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

**FIRST APPAL NO. 2800 OF 2009**

**WITH**

**CIVIL APPLICATION NO. 9907 OF 2009**
**IN**
**FIRST APPEAL NO. 2800 OF 2009**

The New India Assurance Company Ltd.
A Subsidiary of the General Insurance
Corporation of India and a Company
incorporated under the Companies Act
Having its Divisional Office at
Adalat Road, Aurangabad Through its
Senior Divisional Manager
Shri Vishwas Bansi Gaikwad
Age; 52 years. **APPELLANT**
(Original Respondent No. 3)

**VERSUS**

1. Avinash Trimbak Mane,
Age; 24 years, Occupation; Mechanic
& Agriculturists,
Resident of Village Mahalangra,
Taluka Chakur, District; Latur,
Being unsound through his
father next friend; Trimbak Kishanrao Mane
Age 55 years, Occupation Nil,
Resident of as above.

2. Hanmant Mahajan Kondewad,
Age; Major, Occupation; Driver,
Resident of Porna Niwas,
Taluka Udgir, District; Latur.

3. Avinash Nivratirao Gurmulwad,
Age; Major, Occupation; Business,
Resident of Flat No. 7, Purva Apartment
Next to Patel Tiles, Shivajinagar,
Pune 411 005.

Respondent Nos. 2 and 3
deleted **<u>RESPONDENTS</u>**
(R.No.1 Orig.Clmnt & R. Nos.
2 & 3 Orig. R. Nos. 1 & 2)

**WITH**

**X CROSS OBJECTION NO. 5816 OF 2010**

**IN**

**FIRST APPEAL NO. 2800 OF 2009**

Avinash Trimbak Mane,
Age; 26 years, Occupation; Mechanic &
Agriculturists,
Resident of Mahalangra, Taluka Chakur,
District; Latur.
Being unsound through his father next friend
namely Trimbak Kishanrao Mane,
Age; 57 years, Occupation; Nil,
Resident of Village Mahalangra,
Taluka Chakur, District; Latur. **<u>APPELLANT</u>**
(Original Petitioner)

**<u>VERSUS</u>**

1. Hanmant Mahajan Kondewad,
Age; 38 years, Occupation; Driver,
Resident of Poorna Niwas,
Taluka; Udgir, District; Latur.

2. Avinash Nivratirao Gurmulwad,
Age 38 years, Occupation; Business,
Resident of Flat No. 7, Purva Apartment,
Next to Patel Tiles, Shivaji Nagar,
Pune – 411 005.

3. The New India Assurance Company Ltd.,
Through its Branch Manager,
Branch Office at Main Road,
Latur, District; Latur. **<u>RESPONDENTS</u>**

WITH

**CIVIL APPLICATION NO. 6360 OF 2018**

**IN**

**FIRST APPEAL NO. 2800 OF 2009**

Avinash Trimbak Mane,
Age; 26 years, Occupation; Mechanic & Agriculturists,
Resident of Mahalangra, Taluka Chakur,
District; Latur.
Being unsound through his father next friend
namely Trimbak Kishanrao Mane,
Age; 57 years, Occupation; Nil,
Resident of Village Mahalangra,
Taluka Chakur, District; Latur. **APPELLANT**
(Original Petitioner)

**VERSUS**

1. The New India Assurance Company Ltd.,
Through its Branch Manager,
Branch Office at Main Road,
Latur, District; Latur.

2. Hanmant Mahajan Kondewad,
Age; 38 years, Occupation; Driver,
Resident of Poorna Niwas,
Taluka; Udgir, District; Latur.

3. Avinash Nivratirao Gurmulwad,
Age 38 years, Occupation; Business,
Resident of Flat No. 7, Purva Apartment,
Next to Patel Tiles, Shivaji Nagar,
Pune – 411 005. **RESPONDENTS**
(Resp. Nos. 2 & 3 are formal parties to the present Civil Application).

