

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL ST. NO. 17586 OF 2017
WITH
CIVIL APPLICATION NO. 3662 OF 2017
WITH
CIVIL APPLICATION NO. 3663 OF 2017
IN
FIRST APPEAL ST. NO. 17586 OF 2017**

The New India Assurance Co.Ltd. ...Appellant

Versus

Mr. Sayyad Abdus Sadique & Anr. ...Respondents

**WITH
CIVIL APPLICATION ST. NO. 5050 OF 2018
IN
FIRST APPEAL ST. NO. 17586 OF 2017**

Mr. Sayyad Abdus @ Abdul Sadique ...Applicant

Versus

The New India Assurance Co. Ltd. & Anr. ...Respondents

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Mr.Devendranath S. Joshi for the Original Appellant.
Mr. Vilas R. More for Respondent Nos. 1 and 2 and the Applicant in
CAFST No. 5050 of 2018.

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CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **FEBRUARY 22, 2018**

P.C.:

1. Upon urgent mentioning, taken on Production Board.
2. Admit. By consent of the parties, the Appeal is heard finally and decided at the stage of admission.
3. This Appeal is directed against the judgment and award dated 11.11.2016 passed by the learned Member, CR-5, MACT, Mumbai in M.A.C.P. No. 1767 of 2010 thereby granting compensation of Rs. 6,87,000/- to the original claimants @9% p.a. from the date of filing of the application.
4. Javed Akhtar Abdus Sadique lost his life in motor vehicular accident dated 07.05.2010. He was performing his duty as a supervisor on the dumping ground site at Govandi. At that time, one motor dumper bearing no. MH-43-U-2077 dashed him and he died on the spot. The original claimants i.e. parents of the deceased filed claim application under Section 166 of the Motor Vehicles Act for compensation. The deceased was 26 years old and was working in the Transport Company and earning Rs. 6000/- p.m. After issuance of the notice, the opposite party/ owner did not appear and did not

file written statement. The insurance company appeared, filed written statement and contested the claim mainly on the ground of negligence. The original claimants adduced evidence. After considering the oral as well as documentary evidence, the learned Member of the tribunal allowed the application to the extent of Rs. 6,87,000/- along with interest @ 9% p.a. Hence, this Appeal.

5. The learned Counsel for the appellant submits that the appellant/ insurance company challenges this Appeal on the point of quantum. He further submits that the multiplier 17 applied by the learned Member of the tribunal is on a higher side so also the amount of compensation is excessive. He further submits that the learned Member of the tribunal has considered 50% income of the deceased though it is mentioned Rs. 6000/- p.m. in the application, as the salary certificate has not produced and also the employer has not examined. The learned Member of the tribunal has fixed the notional income Rs. 4000/- p.m. He further submits that in view of the fixed formula laid down in the case of ***National Insurance Company Limited Versus Pranay Sheti and Ors.*** reported in ***AIR 2017 SC 515***, where the salary is not proved, it should be computed 40% of the income of the deceased towards

future prospects for the age group below 40 years. In this case, the learned Member of the tribunal has fixed 50% of the income of the deceased for future prospects.

6. The learned Counsel for respondent nos. 1 and 2 submits to the order of this Court.

7. Considered the submissions. Perused the impugned order. In view of the judgment in the case of ***National Insurance Company Limited Versus Pranay Sheti and Ors.*** (*supra*), the computation of future prospect amount can be reduced from 50% to 40%. No other defence is available. Hence, the remaining order stands maintained as it is. The calculation of the amount of future prospect is as follows:

Salary	Rs. 4000/-
40% Future Prospect	Rs.1600/-
Total	Rs. 5600/-
50% dependency	Rs. 2800/-
Annual Salary	Rs. 33,600/-
Multiplier	17
Loss of Income	Rs. 5,71,200/-
Conventional Heads	Rs. 75,000/-
Total	Rs. 6,46,200/-
Interest maintained @9% p.a.	

8. The statutory amount of Rs.25,000/- deposited by the insurance company at the time of filing of Appeal is to be transferred to M.A.C.T., Mumbai.

9. Hence, First Appeal is partly allowed.

10. Civil Applications are also accordingly disposed of.

(MRIDULA BHATKAR, J.)