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

FIRST APPEAL NO.275 OF 2012

1. Sagar Ramesh Barhate
Age : 13 years, occu.: education
Through next friend maternal
Uncle
Neelkantha Digambar Choudhari
Age : 52 years, occu.: service
R/o Plot No.163, Ganesh Colony,
Jalgaon.

2. Jaubai Kautik Barhate
Age : 67 years, occu.: household
R/o Mahajan Wada, Khalchi Ali,
At Post Nashirabad, Taluka and
District Jalgaon. **Appellants**.

Versus

1. M/s S.P. Golden Transport Co.
Prop. Gokulsingh Gugalsingh
Chauhan
Age : major, occu.: business
R/o Plot No.280, Gurukrupa
Palace, Near Haldiram Factory.
Bhandara Road, Nagpur.

2. The New India Assurance Co.
Divisional Manager,
Mandore Market, First Floor,
Near Panchamukhi Hanuman,
Jalgaon. **Respondents**.

***

Mr. M.M. Bhokrikar, Advocate for the appellants.
Mr. A.B. Kadethankar, Advocate for respondent No.2.

***

WITH
FIRST APPEAL NO. 1037 OF 2019

New India Assurance Company Ltd.
A Subsidiary of the General
Insurance Corporation of India and
a Company incorporated under the
Companies Act, having one of its
Divisional Office at Adalat Road,
Aurangabad through its Senior
Divisional Manager
Vishwas Bansi Gaikwad
Age : 52 years, occu.: service at
New India Assurance Co. D.O.
No.1, Adalat Road, Aurangabad. **Appellant**.

Versus

1. Sagar Ramesh Barhate
Age : 13 years, occu.: education
Through next friend maternal
Uncle
Neelkantha Digambar Choudhari
Age : 52 years, occu.: service
R/o Plot No.163, Ganesh Colony,
Jalgaon.

2. Jaubai Kautik Barhate
Age : 67 years, occu.: household
R/o Mahajan Wada, Khalchi Ali,
At Post Nashirabad, Taluka and
District Aurangabad.

3. M/s S.P. Golden Transport Co.
Prop. Gokulsingh Gugalsingh
Chauhan
Age : major, occu.: business
R/o Plot No.280, Gurukrupa
Palace, Near Haldiram Factory.
Bhandara Road, Nagpur. **Respondents**.

WITH
CIVIL APPLICATION NO. 4124 OF 2018
(Sagar Ramesh Barhate Vs. New India Assurance Co.)
AND
CIVIL APPLICATION NO. 15232 OF 2010
(New India Assurance Co. Vs. Sagar Ramesh Barhate)

***

Mr. A.B. Kadethankar, Advocate for the appellant.
Mr. M.M. Bhokrikar, Advocate for respondent Nos.1 and 2.

***

WITH
FIRST APPEAL NO. 1138 OF 2018

New India Assurance Company Ltd.
A Subsidiary of the General
Insurance Corporation of India and
a Company incorporated under the
Companies Act, having one of its
Divisional Office at Adalat Road,
Aurangabad through its Senior
Divisional Manager
Vishwas Bansi Gaikwad
Age : 52 years, occu.: service at
New India Assurance Co. D.O.
No.1, Adalat Road, Aurangabad. **Appellant**.

Versus

1. Sagar Ramesh Barhate
Age : 13 years, occu.: education
Through next friend maternal
Uncle
Neelkantha Digambar Choudhari
Age : 52 years, occu.: service
R/o Plot No.163, Ganesh Colony,
Jalgaon.

2. M/s S.P. Golden Transport Co.
Prop. Gokulsingh Gugalsingh Chauhan

Age : major, occu.: business
R/o Plot No.280, Gurukrupa
Palace, Near Haldiram Factory.
Bhandara Road, Nagpur. **Respondents**.

