman, Advocate for respondent No. 5.

WITH
FIRST APPEAL NO.80 OF 2001

Prakash Mohan Karpe,
Age : 20 years, Occu : Student,
R/o. Ring Road, Jillha Peth,
Jalgaon.

... Appellant

Versus

- 1] Mr. Gautam Suryakant Malinkurve,
Age : 24 years, Occu : Driver and
owner of Truck No.MCY-2358,
R/o A-23, Shrirang Housing Society,
Thane (West).

- 2] The New India Assurance Co. Ltd.,
Shivaji Nagar, Shivkripa Camp,
Centre, Gokhle Road, Thane.

New India Insurance Co. Near
Panchmukhi Maruti, Jalgaon.
(Summons be served on New India
Assurance Co. Dhule Div. Office,
Opp. Municipal Complex, Dhule)

- 3] Rajatbhai Wani,
Owner of Truck No. MHV-6480
[Deleted]

- 3-A] Noor Mohammad S/o Mohammad Ismail,
Age : 40 years, Occu : Transporter,

Reg. Owner of MHV-6480,
R/o Ratan Nagar Maaraoti,
Talu and District – Amraoti.

- 4] Abdul Nusim, Abdul Rasshid Shaikh,
Age 25 years, Occu. Driver &
Cleaner of Truck No. 6480,
Licence No. 2323, R/o. Nalsahebpura,
Amaraoti [Appeal abated vide
Registrar's order dated 7.11.2006].

- 5] United India Insurance Co. Ltd.,
Amraoti, Divisional Office,
Amraoti, Badnera Road, Amraoti,
Tq and Dist. Amraoti.

... Respondents.

Mr. N.B. Suryawanshi, Advocate for appellant.

Mr. S.G. Chapalgaonkar, Advocate for respondent No.2

Mr. D.V. Soman, Advocate for respondent No.5.

CORAM : T.V. NALAWADE, J.

DATED : 18th January, 2016.

JUDGMENT :

1) First Appeal No. 119 of 2001 is filed against the judgment and award of Claim Petition No. 136/1989, which was pending before the Claims Tribunal, Dhule. Original claimants have challenged the decision of the Tribunal on the point of quantum of compensation. Both the sides are heard.

2) It is the case of claimant Kusum Patil, the claimant from Claim Petition No. 136/1989 that her deceased son Ashok Patil was aged about 19 years at the relevant time and he was

student of Diploma Course in Engineering. It is her case that he was helping the family by cultivating the land and by doing the milk business. Claimant No. 2 is elder brother of deceased and he was also student at the relevant time. Under various heads, compensation was claimed and it was mainly on the ground of loss of dependency.

3) The appellant from First Appeal No. 80/2001 was injured in the accident. He was also student of the same course. It is his case that he sustained fracture injuries to left leg, mandible and other injuries and due to that, his earning capacity has come down. He had received treatment on indoor basis at places like Mumbai when he was resident of Jalgaon. He had filed Claim Petition No. 4/1990.

4) In Claim Petition No. 136/1989, which was filed by mother of deceased and brother of deceased, the Tribunal presumed monthly income as Rs. 2,000/- and held that the loss of dependency is only of Rs. 500/- as only mother can be treated as a dependent. In that case also, the Tribunal could have held 1/2 amount could have been deducted for personal expenses and monthly loss could have been held as Rs. 1000/-. In view of the age of the mother, 15 could have been used as a multiplier.

Thus, the amount of Rs. 1.8 lakh could have been given as compensation under the head of loss of dependency. The Tribunal has given the amount of Rs. 96,000/- only under this head. The amount of Rs. 2,000/- is given under the head of funeral expenses and the amount of Rs. 2000/- is given under the head of loss of love and affection. It can be said that more amount could have been given under these heads. This Court holds that amount of Rs. 1.8 lakh needs to be given under the head of loss of dependency and so, the total amount of Rs. 1.85 lakh ought to have been given by the Tribunal. The Tribunal has granted interest at the rate of 6% p.a. only when as per the settled law, interest at the rate of 9% p.a. could have been given. Such rate of interest was given by the nationalised banks at the relevant time. So, First Appeal No. 119/2001 needs to be allowed to make the compensation as Rs. 1.85 lakh on the principle of fault (this amount is inclusive of the amount awarded on the principle of no fault) and the interest at the rate of 9% p.a. needs to be given on the amount.

5) In Claim Petition No. 4/1990 (First Appeal No 80/2001) the claimant has given evidence that he sustained fracture injury to his left leg and he sustained injuries to his jaw also. He has deposed that due to injuries, he is suffering from

permanent disability. He has given evidence that he cannot open the mouth completely and due to fracture injury, he is suffering from permanent disability. He gave evidence that he was required to spend Rs. 85,000/- on treatment and medicines and he lost one academic year, the second year of Diploma Course. In the cross examination, it is brought on the record that he completed the course and when evidence was given, he was employed in one industry from Jalgaon and he was getting monthly salary of Rs. 2,750/-.

6) M.L.C. prepared by the Government Hospital, Dhule is on the record which shows that there was fracture of left femur and there were injuries on his face. The discharge card prepared by Durga Nursing Home of Mumbai is also produced, which is consistent with the case of the claimant. The bills of medicines and treatment are produced and the record is sufficient to prove that there was fracture of left femur, there was fracture of mandible on left side. The disability certificate issued by the Civil Surgeon was produced though it is not exhibited and it shows that due to the injuries, there is permanent disability to the extent of 20%.

7) Like in the first case, in the matter of Prakash,

injured claimant from second case, it can be presumed that his monthly income was around Rs. 2,000/-. It can be further presumed that due to the permanent disability the earning capacity has come down of 20% i.e. Rs. 400/- per month. In view of the age, which was around 20 years, 18 can be adopted as multiplier for calculation of loss of future income and the loss of future income comes to Rs. 84,600/-. Thus, under this head amount of Rs. 84,600/- could have been given as a compensation in this matter. The Tribunal has given amount of Rs. 10,000/- under the head of amount spent, amount of Rs. 20,000/- is given under the head of permanent disability and amount of Rs. 10,000/- is given under the head of pain and suffering. Thus, meager amount of Rs. 40,000/- is given when a student, aged about 19 years, had sustained injuries of aforesaid nature. Separate amount ought to have been given under the head of loss of future income and so, this Court holds that the amount of Rs. 86,400/- needs to be given more as compensation and the compensation amount needs to be increased by that amount. Interest in this case also needs to be given at the rate of 9% p.a. In the result, following order is made.

ORDER

- (i) First Appeal No. 119 of 2001 is allowed. Judgment and award of the Tribunal is modified to make the compensation

as Rs. 1,85,000/- on the principle of fault. This amount is inclusive of the amount which must have been awarded on the principle of no fault. The entire amount is to be given with interest at the rate of 9% p.a. Award is to be prepared accordingly.

(ii) First Appeal No. 80 of 2011 is allowed. Judgment and award of Tribunal is modified to enhance the compensation by Rs. 86,400/-. The interest will be payable on the entire amount of compensation at the rate of 9% p.a. Award is to be prepared accordingly.

(iii) The enhanced interest is to be given, in both the appeals, on the entire amount but the amount already deposited is to be deducted and interest is to be calculated accordingly.

(iv) Deficit court fees is to be recovered from the claimants in respect of the aforesaid compensation amount.

(v) After depositing the amount, the amount is to be disbursed as per the award.

(vi) The distribution of liability done by the Tribunal is kept as it is.

[T.V. NALAWADE, J.]

ssc/