.....
Shri. A.B. Kadethankar, Advocate for Appellant
Shri. P.K. Lakhotiya h/f Mr. B.R.Loya, learned Advocate for Respondent No. 1
Respondent No. 3 is served.
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**CORAM : SUNIL K. KOTWAL, J.**

**Date of Reserving Judgment : 27.11.2018**
**Date of Pronouncing Judgment : 06.12.2018**

**J U D G M E N T :**

This appeal is directed by the New India Assurance Company Ltd., which was respondent No. 3 in MACP No. 299 of 2007, challenging the award passed by Motor Accident Claims Tribunal, Latur, (hereinafter referred to as 'MACT'), wherein, the compensation of Rs. 6,63,600/- with interest @ 7.5% per annum was awarded by the Tribunal. Respondent No. 1 in the appeal is the original claimant, respondent No. 2 is driver and respondent No. 3 is the registered owner of the offending car bearing No. MH-12-BP-2546. Respondent Nos. 2 and 3 in the appeal are deleted. Thus, the appeal is to be decided only in between the appellant and respondent No. 1 (hereinafter parties are referred as per their original status in the motor accident claims proceeding). Even the claimant has filed cross objection to enhance the compensation.

2. Facts leading to the institution of this appeal are that on 29.12.2006, the claimant who was mechanic, was returning after

completion of his work at the workshop was returning towards his village Mahalangra, from Latur by his motorcycle bearing No. MVE-2147 along with a pillion rider Nagnath Kamble. At about 10.00 p.m., when they reached near agricultural School, within the jurisdiction of village Kolpa situated at Latur – Nanded road, that time offending car bearing No. MH-12-BP-2546 came from opposite direction in high speed and gave dash to the motorcycle of the claimant by coming to the wrong side of the road. In that accident, claimant sustained head injuries and fracture injuries. Initially, he was admitted at Civil Hospital, Latur and on 31.12.2006 he was shifted to Apex Hospital, Latur for better treatment. Though, he survived due to accidental injuries, he sustained 100% functional disability and became unsound mind. Therefore, claimant filed claim petition for compensation against the driver, owner of the offending car and the Insurance Company i.e. the insurer of the offending car.

3. Insurance Company filed written statement and resisted the claim by raising defence of contributory negligence by the claimant as well as breach of conditions of policy of the insurance by the owner of the offending car, as the driver of the car did not hold effective and valid driving license.

4. After considering the evidence placed on record by the claimant, the Tribunal awarded above said compensation. Being dis-

satisfied with that award, the Insurance Company has filed this appeal. Even the claimant has filed Cross Objection for enhancement of the compensation.

5. Heard Shri A.B. Kadethankar, learned counsel for appellant Insurance Company and Shri P.K. Lakhotiya holding for Shri P.R. Loya, learned counsel for respondent No. 1 (Original Claimant).

6. Learned counsel for Insurance Company contended that though in para 8 and 9 of the judgment, the Tribunal held that the claimant was guilty for contributory negligence, the entire liability to pay compensation is saddled only on the Insurance Company. He submits that the liability to pay compensation shall be equally apportioned in between the claimant and the Insurance Company. He has pointed out that in the spot panchanama, it is mentioned that the spot of the accident is in the middle portion of the Nanded – Latur road and the front portion of the offending car as well as motorcycle of the claimant were found damaged. He submits that it was the case of head on collision in between two vehicles on the middle portion of the road. Thus, the claimant and the Insurance Company shall be held equally liable to share the payable compensation amount. He did not dispute the quantum of the compensation awarded by the Tribunal or the evidence of the Medical Officer.

7. Learned counsel for the original claimant submits that in written statement, specific pleading regarding contributory negligence is missing. He submits that only because accident occurred due to head on collision in between two vehicles, an inference cannot be drawn that even the claimant was equally liable. He has pointed out that the Investigating Officer (PW 7) has filed charge-sheet only against the driver of the offending car.

8. Regarding quantum of the compensation, the learned counsel for the claimant submits that due to accidental injuries the claimant sustained 100% functional disability and he has lost 100% earning capacity. The claimant being mechanic, used to earn Rs. 6,000/- per month, however, the Tribunal has awarded meager compensation, even by erroneously deducting 1/3rd amount from the said compensation. He has pointed out that no compensation is awarded for loss of future prospects, loss of amenities and the marriage prospects.

9. His last submission is that as the Insurance Company did not examine the driver of the offending car, it cannot prove the contributory negligence. He placed reliance on **"Minu Rout and another Vs Satya Pradyumna Mohapatra and others" [2014 (2) Mh.L.J.534]**, **"Syed Sadiq Etc. vs Divisional Manager, United India Ins.Co." [2014 DGLS(SC) 47], "Smt. Usha Arjun Kavade &**

**Ors. vs Shri Tahil Chand Shaikh & Ors." [2011 (7) ALL MR 209]** and **"Managing Director, Mazgaon Docks Ltd. vs Vinodbhai Mohanlal Patel" [2010 ALL MR (Supp.) 31]**.