WITH
CIVIL APPLICATION NO. 15217 OF 2010
(New India Assurance Co. Vs. Sagar Ramesh Barhate)
AND
CIVIL APPLICATION NO. 3799 OF 2018
(Sagar Ramesh Barhate Vs. New India Assurance Co.)
WITH
CIVIL APPLICATION NO. 14171 OF 2017
IN
X-OBJECTION (ST.) NO. 31115 OF 2017
(Sagar Ramesh Barhate Vs. New India Assurance Co.)

WITH
FIRST APPEAL NO. 1137 OF 2018

New India Assurance Company Ltd.
A Subsidiary of the General
Insurance Corporation of India and
a Company incorporated under the
Companies Act, having one of its
Divisional Office at Adalat Road,
Aurangabad through its Senior
Divisional Manager
Vishwas Bansi Gaikwad
Age : 52 years, occu.: service at
New India Assurance Co. D.O.
No.1, Adalat Road, Aurangabad. **Appellant**.

Versus

1. Sagar Ramesh Barhate
Age : 13 years, occu.: education
Through next friend maternal
Uncle

Neelkantha Digambar Choudhari
Age : 52 years, occu.: service
R/o Plot No.163, Ganesh Colony,
Jalgaon.

2. M/s S.P. Golden Transport Co.
Prop. Gokulsingh Gugalsingh Chauhan
Age : major, occu.: business
R/o Plot No.280, Gurukrupa
Palace, Near Haldiram Factory.
Bhandara Road, Nagpur. **Respondents**.

WITH
CIVIL APPLICATION NO. 15219 OF 2010
(New India Assurance Co. Vs. Sagar Ramesh Barhate)
AND
CIVIL APPLICATION NO. 3841 OF 2018
(Sagar Ramesh Barhate Vs. New India Assurance Co.)
WITH
CIVIL APPLICATION NO. 2757 OF 2018
IN
X-OBJECTION (ST.) NO. 29692 OF 2017
(Sagar Ramesh Barhate Vs. New India Assurance Co.)

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 24 April 2019.
Judgment pronounced on : 2 May 2019.

JUDGMENT.

1. First Appeal No.275 of 2012 is filed by original claimant against the judgment and award passed by Motor Accident Claims Tribunal (hereinafter referred to as the "Tribunal), Jalgaon in Motor Accident Claim Petition (M.A.C.P.) No.36/2006 and First Appeal No.1037 of 2019 is filed by original

opponent No.2 – New India Assurance Company Limited against the same judgment and award. Original opponent No.1 is the owner of offending vehicle.

2. First Appeal No.1138 of 2018 is filed by original opponent No.2 – New India Assurance Company Limited against the judgment and award passed by the Tribunal, Jalgaon in M.A.C.P. No.37/2006 and in that appeal original claimant has also filed Cross-objection (St.) No. 31115 of 2017 with Civil Application No. 14171 of 2017 for condonation of delay in filing Cross-objection. First Appeal No. 1137 of 2018 is also filed by the same Insurance Company against the judgment and award passed by the Tribunal, Jalgaon in M.A.C.P. No.38/2006 and original claimant has filed Cross-objection (St.) No. 29692 of 2017 against the same award with Civil Application No.2575 of 2018 for condonation of delay in filing Cross-objection.

3. All these appeals and Cross-objections being filed against common judgment and award passed by the Tribunal, Jalgaon, are disposed of by this common judgment.

4. Hereinafter the parties are referred to in accordance with their status in the original proceeding as “claimant”,

"owner" of offending vehicle and "Insurer" of the offending vehicle.

5. The facts leading to institution of these appeals and Cross-objections are that on 15.09.2005 deceased Ramesh Barhate was riding his motorcycle bearing registration No.MH-19-R-2777by Nashirabad to Jalgaon road and his wife Kalpana @ Pushpa and daughter Harshada as well as claimant Sagar Ramesh Barhate were travelling by the same motorcycle as pillion riders. That time truck bearing registration No. MH-31-CV-3736 (hereinafter referred to as the "offending vehicle") came from backside of the motorcycle in high speed and gave dash to the motorcycle of deceased Ramesh Barhate, resulting into the death of Ramesh, his wife Kalpana and daughter Harshada on the spot of the accident. After the occurrence, the truck driver immediately fled away with his truck from the spot of the accident, which was subsequently intercepted by police. The accident occurred due to rash and negligent driving by the drive of offending vehicle. Therefore, the dependents of deceased filed these three different motor accident claim petitions.

