

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

FIRST APPEAL NO.68 OF 2007

1. Putalabai w/o Janshing Jadhav
Age : 42 years, Occu : Household
2. Anusaya Janshing Jadhav
Age : 28 years, Occu : Education
3. Rekhabai Janshing Jadhav
Age : 25 years, Occu : Education
4. Kishor Janshing Jadhav
Age : 16 years, Occu : Education
5. Ashok Janshing Jadhav
Age : 14 years, Occu : Education
6. Gorakh Janshing Jadhav
Age : 12 years, Occu : Education
7. Munni Janshing Jadhav
Age : 7 years, Occu : Nil,
Applicant Nos.4 to 7 minor,
U/g of their real mother, Applicant No.1

All R/o. at President of Near
R.R. Kapoors Ccusher, Pokhardi Shivar,
Tq. Nagar, Dist. Ahmednagar

8. Harilal Fakira Jadhav (Deleted)

.. Appellants
(Orig. Appellants)

Versus

1. Smt Latake Shoba Somnath ... (Appeal is dismissed against
Respdt No.1 as per Registrar's
order dtd.17.03.2009)
2. The National Insurance Company Ltd,

Through its Branch Manager,
A-101, Raj Chambers, Kothala Road,
Ahmednagar

3. Babasaheb Faulad Irani
Age : Major, Occu : Business,
R/o. Opp. New Court, Ward No.1
Shrirampur, Dist. Ahmednagar

.. Respondents
(Orig. Respondents)

.....

Advocate for Appellants : Smt M.P. Thube – Mhase ;
Advocate for Respondent No.2 : Shri S.V. Kulkarni.

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CORAM : P.R. BORA, J.
Dated: February 21, 2019

ORAL JUDGMENT :

1. The claimants in Motor Accident Claim Petition No.1129 of 1999 decided by the Motor Accident Claims Tribunal at Ahmednagar (hereinafter referred to as the 'Tribunal') have preferred the present appeal on the ground that, though the Tribunal has recorded a finding that the appellants – claimants are entitled for the compensation of Rs.3,60,000/-, has awarded the compensation of only Rs.3,00,000/- for the reason that the claimants had restricted the claim to that extent.

2. The learned Counsel appearing for the appellants – claimants submitted that, the claimants had restricted the claim to the extent of Rs.3,00,000/- obviously for the reason that, at

the time of filing the claim petition, they were in a position to pay the court fee only on the aforesaid amount of Rs.3,00,000/-. The learned Counsel relying upon the Judgment of the Hon'ble Apex Court in the case of **Nagappa Vs. Gurudayal Singh and others, 2003 ACJ 12** submitted that, though the claimants had restricted the claim to Rs.3,00,000/-, if according to the Tribunal the claimants were found entitled to receive the compensation of Rs.3,60,000/-, the Tribunal was bound to award the entire said amount to the claimants. The learned Counsel, in the circumstances, prayed for enhancing the amount of compensation to Rs.3,60,000/-. The learned Counsel submitted that, the claimants are ready to pay the deficit court fee.

3. I have perused the impugned Judgment. Para-8 of the impugned judgment is relevant to decide the controversy arose in the present matter, which reads thus:

“8. Now turning to the question of compensation to be awarded to the applicants, the applicant Puralabai has stated in her application Exh.1 as well as in her deposition at Exh.34 that her husband deceased Janshing was working as labour and thereby he was earning Rs.5,000/- per month. However to prove the income of the deceased there is no any cogent and convincing oral or documentary evidence adduced by the applicants, except the bare interested version of the applicant Putalabai. However,

considering the fact that deceased was the labourer and labourer gets minimum wages of Rs.100/- per day the monthly income of the deceased can be assessed as Rs.3,000/-. Therefore, after deducting 1/3rd amount from this amount the dependency of applicants comes to Rs.2,000/- per month i.e. Rs.24,000/- per year. According to the applicants, the age of the deceased at the time of accidental death was 45 years. In post-mortem inquiry Exh.44, inquest panchanama Exh.45 and post-mortem report Exh.46 the age of the deceased is mentioned as 45 years on the date of accident the proper multiplier that would be applicable is 15. Therefore, the total compensation payable to the applicants comes to Rs.3,60,000/- (Rs.24,000/- x 15). However, the applicants in the present claim petition have claimed Rs.3,00,000/- only and, therefore, the applicants are entitled to claim Rs.3,00,000/- i.e. Rs.1,50,000/- from the opponents No.1 and 2 jointly and severally and remaining Rs.1,50,000/- from opponent no.3. Though the opponent No.2 has taken contention in the written statement that the driver of the goods truck was not holding effective and valid driving licence at the time of accident and thereby the owner has committed breach of terms and conditions of the insurance policy, therefore, the liability is not duly indemnified with it, no any evidence is adduced by the opponent to prove the same. I, therefore, answer the issues accordingly.”

4. It is quite evident that, the Tribunal has recorded a clear finding, holding the appellants – claimants entitled for the total compensation of Rs.3,60,000/-. In the circumstances, though the claimants had restricted the claim to Rs.3,00,000/-, in view of the law laid down by the Hon'ble Apex Court in the case of **Nagappa Vs. Gurudayal Singh and others** (cited supra) it was well within the competence of the Tribunal to award the compensation of Rs.3,60,000/- and while doing so, the Tribunal

could have required the claimants to pay the deficit court fee.
For the reasons stated above, the appeal deserves to be allowed.
In the result, the following order is passed.

ORDER

(i) The impugned Award so far as it relates to amount of compensation stands modified as follows:

. It is held that, the appellants – claimants are entitled to receive the compensation of Rs.3,60,000/- jointly and severally from the respondents in the present case together with the interest thereon at the rate and in the manner prescribed by the Tribunal in the impugned Award.

(ii) The appellants - claimants shall pay the deficit court fee.

(iii) The appeal stands allowed in the aforesaid terms.

(PR. BORA, J.)