10. So far as, the pleading of the Insurance Company is concerned, after going through the written statement of the Insurance Company, it emerges that only one line is pleaded by the Insurance Company that "In fact, the alleged incident occurred by the negligent act of the claimant himself."

11. The insurance Company has not specifically pleaded as to the exact nature of the contributory negligence of the claimant. Thus, at the out set, I must hold that the plea of the contributory negligence is not specifically pleaded by the Insurance Company in the written statement and for that reason even issue regarding contributory negligence is not framed by the Tribunal.

12. Even assuming that the plea of contributory negligence is raised by the Insurance Company, even then by examining the driver of the offending car, the Insurance Company has not proved its plea of contributory negligence. This Court in **"Smt. Usha Arjun Kavade & Ors. vs Shri Tahil Chand Shaikh & Ors."** (supra) and the **"Managing Director, Mazgaon Docks Ltd. vs Vinodbhai Mohanlal Patel"** (supra), has consistently taken the view that :

> "In case of raising plea of contributory negligence, examination of driver of offending vehicle is necessary and non examination of the driver is sufficient to draw adverse inference against the person raising plea of contributory negligence".

13. Therefore, as appellant Insurance Company has not taken pains to examine the driver of the offending car involved in the accident, an adverse inference has to be drawn that there was no contributory negligence on the part of the claimant.

14. Otherwise also, in the case at hand, as the claimant has become unsound mind after sustaining the accidental injuries and as he has sustained 100% physical disability, the examination of the claimant was impossible. Therefore, even this petition is filed by the father of the claimant as his next friend. To prove the occurrence of the incident, the father of the claimant namely Trimbak Mane (PW 1), who lodged the FIR (Exh. 38), has stepped into the witness box. He has duly proved the certified copy of the FIR (Exh. 38/1) and the spot panchanama (Exh. 38/2). However, from his cross-examination, it emerges that he was not present on the spot at the time of occurrence. Therefore, only on the basis of oral evidence of Trimbak Mane (PW 1), claimant cannot prove rash and negligent driving by the driver of the offending car.

15. It is to be noted that in motor accident claim proceeding,

the claimant need not prove his case beyond reasonable doubt like in criminal trials. He has to prove his case only on the basis of preponderance of probabilities. The FIR (Exh. 38/1) recites that the accident occurred only due to rash and negligent driving by the driver of the offending car. The spot panchanama (Exh. 38/2) with sketch map shows that on the spot, Nanded – Latur road passes in East – West direction and the offending car as well as the motorcycle were lying on the Kaccha road on the Southern side of the tar road. The width of the tar road is only thirty feet and in the Northern portion of the road, blood stains were found at four to five places. The offending car was at the distance of twenty feet from the actual spot of accident. The front portion of the car and the motorcycle were in damaged condition. Twenty feet distance of the car from the spot of the accident itself indicates that at the time of accident, it was in high speed. The sketch map, which is the part of the spot panchanama, shows that the spot actual collision, is towards Northern portion of the road and not in the exact middle portion. As the claimant was proceeding from Latur towards his village i.e. towards Nanded side, the Northern side, is the left side of the claimant. It means that though, the claimant was on the left portion of the road, the offending car came towards the left side, resulting into head on collision in between both the vehicles.

16. Thus, applying principle of “Res Ipsa Loquitur”, as ruled

by the Apex Court in **“Pushpabai Parshottam Udeshi and others vs Ranjit Ginning and Pressing Co. Lvt. Ltd. And another” [AIR 1977 Supreme Court 1735 (1)]**, the claimant has proved that the accident occurred only due to rash and negligent driving by the driver of the offending car, who was driving the car in high speed. Even, the Investigating Officer, PSI, Deelip Kamble (PW 7), has specifically deposed that it was transpired during the investigation that the driver of the offending car gave dash to the motorcycle and therefore, he has filed the charge-sheet against the driver of the car. Only because the motorcycle was found lying on the Southern side on the Kaccha road, an inference cannot be drawn that the claimant was driving motorcycle by wrong side of the road. It cannot be ignored that due to dash given by the car, the motorcycle could be pushed towards backside and tossed towards the Southern side of the road. The distance in between the spot of collision and motorcycle indicates this probability. However, the learned Tribunal without considering these circumstances visible on the spot, only on the ground of absence of tyre marks on the road, held that the claimant and the driver of the offending car were equally responsible for the accident. I hold that observations of the Tribunal about occurrence of the accident due to contributory negligence of the claimant is erroneous. On the other hand, after going through the map of the spot and the spot situation, I am fully satisfied that the accident occurred only due to rash and negligent driving by the driver of the offending car. I hold that the Insurance Company failed to prove contributory negligence of the claimant.