6. Only the Insurer of the offending vehicle filed written statement and raised objection that the accident occurred due to contributory negligence of the deceased Ramesh who was driving the motorcycle with three pillion riders and who lost balance of the motorcycle.

7. In M.A.C.P. No. 36/2006 claimant No. 2 Jaubai Kautik Barhate, who was the mother of deceased Ramesh, died during pendency of these appeals. Claimant No.1 Sagar Ramesh Barhate is the sole surviving legal representative of claimant No.2 Jaubai Kautik Barhate. Therefore, at the stage of appeal the name of claimant No.2 Jaubai Kautik Barhate is deleted. At the time of filing of claim petition the claimant Sagar Ramesh Barhate was 13 years old minor, and therefore, all the claim petitions were filed through next friend. However, by this time the claimant Sagar Barhate has become major.

8. Heard Mr. Kadethankar, learned Counsel for the insurer of offending vehicle and Mr. Bhokrikar, learned Counsel for the claimant.

9. Learned Counsel for the insurer submits that by driving the motorcycle with three pillion riders, the deceased

Ramesh contributed occurrence of the accident and on account of his contributory negligence, the entire liability to pay compensation cannot be fastened only against the Insurer of offending vehicle.

10. The next objection raised by learned Counsel for the Insurer is that the claim petitions are bad for non-joinder of driver of offending vehicle who is necessary party to the claim petitions.

11. The last contention of learned Counsel for the Insurer is that the compensation awarded by Tribunal is exorbitant.

12. In reply, learned Counsel for the claimant submits that mere riding of the motorcycle with three pillion riders does not amount to contributory negligence on the part of deceased Ramesh Barhate. He submits that the Insurer of the offending vehicle did not examine the driver of offending vehicle to prove that deceased Ramesh lost balance and thereby accident occurred. He submits that absolutely no evidence has been brought on record in the insurer of offending vehicle to prove contributory negligence of deceased Ramesh. To substantiate his

contention, he placed reliance on the case of **"Devising Vs. Vikramsingh and others" (AIR 2008 MP 18)**, wherein the Full Bench held that mere carrying two pillion riders in violation of Section 128 of the Motor Vehicles Act does not amount to contributory negligence. Breach of Section 128 must have casual connection with occurrence of the accident. He also placed reliance on the case of **"Meera Devi & anr. Vs. H.R.T.C. & ors" (AIR 2014 SC (Supp) 1881)**, wherein the Apex Court held that to prove contributory negligence there should be specific evidence to prove that the accident took place due to rash and negligent driving of the deceased in the case before the Apex Court.

13. The next contention of learned Counsel for the claimant is that in written statement the insurer of the offending vehicle has not taken objection regarding non-joinder of necessary party, and therefore, the same cannot be raised in the appeals.

14. The next contention of learned Counsel for the claimant is that while awarding compensation, the Tribunal did not consider loss of future prospects and even the Tribunal awarded meager compensation under conventional heads. He

prays for enhancement of compensation by allowing Cross-objections and First Appeal No.275 of 2012.

15. At the stage of argument, with consent of both parties, the delay in filing Cross-objections by the claimant in First Appeal No. 1138 of 2018 and First Appeal No. 1137 of 2018, is condoned. Otherwise also, the minor age of helpless claimant in these appeals is certainly a sufficient cause for delay in filing Cross-objections. Therefore, Civil Application No. 14171 of 2017 and Civil Application No. 2757 of 2018 are disposed of as allowed and Cross-objections filed by claimant are taken on record.

