

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 1072 OF 2009

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| 1 | The National Insurance Co. Ltd., having its Regd & Head Office at 3 Middleton Street Kolkatta and Branch Osmanabad 413 501 and Divional Office at Station Road, Hazari Chambers, Aurangabad, Through its Divisional Manager and Duly Constituted Attorney Shri Shrikrishna Ramji Bodade, Aged 52 Years | APPELLANT |
| 2 | Sayyad Abdul Kdar Jilani s/o Abdul Gafoor, Major, Occ. Truck Owner, Resident of at Patha Peta D.No. 22/56, NUZVID | |

V E R S U S

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| 1 | Mangal W/o Nandkumar Jadhav, Aged 30 Years, Occupation Household | RESPONDENTS |
| 2 | Master Sagar S/o Nandkumar Jadhav, Aged 13 Years, Occupation Student | |
| 3 | Master Akshaya S/o Nandkumar Jadhav, Aged 7 Years, Occupation Student | |
| 4 | Msis Rakhi d/o Nandkumar Jadhav, Aged 5 Years, Occupation Student | |

Respondent Nos. 2 to 4 are Minors, through guardian Mother Respondent No.1, Resident of Omerga, Taluka Omerga, District Osmanabad

Mr. V.N. Upadhye, Advocate for the Appellants
Mr. A.S. More, Advocate for the Respondents

CORAM : A.V. NIRGUDE, J.

DATE : 26th August, 2016

ORAL JUDGMENT :

1. This Appeal filed by the Insurance Company challenges the Judgment and Award dated 14th February, 2005, delivered by the learned Member, Motor Accident Claims Tribunal, Osmanabad, in Motor Accident Claim Petition No. 298 of 1999.

2. ***The facts leading to the litigation are as under :-***

Victim Narayan @ Nandkumar S/o Balbhim Jadhav was 35 years old, who died on 16th May, 1999 at about 05.50 a.m. He was walking by the side of the road and the offending vehicle ran over him. The respondents are his family members viz. his wife and minor children.

3. The learned counsel for the Appellants contended that his clients would not challenge the Award on merits but would challenge the quantum of compensation only. The question that arose in my consideration is, to what amount the respondents are entitled towards compensation ?

The respondents' asserted in their evidence that monthly income of Narayan @ Nandkumar was Rs.10,000/- approximately. Narayan @ Nandkumar had a business, but the respondents-claimants did not bring material evidence to indicate the actual income of the victim. On the contrary, it came on record that victim Narayan @ Nandkumar obtained

loan of Rs.50,000/- way back in 1997 for the business purpose but committed default in repayment of the same, and on the day of incident, he owned to the Bank sum of Rs.1,10,000/-. This indicates that Narayan @ Nandkumar was not quite successful businessman. Apparently he did not repay the loan amount through installments etc. At the most it can be assumed that Narayan @ Nandkumar's income was barely sufficient to maintain his family. On the basis of this assumption, the learned Member guessed that Narayan @ Nandkumar's monthly income was approximately Rs.5,000/- per month. Utilizing such figure, further calculations are made.

4. The question is, whether this estimate though empirical, is grossly erroneous? Having regard to the years of Narayan @ Nandkumar's death, the estimated income of Narayan @ Nandkumar @Rs.5,000/- per month looks more, and therefore, it can be said that the appeal is justifiable. But, I am not inclined to disturb the finding mainly because the case is pending since last more than 16 years. The accident took place in 1999. The Motor Accident Claims Petition was pending for five years and thereafter it remained pending before this Court since last seven years. Having regard quite of the respondents who lost their bread earner, the amount will be granted to them as compensation. It does not reserve to be disturbed. The amount deposited in the Court shall be handed over to the respondents-claimants immediately. Appeal stands dismissed.

(A.V. NIRGUDE, J.)