17. Now, the question arises regarding the quantum of compensation payable to the claimant. In **"Raj Kumar Vs Ajay Kumar and another" [2011 (2) Mh. L.J. 569]**, while considering the law regarding personal injury cases, the Apex Court held that in the matters of personal injury, compensation is to be awarded under following heads :

"**Pecuniary damages (Special Damages)** :-

i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing, food and miscellaneous expenditure.

ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

a) Loss of earning during the period of treatment;

b) Loss of future earnings on account of permanent disability.

iii) Future medical expenses.

**Non pecuniary damages (General Damages)** :-

iv) Damages for pain, suffering and trauma as a consequence of the injuries.

v) Loss of amenities (and/or loss of prospects of marriage).

vi) Loss of expectation of life (shortening of normal longevity)."

18. In this case, the Apex court also ruled that in injury

claim, there cannot be any deduction towards the personal and living expenses. The Apex Court laid down following principles for assessing the compensation in personal injury cases :

> "i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
>
> ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).
>
> iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.
>
> iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

19. In **"Arvind Kumar Mishra vs New India Assurance Co. Ltd. & Anr." [(2010) 10 SCC 254]**, the Apex Court observed that

> "7. We do not intend to review in detail state of authorities in relation to assessment of all

> damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand."

20. Three Judges of the Supreme Court in **"Jagdish vs. Mohan and Ors." [AIR 2018 Supreme Court 1347]** observed that the principles laid down in **"Arvind Kumar Mishra vs New India Assurance Co. Ltd. & Anr."** (supra), **"Raj Kumar Vs Ajay Kumar and another"** (supra), must be followed by all the Tribunals and High Courts in determining the quantum of compensation payable to the victims of the accident, who are disabled either permanently or temporarily.

21. Thus, percentage of disability sustained by the Claimant is not relevant while determining the compensation payable to the

claimant. The loss of earning capacity of the claimant due to disability sustained in the accident is only relevant. In the case at hand, by examining Dr. Shyam Agroya (PW 2), the claimant has proved permanent disability certificate (Exh. 48), which shows that the physical disability of the claimant is 70%. Dr. Shyam (PW 2) has made effect of physical disability, clear that the claimant has become unsound mind and the components of his disability are as under :

1) Left hemiplegia.
2) Speech non fluent with decreased understanding,
3) Focal convulsions even on treatment.
4) Right hand weakness.

22. Dr. Shyam (PW 2) who is Neuro Surgeon, has made it clear that the claimant requires support, either to sit or stand by two persons. The claimant requires the person for nursing day to day activities. At last, he has clarified that the claimant is living in such a condition that at present he cannot do any kind of work. Despite lengthy cross-examination, this Medical Officer remained constant regarding the condition of the claimant. On the other hand, in cross-examination, it has been brought on record that there is no improvements in the condition of the claimant. This medical officer also clarified that even after the discharge of the claimant, the claimant would be required to take anti convulsion drugs for minimum period of three years or which may extend to whole life. Thus, it becomes clear that due to accidental injuries, the claimant has sustained 100% functional disability and he requires to take anti

convulsion drugs throughout his life. The evidence of Dr. Shyam (PW 2), who is Neuro Surgeon, is sufficient to hold that due to accidental injuries sustained in the accident, the claimant on his own cannot do any work and has lost 100% earning capacity.