16. After hearing both the sides, following points arise for my determination.

	POINTS		**FINDINGS**
1)	Whether deceased Ramesh Barhate contributed occurrence of the accident?	:-	No.
2)	Whether the claima petitions are bad for non-joinder of necessary party?	:-	No.
3)	What would be the just and reasonable compensation?	:-	As per final order.

AS TO POINT NOS.1 AND 2 :-

16. After going through the record and proceeding, it emerges that on the unfortunate day of accident, when the deceased Ramesh Barhate was riding on motorcycle with his wife and two minor children, the offending truck came from backside and gave dash to the motorcycle resulting into the death of deceased Ramesh, his wife Kalpalata @ Pushpa and minor daughter Harshada. Though the Insurer of offending vehicle took defence that the accident occurred because deceased Ramesh Barhate lost balance of his motorcycle while riding the motorcycle with three pillion riders in contravention of Section 128 of Motor Vehicles Act, to substantiate this contention the Insurer of the offending vehicle did not examine any eye witness or even the driver of offending vehicle. Therefore, in absence of the evidence to prove contributory negligence of deceased Ramesh Barhate, by no stretch of imagination it can be held that even deceased Ramesh contributed the occurrence of the accident. Otherwise also, no evidence is on record which shows that due to riding of the motorcycle by deceased Ramesh with three pillion riders, he lost balance and that was the cause

behind the accident. Therefore, in any case, the Insurer of offending vehicle cannot prove that the accident occurred on account of contributory negligence of deceased Ramesh. Therefore, at the outset I hold that the Insurer of the offending vehicle failed to prove that the accident occurred due to contributory negligence of deceased Ramesh Barhate.

17. The next question arises whether the claim petitions are bad for non-joinder of driver of the offending vehicle? However, after going through written statement of the Insurer of offending vehicle, it emerges that in the written statement nowhere objection was raised regarding non-joinder of driver of offending truck as necessary party. Therefore, at the belated stage of these appeals, the Insurer of offending vehicle cannot take objection regarding non-joinder of driver of offending vehicle as necessary party to the proceedings. I hold that the objection raised by learned Counsel for the Insurer of offending vehicle regarding non-joinder of necessary party, holds no substance. Accordingly, I hold that the claim petition is not bad for non-joinder of necessary party. I answer point Nos.1 and 2 in the negative.

AS TO POINT NO.3 :-

18. Now the question arises what would be the just and reasonable compensation payable to the claimant. The Insurer of the offending vehicle contended that compensation awarded by the Tribunal is exorbitant. On the other hand, by filing cross-appeal and cross-objections, the claimant claimed enhancement of compensation.

19. As three persons from one and the same family of the claimant died in one accident, the compensation payable to the claimant for the death of each deceased would be different, on account of different age and occupation of respective deceased.

JUST AND REASONABLE COMPENSATION PAYABLE IN FIRST APPEAL NO. 275/2012
WITH
FIRST APPEAL NO.1037/2019
Against Judgment & Award passed in M.A.C.P. NO.36/2006

20. In M.A.C.P. No.36/2006 the deceased Ramesh Barhate is the father of claimant Sagar Barhate. From the School Leaving Certificate (Exh.29) of deceased Ramesh, it emerges that his date of birth is 02.05.1959. Therefore, on the date of his death i.e. on 15.09.2005, deceased Ramesh was 46

years old. Therefore, in view of the law laid down by the Apex Court in the case of **"Sarla Varma & Ors Vs. Delhi Transport Corp. & Anr.", (AIR 2009 SC 3104)**, the multiplier of "13" is applicable for determining the loss of dependency.

21. According to the claimant, deceased Ramesh Barhate was Lecturer in Junior College. Murlidhar Tayade (PW-2), who is the Headmaster of New English High School which is attached to Junior College of the deceased, was examined by the claimant. From the evidence of Murlidhar Tayade (PW-2) it emerges that the deceased was appointed on 20.06.1986 and he was due for retirement on 31.03.2017. The relevant pages of the service book are at Exhs. 39 to 45. This witness has also brought and proved salary certificate (Exh.47) to prove the last salary of deceased Ramesh in the month of August 2005. From the cross-examination of this witness, it emerges that in column No.17 of the pay register (Exh.46) deduction towards Society Loan has been shown. After going through the copy of pay register (Exh.46), it emerges that in the month of August 2005, the gross salary of deceased Ramesh was Rs. 20,041/- and out of this salary, following amount was deducted.

