IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1967 OF 2015

National Insurance Company Ltd.
Divisional Office at Hazari Chamber,
Railway Station Road, Aurangabad.
Through its Divisional Manager.

...APPELLANT
(Orig.Respondent no.2)

VERSUS

1. Rani Gopal Katkar,
Age 23 years, Occu: House wife,

2. Bhagyashri Gopal Katkar,
Age 4 years, Occu. Nil.

3. Rajashri Gopal Katkar,
Age 2 years, Occu: Nil.

4. Arvind Gopal Katkar,
Age 5 months, Occu: Nil.

Respondent No.2 to 4 being Minor's, through
Their natural Guardian Mother Res.No.1.

Both r/o Dudhondi, Tq. Karjat
Dist. Ahmednagar.

5. Vishvanath Mahadeo Parkale,
Age 40 years, Occu: Business,
R/o. Supekarwadi, Tq. Karjat,
Dist. Ahmednagar.

6. Dattatrya Barku Katkar,
Age 62 years, Occu: Nil,
R/o Dudhodi Beradi, Tq. Karjat,
Dist. Ahmednagar.

7. The Divisional Manager,
The New India Assurance Company Ltd.,
Branch at Abbott Building 1st floor,
Near Ashoka Hotel, Kings Road, Ahmednagar.

...RESPONDENTS
(Resp.No.1 to 4 are original Claimants, Resp.No.5 to 7 are original Resp.No.1, 3 & 4)

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Mr. P.C.Mayure, Adv., h/f Shri S.P.Chapalgaonkar, Advocate for appellant.
Mr. A.C.Darandale, Advocate for Respondent no.1.
Mr. V.N.Upadhye, Advocate, for respondent no.7.
Mr. A.R.Tapse, Adv., h/f Mr. P.D.Suryawanshi, Advocate., for respondent no.5.
Mr.S.A.Deshpande, Adv., h/f Mr.N.V.Gaware, Advocate., for respondent no.6.

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WITH

FIRST APPEAL NO. 1968 of 2015

National Insurance Company Ltd.,
Divisional Office at Hazari Chamber,
Railway Station Road, Aurangabad.
Through its Divisional Manager.

...APPELLANT
(Orig.respondent no.2)

VERSUS

1. Anjana Bhau Jadhav,
Age 42 years, Occu: Housewife,

2. Bhau Gangaram Jadhav,
Age 48 years, Occu: Labour Work,

Both R/o Dudhodi, Tq. Karjat,
Dist. Ahmednagar.

3. Vishvanath Mahadeo Parkale,
Age 40 years, Occu. Business,
R/o Supekarwadi, Tq. Karjat,
Dist. Ahmednagar.

4. The Divisional Manager,
The New India Assurance Company Ltd.
Branch at Abbot Building 1st floor,
Near Ashoka Hotel, Kings Road, Ahmednagar.

...RESPONDENTS
(Resp.No.1 to 3 are original Claimants, Resp.No.3 to 4 are original Resp.No.1 and 3).
...

Mr. P.C.Mayure, Advocate, h/f Mr.S.P.Chapalgaonkar, Advocate, for appellant.
Mr. A.R.Tapse, Advocate, h/f Mr. P.D.Suryawanshi, Advocate, for respondent no.3.
Mr. A.C.Darandale, Advocate, for respondent nos. 1 and 2.
Mr. V.N.Upadhye, Advocate, for respondent no.4.

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CORAM : V.K. JADHAV, J.

Dated: February 27, 2017

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PER COURT :-

1. By consent of learned Counsel for the parties, both the appeals are heard finally and considered at admission stage.

2. Being aggrieved by the judgment and award passed by the Motor Accident Claims Tribunal, Ahmednagar, dated 2nd May, 2015, in MACP No.372/2011, original respondent No.2 / insurer has preferred First Appeal No.1967/2015 to the extent of

quantum, and also to the extent that, though the Tribunal in paragraph No.19 of the judgment has apportioned the liability amongst Opponent nos. 1 and 2 on one side and Opponent nos. 1 and 3 on the other, failed to say so in the operative part of the judgment.

Being aggrieved by the judgment and award passed by the Member, Motor Accident Claims Tribunal. dated 30th April, 2015, in MACP No.373/2011, original respondent no.2 / insurer has preferred First Appeal No.1968/2015, to the extent of quantum.

3. Both these appeals arise out of one and the same accident, and the judgments and awards passed by the Member, Motor Accident Claims Tribunal, Ahmednagar, in two separate Motor Accident Claims Petitions, as aforesaid.

4. So far as First Appeal No.1967/2015 is concerned, learned Counsel for the appellant / insurer submits that, there is no income proof of deceased Gopal. The claimants have claimed that deceased Gopal was a fisherman, and he was earning Rs.5,000/- to

Rs.6,000/- per month, and in his spare time, he was doing labour work and was earning Rs.2500/- per month. Learned Counsel submits that, there is no evidence at all that deceased Gopal was a fisherman, however, the learned Member of the Tribunal has considered his income at higher side i.e. Rs.6,000/- per month; and even deceased Gopal was not a skilled - labour so as to consider his income at Rs.6,000/- per month. Learned Counsel submits that in paragraph no.19 of the judgment, the Tribunal has observed that Opponent no.1 and Opponent no.2 at one side are liable to pay the amount jointly and severally to the extent of 50 per cent of the compensation awarded. The Tribunal further observed that Opponent nos. 1 and 3 are also liable to pay the amount jointly and severally to to the extent of remaining 50 per cent. Learned Member of the Tribunal, in the same paragraph, has made it further clear that, the liability of the opponent / National Insurance Co.Ltd., appellant herein, and the other insurer i.e. the New India Assurance Co. Ltd. is in equal proportion i.e. 50:50 in payment of the compensation awarded. Learned Counsel submits that even though the Tribunal has observed the same in paragraph no.19, failed to mention it in the operative part of the judgment.

