

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

FIRST APPEAL NO.: 1005 OF 2008

1. Raja S/o Kishanrao Tayade,
Age: 35 years, Occ: Labour,
R/o Chausarnagar, Near Jyotinagar,
Shahanoorwadi, Osmanpura,
Aurangabad.
2. Sangmitra W/o Raj Tayade,
Age: 30 years, Occu: Household,
R/o as above.
3. Amit S/o Raj Tayade,
Age: 10 years, Occ: Student,
Minor, under guardianship of
claimants no.1 and 2. ...

APPELLANTS
(ORIG. CLAIMANTS)

VERSUS

1. Anilkumar S/o Babulal Kasliwal,
Age: Major, Occ: Business,
R/o Ambe Lohal, Tq. Gangapur,
District Aurangabad.
2. Nandkumar S/o Sonaji Gadekar,
Age: 30 years, Occu: Driver,
R/o Ambelohal, Tq. Gangapur,
District: Aurangabad.
3. The Divisional Manager,
National Insurance Co. Ltd.,
Hazard Chambers, Railway Station Road,
Aurangabad.

... **RESPONDENTS**
(ORIG. RESPONDENTS)

Mr. Nikhil Jaju, Advocate h/f Mr. A. S. Bajaj, Advocate for the Appellants.

Mr. S. V. Kulkarni, Advocate for Respondent No.3.

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CORAM:-

T. V. NALAWADE, J.

DATED:-

15th FEBRUARY, 2016.

ORAL JUDGMENT:

1. The appeal is filed by original claimant against judgment and Award in M.A.C.P. No.122 of 2002 which was pending before Claims Tribunal, Aurangabad. The decision of the Tribunal is challenged on the ground of quantum of compensation. Both the sides are heard.

2. The deceased was son of claimant Nos.1 and 2 and brother of claimant No.3 and he was aged about 14 years. He died in accident dated 7th December, 2001. At the relevant time he was studying in 8th standard. It is the case of parents that during their old age the deceased would have given support to them by making income and so there is loss of dependency. The proceeding was filed under section 163-A of Motor Vehicle Act.

3. The Tribunal has considered some evidence given by the claimants that deceased was doing some part time

work and he was earning Rs.900/- per month. On that basis compensation amount is calculated and from that 1/3rd amount is deducted and compensation of Rs.59,500/- only is awarded by the Tribunal.

4. Learned counsel for the Appellants placed reliance on the case reported as **2014 (3) Mah.L.J. (S.C.) 560 [Kishan Gopal and another V/s Lala and others]**. In this reported case when a proceeding was filed under section 163A of M.V.Act and the accident had taken place in the year 1992 in respect of the death of boy aged about 10 years, compensation of Rs.4.5 Lakh was given under the head of loss of dependency and the amount of Rs.50,000/- was given under conventional heads like loss of love and affection, funeral expenses, last rites etc. Learned counsel for Insurance Company placed reliance on the case reported as **AIR 2014 SC 706 (Puttamma and others V/s K. L. Narayana Reddy and another)**. In this subsequently decided case, the Apex Court held that when a child aged up to 5 years dies the amount of Rs.1 Lakh can be given as fixed compensation and when a person, who has cross aged of 5 years dies, the minimum compensation of Rs.1.5 Lakh can be given. It is observed

that if the compensation which can be awarded under 2nd schedule of Section 163A of M.V.Act is more than the amount of Rs.1.5 Lakh then the amount which can be given under that schedule needs to be given. If the observations made by the Apex Court in the aforesaid two cases are kept in mind and the fact that the accident took place in the year 2001 is kept in mind and the fact that the schedule was prepared in the year 1994 is kept in mind, it can be said that the notional income of the deceased was Rs.30,000/- per annum. As provided under the schedule 1/3rd can be deducted towards personal expenses of the deceased and 15 can be adopted as multiplier for calculation of loss of dependency. The total amount of loss of dependency comes to Rs.3 Lakh. As provided in the case of Kisan Gopal, cited supra, the amount of Rs.50,000/- can be given under the aforesaid conventional heads. Thus, the total amount of compensation come to Rs. 3.5 Lakh.

5. In the result, the following order is made:

Appeal is allowed to make the total compensation amount Rs.3.5 Lakh. The interest will be payable at the rate of 9% p.a. from the date of petition till realisation.

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Award to be prepared accordingly. Disbursement to be made as per the Award made by the Tribunal.

(T. V. NALAWADE, J.)

Dated:15/02/2016.
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