P.F.A.	:-	Rs. 2,000/-
Professional tax	:-	Rs. 200/-
Income tax	:-	Rs. 800/-
Credit Society Loan	:-	Rs. 560/-
L.I.C.	:-	Rs. 316/-
R.D.	:-	Rs. 300/-
Total	:-	Rs. 4,176/-

22. However, in view of the law settled by Apex Court in the cases of **"Shyamwati Sharma & ors Vs. Karam Singh & ors" [(2010 12 SCC 378]** and **"National Insurance Company Ltd. Vs. Indira Srivastav" [2008 (3) Mh.L.J. SC 554)** while calculating net income of the deceased, income tax and other taxes can be deducted. However, deductions towards G.P.F., life insurance premium, repayments of loans and allowances given for benefit of the family members of the deceased, cannot be deducted. Thus, out of gross salary of Rs. 20,041/-, only professional tax of Rs. 200/- and income tax of Rs. 800/- (Total Rs.1,000/-) can be deducted. In the circumstances, the monthly income of deceased Ramesh comes to Rs. 19,041/-. Thus, the annual income of deceased Ramesh comes to Rs. 2,28,492/-.

23. As the deceased was in permanent service in the college and was in between 40 to 50 years of age, in view of the law laid down by the Apex Court in the case of **“National Insurance Co. Ltd. Vs. Pranay Sethi and others” [2018 (3) Mh.L.J. (SC) 70]**, 30% addition is to be made in the actual annual income of the deceased. Thus, after adding 30% amount i.e. Rs. 68,547/- towards loss of future prospects, the annual income of deceased Ramesh comes to Rs. 2,97,039/- (2,28,492 + 68,547) .

24. In M.A.C.P. No.36/2006 the number of dependents in the family of deceased Ramesh are “2”. Therefore, in view of the law settled by the Apex Court in the case of **“Sarla Varma Vs. Delhi Transport Corp.**” (supra), one-third amount i.e. Rs.99,013/- is to be deducted towards personal expenses of deceased Ramesh from his annual income. Thus, the contribution of deceased Ramesh available to his family comes to Rs. 1,98,026/- (2,97,039 – 99,013).

25. As observed above, after applying multiplier of “13” to the annual contribution of deceased Ramesh, the loss of dependency sustained by claimant comes to Rs. 25,74,338/-

(1,98,026 x 13).

26. After going through the judgment passed by the Tribunal, it emerges that under conventional heads, the Tribunal awarded meager amount of Rs 2,000/- towards funeral expenses and Rs. 2,500/- towards loss of estate. However, in view of the guidelines issued by the larger Bench of the Apex Court in the case of **"National Insurance Co. Vs. Pranay Sethi"** (supra) under conventional heads, the claimant is entitled to following compensation :

Loss of estate	:- Rs. 15,000/-
Funeral expenses	:- Rs. 15,000/-
Total	:- Rs. 30,000/-

27. Thus, the claimant Sagar is entitled to following compensation under different heads :-

Loss of dependency	:- Rs. 25,74,338/-
Loss of estate	:- Rs. 15,000/-
Funeral expenses	:- Rs. 15,000/-
Total	:- Rs. 26,04,338/-

28. As the Insurer of the offending vehicle dragged the claimant in the Court of law on account of quantum of compensation, in view of the law settled by Apex Court in the

case of **“Municipal Council of Delhi Vs. Association of victims of Upahaar Tragedy” [(2011) 14 SCC 481]**, the claimant Sagar is entitled to interest on compensation amount at the rate of 9% per annum from the date of filing of petition till realization of entire compensation amount.