5. So far as First Appeal No.1968/2015 is concerned, the learned Counsel submits that the claim under this appeal is about the death of a child, aged 15 years at the time of his accidental death. According to the claimants, in the said claim, the said deceased child, namely, Kiran, was doing seasonal labour work and was earning Rs.3,000/- per month. Instead of considering the said income of the deceased child, the Tribunal has considered his notional income as Rs.30,000/- per annum, and by applying multiplier of 15, worked out the compensation. Learned Counsel submits that the Tribunal ought to have considered his income as claimed by the respondents / claimants and awarded the compensation accordingly.

6. Learned Counsel appearing for the respondents / original claimants in First Appeal No.1967/2015, submits that the Tribunal has rightly considered income of deceased Gopal at Rs.6,000/- per

month. Learned Member of the Tribunal has observed that no documents can generally be produced in respect of doing the work of Fisherman and has, thus, rightly assessed the income of deceased Gopal at Rs.6,000/- per month, and, therefore, no interference is required. Learned Counsel submits that in paragraph no.19 of the judgment, the Tribunal has observed about apportionment of the liability, however, failed to specify it in the operative part of the judgment. Learned Counsel for the respondents / claimants submits that the claimants have no objection if the award under is appeal is modified to that extent.

7. Learned Counsel appearing for the respondents / original claimants in First Appeal No.1968/2015 submits that the Tribunal, in the light of the ratio laid down in the case of Kishan Gopal and another vs. Lala and others ((2014) 1 SCC 244), has rightly considered the notional income of deceased Kiran and, without any deductions awarded the compensation by applying the multiplier in consonance with the age of the parents and, therefore, no interference is required. Learned Counsel submits that the Tribunal has, however,

awarded a meager amount under the heads of loss of love and affection and loss of estate. Even though the respondents / claimants have not preferred any appeal or cross objection, the same can be awarded to them if they are entitled for it.

8. In First Appeal No.1967/2015, learned Counsel appearing for respondent no.7 Insurer, submits that the Tribunal has rightly fastened the liability on the appellant insurer and no interference is required.

9. On careful perusal of the judgment and award passed by the Tribunal in M.A.C.P. No. 372/2011, which is the subject matter of First Appeal No.1967/2015, it appears that the Tribunal has considered the income of deceased Gopal at higher side. There is no income proof and though there may not be any document supporting the case of the claimants that deceased Gopal was a fisherman, the claimants could have examined the other companion fishermen of deceased Gopal to substantiate their contention about his occupation and monthly earning from the said occupation. In absence of any such

evidence, the earning of the deceased Gopal could have been considered as of doing labour work. In the given set of facts it would be just and appropriate if the monthly income of deceased is considered at Rs.4500/-, with 50 per cent of the income to be added towards future prospects.

10. In paragraph No.19 of the judgment, though the Tribunal has observed about apportionment of the liability amount amongst joint tort feasors, failed to mention the same in the operative part of the judgment in MACP No.372/2011, which arises out of one and the same accident, and which is also the subject matter of the First Appeal No.1968/2015, wherein the same learned Member of the Tribunal, in the operative part of the judgment, apportioned the liability amongst the joint tort feasors.

11. In view of the above discussion, the impugned judgment and award in MACP No.372/2011, to the extent of the quantum, so far as earning of deceased Gopal is concerned, and to the extent of apportionment of liability as aforesaid, requires modification.

12. In the case of Kishan Gopal and another vs. Lala and others (cited supra), in paragraph nos. 38 and 39 of the judgment, the Apex Court has made following observations:

> "38. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non- earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard.
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> 39. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma v. Delhi Transport Corporation , the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC v. Susamma Thomas, which is referred to in Lata Wadhwa's case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants."

In view of above ratio laid down by the Supreme Court, the Tribunal has rightly considered the notional income of deceased Kiran at Rs.30,000/- per annum and by applying appropriate multiplier, which is in consonance with the age of the mother, rightly worked out the compensation.

So far as the compensation awarded under the non pecuniary heads is concerned, I do not find any fault and the Tribunal has rightly awarded the same.

In view of the above discussion, I proceed to pass the following order:

ORDER

1. First Appeal No.1967/2015 (National Insurance Company Ltd., Vs. Rani Gopal Katkar and others) is hereby partly allowed with proportionate costs. The judgment and award passed by the Member, Motor Accident Claims Tribunal, Ahmednagar, in M.A.C.P. No.372/2011 is hereby modified in the following manner:

(i) The petitioners and Opponent no.4 are entitled to an amount of Rs.16,02,500/- (Rs. sixteen lacs, two thousand, five hundred) as compensation, inclusive of the amount of No Fault Liability and Opponent Nos. 1 and

2 and Opponent no.1 and 3, do pay, jointly and severally, in proportion of 50:50, the amount of Rs.16,02,500/- (Rs. sixteen lacs, two thousand, five hundred) to the petitioner and opponent no.4, inclusive of Rs.50,000/- (Rs. fifty thousand), the amount of No Fault Liability, with interest at the rate of 9 per cent per annum from the date of filing of the petition i.e. 1st June, 2011, till realization of the said amount.

(ii) Rest of the judgment and award stands confirmed.

(iii) Award be drawn as per the above modification.

2. First Appeal No.1968/2015 (National Insurance Company Ltd. Vs. Anjana Bhau Jadhav) is hereby dismissed. No costs.

Both the Appeals are disposed of in above terms.

Needless to say that if any amount is deposited before this Court by the appellant insurer, the respondents / original claimants are at liberty to withdraw the same.

(V.K. JADHAV)
JUDGE

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