23. The father of the claimant, Trimbak Mane (PW 1), specifically deposed that the claimant used to earn Rs. 6,000/- per month as a Mechanic. He has also proved photographs (Exh. 38/7), which show that the claimant was running garage in the name and style as 'Shriram Mini Tyre Garage'. No doubt, account of the said business is not filed by the claimant in support his contention. However, it is a matter of common sense that in such small scale business, no such accounts are maintained. Therefore, only on the ground non filing of any supporting documentary evidence, the testimony of Trimbak (PW 1), cannot be doubted. In **“Laxmidhar Nayak and Ors. Vs Jugal Kishore Behera and Ors.” [2018 AIR (SC) 204],** the Apex Court considered the notional income of house wife cum labour as Rs. 4500/- per month. Considering this ratio, I hold that considering young age of the claimant as 24 years as mentioned in the discharge card (Exh. 49) and the injury certificate (Exh. 53), the notional income of the claimant cannot be less than Rs, 6,000/- per month as a skilled mechanic. Thus, annual income of the claimant comes to Rs. (6,000 x 12) Rs. 72,000/-. The deceased being self employed person, in view of law settled by the Apex Court

in the case of “National Insurance Co. Ltd. Vs. Pranay Sethi and others” (supra) 40% income is to be added in the annual income of the deceased, towards loss of future prospects. Thus, the income of the deceased is assessed as (72,000 + 28,800) Rs. 1,00,800/-.

24. As the claimant was 24 years old at the time of accident, in view of **“Smt. Sarla Varma and Ors Vs Delhi Transport Corporation and Anr” [AIR 2009 Supreme Court 3104]**, the multiplier of '18' is applicable. Thus, future loss of income of the claimant due to permanent disability comes to Rs. ( 1,00,800 x 18) Rs. 18,14,400/-. Thus, the claimant is entitled for compensation of Rs. 18,14,400/- under the head of loss of future income.

25. Dr. Shyam (PW 2) deposed that the claimant was admitted in his hospital on 31.12.2006 and he was discharged on 26.3.2007. His evidence is also corroborated by discharge card (Exh. 49). Thus, it seems that the claimant was hospitalized for the period of 86 days at Apex Hospital, Latur. Prior to that he was admitted in Civil Hospital on 29.12.2006 and discharged on 31.12.2006 for better treatment. Thus, the total period of hospitalization is 88 days. The claimant has lost his income during these 88 days. Considering monthly income of the claimant @ Rs. 6,000/- per month his per day income comes to Rs. 200/-. Thus, during the period of hospitalization, he sustained loss of Rs. (200 x

88) Rs. 17,600/-. Thus the claimant is entitled to compensation of Rs. 17,600/- under the head of actual loss of income during the hospitalization.

26. Regarding the medical expenditure, by examining Dr. Shyam (PW 2), the claimant has proved the bill issued by the Apex Hospital, Latur (Exh. 50), which shows that at Apex Hospital, the claimant paid charges of Rs. 1,15,370/-. Deposit receipts Exh. 51/1 to 51/9 cannot be considered as it was deposit amount and it would be refunded or adjusted in the bill.

27. The claimant has also proved bills issued for obtaining X-ray report at (Exh. 52/1 to 52/4) which comes to Rs. 440/-.

28. By examining Dr.Kavthekar (PW 3), who is Radiologists, the claimant has also proved receipt (Exh. 59/1 to 59/6) for obtaining City Scan and some X-ray reports from Vision Spiral C.T. Scan Center. This amount is proved by Dr. Kavthekar (PW 3) as Rs. 3,700/-.

29. By examining Shri Padmakar Bardapurkar (PW 4), the claimant has also proved bills of Home Sai Pathology Lab (Exh. 61/1 to 61/24), from where the claimant obtained pathology report during his treatment. This bill comes to Rs. 1,48,090/-.

30. By examining Sagar Chapsi (PW 5) and Jaiprakssh Reddi (PW 6), the claimant has also proved bills of medicines purchased by him for his treatment as well as (Exh. 63/1 to 63/7 and Exh. 65/1 to 65/144) which comes to Rs. 49,468/-.