29. This compensation amount shall be inclusive of the compensation under “no fault liability” already received by the claimant.

30. Thus, the compensation awarded by the Tribunal in M.A.C.P. No.36/2006 as Rs. 19,27,000/- needs to be enhanced to the tune of Rs.26,04,338/- (inclusive of compensation under head “no fault liability”) by allowing First Appeal No.275 of 2012 and by dismissing First Appeal No. 1037 of 2019.

JUST AND REASONABLE COMPENSATION PAYABLE IN CROSS-OBJECTION (ST.) NO. 31115 OF 2017
WITH
FIRST APPEAL NO. 1138 of 2018
Against Judgment & Award passed in M.A.C.P. NO.37/2006

31. M.A.C.P. No.37/2006 is fled by claimant Sagar Ramesh Barhate for the accidental death of his mother Kalpana @ Pushpa Ramesh Barhate.

32. From the date of birth certificate of deceased Kalpana @ Pushpa, it emerges that her date of birth is 06.12.1963. Therefore, on the date of her death she was 42 years old. In the circumstances, in view of the legal principles settled by the Apex Court in the case of **"Sarla Varma Vs. Delhi Transport Corp."** (supra), the multiplier of "14" is applicable in this proceeding while determining loss of dependency.

33. No doubt, at the time of death deceased Kalpana @ Pushpa was housewife. However, her degree certificates (Exhs.31 to 33) show that her educational qualification was M.A. B.Ed. Even by examining Vinayak Mahajan (PW-2), who is a Clerk from M.J. College, Jalgaon, the claimant has also proved that in the year 1986-87 for some period deceased Kalpana @ Pushpa worked as a Lecturer of Social Science on clock hour basis. This indicates the earning capacity of deceased Kalpana @ Pushpa as Teacher or Lecturer.

34. Learned Tribunal assessed notional income of deceased Kalpana @ Pushpa at the rate of Rs.3,000/- per month relying on the ratio of the judgment in the case of **"Lata Wadhwa Vs. State of Bihar" (AIR 2001 SC 3218)**. However, it cannot be ignored that in the case of **"Lata Wadhwa Vs. State of Bihar"** (supra), the Apex Court determined notional income of deceased woman who died in the year 1989 in fire mishap. Deceased Kalpana @ Pushpa died in the

year 2005 i.e. after more than 15 years from the date of mishap in **"Lata Wadhwa's"** case. It is matter of common sense that during the span of 15 years certainly there was escalation of income even daily wages. Thus, in the year 2005 notional income of deceased Kalpana @ Pushpa, who is well educated and able bodied 42 years old woman, cannot be less than Rs.5,000/- per month. I hold that notional income of deceased Kalpana @ Pushpa was Rs. 5,000/- per month. It follows that her annual income comes to Rs. 60,000/- (5,000 x 12).

35. As in the family of deceased Kalpana @ Pushpa, the claimant only is surviving member, out of annual income of deceased Kalpana @ Pushpa one-third amount is to be deducted towards personal expenses of deceased Kalpana @ Pushpa. After deducting this one-third amount i.e. Rs. 20,000/-, the annual income of deceased available to her family comes to Rs. 40,000/- (60,000 – 20,000)

36. As deceased Kalpana @ Pushpa was not in permanent job, in view of the law settled in the case of **"National Insurance Co. Vs. Pranay Sethi"** (supra), considering the age of deceased as 42 years, there shall be addition of 25% (Rs. 10,000) of her actual income towards loss of future prospects. Thus, the annual income of deceased Kalpana @ Pushpa comes to Rs.50,000/- (40,000 + 10,000).

