

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.383 OF 2005

The New India Assurance Co. Ltd.,
through its Authorised Signatory,
Divisional Manager Mr. Shrikant Baliram
Aney, Age : 51 years, Occu. Service,
Aurangabad Divn., Aurangabad

APPELLANT
(Ori. Respondent
No.2)

VERSUS

1. Suresh Ramrao Bansode,
Age : 38 years, Occu. Labourer
2. Sunita w/o Suresh Bansode,
Age : 35 years, Occu. Household

Both R/o Lamjana, Tq. Ausa,
District Latur

3. Gausoddin s/o Nabisab Bagwan,
Age : 46 years, Occu. Business,
R/o Bagwan Galli, Nilanga,
- RESPONDENTS**
(Ori. Claimants
and Respondent No.1)

Mr. Dhananjay Deshpande, Advocate for the appellant
Mr. N.D. Kendre, Advocate for respondent Nos.1 and 2

CORAM : SUNIL K. KOTWAL, J.

DATE : 12th JUNE, 2019

ORAL JUDGMENT :

This appeal is directed by original opponent
No.2 – New India Assurance Company Ltd. Against the
judgment and award passed by the Motor Accident Claims

Tribunal, Latur ("Tribunal", for short) in Motor Accident Claims Petition No.77/2002 ("MACP", for short), whereby compensation of Rs.1,50,000/- was awarded by the Tribunal, in the case of child death below the age of 5 years. Respondent Nos.1 and 2 are original claimants, who are the parents of the deceased whereas respondent No.3 is the owner of the offending Tempo bearing registration No.MH-24/F-4214.

2. The facts, in nutshell, leading to institution of this appeal are that on 2nd January, 2002 at village Lamjana Pati on Latur-Nilangaz road, when deceased Sangita, at about 5.45 p.m., was sitting by the side of road to answer the nature's call, the offending tempo came from Latur side and gave dash to the deceased by coming towards wrong side of the road. The accident occurred due to rash and negligent driving by the driver of the tempo and therefore, the claimants filed claim petition for compensation under Section 166 of the Motor Vehicles Act.

3. The owner of the offending tempo and insurer resisted the claim petition. The insurer of the offending tempo raised statutory defence regarding breach of condition of policy of the insurance, for lack

of valid and effective driving licence with the driver of the offending tempo.

4. After considering the evidence placed on record, the Tribunal awarded compensation of Rs.1,50,000/- to the claimants, inclusive of No Fault Liability compensation. The joint and several liability was fastened against original opponent Nos.1 and 2. That award is under challenge in the present appeal.

5. Heard Mr. Dhananjay Deshpande, learned counsel for the appellant – insurer of the offending tempo and Mr. N.D. Kendre, learned counsel for respondent Nos.1 and 2 – claimants. None appeared for respondent No.3, though served.

6. The sum and substance of the arguments advanced by the learned counsel for the insurer is that the Tribunal awarded exorbitant compensation even in the case of child death. On the other hand, learned counsel for the claimants supported the impugned judgment.

7. In the case at hand, undisputedly, the deceased was below the age of 15 years and therefore, multiplier of 15 is applicable as approved by the Apex Court in the case of ***“National Insurance Company Ltd. Vs. Pranay***

Sethi and others" [2018(3) Mh.L.J.70].

8. As the deceased was non-earning member of the family, the Tribunal assessed her notional income as Rs.15,000/- per annum and after deducting 1/3rd amount towards personal expenses of the deceased, applied proper multiplier. Thus, the income of the deceased available to her family comes to Rs.1,50,000/-. In addition to this, in view of law settled by the Apex Court, the claimants are entitled to compensation of Rs.15,000/- under the head of 'Loss of Estate' and Rs.15,000/- under the head of 'Funeral Expenses'. Thus, in view of this changed position of law, in fact, the claimants are entitled to more compensation than awarded by the Tribunal. However, in absence of Cross-Objection, this Court cannot enhance the compensation. Therefore, I have no hesitation to hold that this appeal being devoid of merit deserves to be dismissed.

9. Accordingly, First Appeal No.383 of 2005 is dismissed. The parties to bear their respective costs.

**[SUNIL K. KOTWAL]
JUDGE**