31. Thus, the claimant is entitled to total following compensation under heads of medical expenditure :

| Sr.No | Description | Amount in Rs. |
|---|---|---|
| 1) | Bill issued by the Apex Hospital, Latur (Exh. 50) : | 115370 |
| 2) | Bills for obtaining X-ray report at (Exh. 52/1 to 52/4) : | 440 |
| 3) | City Scan and some X-ray reports from Vision Spiral C.T. Scan Center : | 3700 |
| 4) | Bills of Home Sai Pathology Lab (Exh. 61/1 to 61/24) : | 148090 |
| 5) | Medicines purchased (Exh. 63/1 to 63/7) and (Exh. 65/1 to 65/144) : | 49468 |
| | Total= | 3,17,068/- |

32. In addition to this, as the claimant was hospitalized for 88 days, certainly he would have been attended by some family member. Thus, the claimant is entitled to compensation @ Rs. 500/- per day towards charges of attendant. Thus, charges for 88 days come to (500 x 88) = Rs. 44,000/-. The claimant is entitled to

Rs. 44,000/- under the head of attendant charges.

33. In addition to this, considering the physical condition of the claimant, the compensation of Rs. 50,000/- needs to be awarded, under the head of nourishing food.

34. As the claimant has become lame person, who needs service of somebody, to do all routine activities, the compensation of Rs. 1,00,000/- is to be awarded under the head of loss of amenities.

35. At the time of accident, claimant was 24 years young person. Therefore, after sustaining 100% disability, he has lost the marriage prospects. Compensation of Rs. 50,000/- needs to be awarded under the head of loss of marriage prospects and like expectancy.

36. Dr. Shyam (PW 2) has also proved that the claimant needs the medicine to avoid convulsion, which may be taken for his entire life. He has proved certificate (Exh. 54). Thus, under the head of future medical expenses, the claimant is entitled to compensation of Rs. 50,000/-.

37. Considering the nature of injuries sustained by the claimant, the compensation of Rs. 50,000/- has to awarded under the

head of pains, suffering and trauma.

38. Thus, the claimant is entitled for following compensation under different heads :

| Sr.No | Description | Amount in Rs. |
|---|---|---|
| 1) | Actual loss of income during the hospitalization : | 17600 |
| 2) | Future loss of income : | 1814400 |
| 3) | Medical expenditure. | 317068 |
| 4) | Attendant charges. | 44000 |
| 5) | Nourishing food. | 50000 |
| 6) | Loss of amenities. | 1,00,000 |
| 7) | Loss of marriage prospects. | 50000 |
| 8) | Future medical expenses. | 50000 |
| 9) | Pains, suffering and the trauma. | 50000 |
| | Total = | 24,93,068/- |

39. The claimant is also entitled to interest on this compensation amount @ 9% per annum from the date of filing of claim petition till realization of compensation amount. This compensation shall be inclusive of No Fault Liability compensation.

40. In view of above discussion, the First Appeal 2800 of 2009 filed by the Insurance Company is dismissed and Cross

Objection No. 5816 of 2010 filed by is allowed. The award passed by Motor Accident Claims Tribunal, Latur in MACP No. 299 of 2007 is modified to enhance the compensation to the tune of Rs. 24,93,068/- (Rs. Twenty Four Lacs Ninety Three Thousand and Sixty Eight Hundred Only) with interest thereon @ 9% per annum from the date of filing of claim petition till realization of compensation amount. It shall be inclusive of compensation received under No Fault Liability.

41. Out of compensation amount, 50% amount shall be invested in fixed deposit in any Nationalized Bank for the period of three years, through next friend Shri Trimbak Kishanrao Mane. The fixed deposit shall be renewed on its maturity, till full recovery of claimant or till his death. The quarterly accrued interest shall be paid to the next friend Shri Trimbak Kishanrao Mane, which shall be utilized only for maintenance and treatment of the claimant. Remaining 50% amount shall be paid to the claimant through next friend Shri Trimbak Kishanrao Mane, by account payee cheque and this amount shall be utilized only for maintenance and treatment of the claimant.

42. Premature withdrawal of fixed deposit is not permissible without permission of the Tribunal. Concerned Bank be informed accordingly. The fixed deposit receipt shall be deposited in the safe custody of the Tribunal. Award be modified accordingly.

43. Appellant the New India Assurance Company Ltd. shall pay cost of the Appeal and Cross Objection to the claimant. Other parties shall bear their respective costs.

44. The deposited amount be transmitted to the Tribunal, Latur for the payment and investment of compensation amount, in accordance with the modified award.

45. Permission is granted to the claimant to withdraw the deposited compensation amount.

46. Civil application No. 6360 of 2018 is disposed of in above said terms.

47. Appeal is disposed of in above said terms.

**( SUNIL K. KOTWAL )**
**JUDGE**

mahajansb/