37. After applying multiplier of "14", the loss of dependency comes to Rs. 7,00,000/- (50,000 x 14).

38. In accordance with law settled by Apex Court in the case of **“National Insurance Co. Vs. Pranay Sethi”** (supra), the claimant is also entitled to following compensation under conventional heads :-

Loss of estate	:- Rs. 15,000/-
Funeral expenses	:- Rs. 15,000/-
Total	:- Rs. 30,000/-

39. Thus, the claimant Sagar is entitled to following compensation under different heads :-

Loss of dependency	:- Rs. 7,00,000/-
Loss of estate	:- Rs. 15,000/-
Funeral expenses	:- Rs. 15,000/-
Total	:- Rs. 7,30,000/-

40. As the Insurer of the offending vehicle dragged the claimant in the Court of law on account of quantum of compensation, in view of the law settled by Apex Court in the case of **“Municipal Council of Delhi Vs. Association of victims of Upahaar Tragedy” [(2011) 14 SCC 481]**, the claimant Sagar is entitled to interest on compensation amount at the rate of 9% per annum from the date of filing of petition till realization of entire compensation amount.

41. The compensation amount shall be inclusive of the compensation under "no fault liability" already received by the claimant.

42. Thus, the compensation awarded by the Tribunal in M.A.C.P. No.37/2006 as Rs. 3,65,000/- needs to be enhanced to the tune of Rs.7,30,000/- (inclusive of compensation under head "no fault liability") by allowing Cross-objection (Stamp) No.31115/2017 and by dismissing First Appeal No. 1138 of 2018.

JUST AND REASONABLE COMPENSATION PAYABLE IN CROSS-OBJECTION (ST.) NO. 29692 OF 2017
WITH
FIRST APPEAL NO. 1137 OF 2018
Against Judgment & Award passed in M.A.C.P. NO.38/2006

43. This claim petition is filed by claimant Sagar for compensation on account of accidental death of his sister Harshada Ramesh Barhate.

44. After going through the postmortem report (Exh.20) of deceased Harshada, it emerges that at the time of death, she was 15 years old. Therefore, in view of the law settled by the Apex Court in the case of **"Sarla Varma Vs. Delhi Transport Corp."** (supra), the multiplier of "18" is applicable in the case at

hand.

45. No doubt, at the time of death Harshada was school going young girl and she was non earning member of the family. However, in the case of **"Kishan Gopal Vs. Lala and others" [2014 (3) Mh.L.J. 560]**, the Apex Court held that notional income of 10 years old non-earning boy shall be considered as Rs.30,000/- per annum. Applying the same ratio, I hold that the notional income of deceased Harshada is to be considered as Rs.30,000/- per annum.

46. After deducting one-third amount i.e. Rs.10,000/- towards personal expenses, the available income of deceased Harshada to her family comes to Rs.20,000/- per annum.

47. From the evidence placed on record, it emerges that Harshada was an intelligent young girl who secured more than 84% marks in all previous examinations before her matriculation. The certificates (Exhs.34 to 44) show that deceased Harshada was active young girl in all activities and she was all-rounder. Thus, considering her academic capacity and all-rounder nature, in view of the law settled by the Apex Court in the case of **"National Insurance Co. Vs. Pranay Sethi"**

(supra), towards loss of future prospects there shall be addition of 40% amount in her annual income of Rs.20,000/-. Thus, after addition of this 40% amount i.e. Rs. 8,000/-, her annual income comes to Rs. 28,000/- (20,000 + 8,000).

48. After applying multiplier of "18", the loss of dependency sustained by claimant comes to Rs. 5,04,000/- (28,000 x 18).

49. In addition to this, the claimant is entitled to following compensation under the conventional heads :

Loss of estate	:- Rs. 15,000/-
Funeral expenses	:- Rs. 15,000/-
Total	:- Rs. 30,000/-

50. Thus, the claimant Sagar is entitled to following compensation under different heads :-

Loss of dependency	:- Rs. 5,04,000/-
Loss of estate	:- Rs. 15,000/-
Funeral expenses	:- Rs. 15,000/-
Total	:- Rs. 5,34,000/-

51. As the Insurer of the offending vehicle dragged the claimant in the Court of law on account of quantum of compensation, in view of the law settled by Apex Court in the

case of **"Municipal Council of Delhi Vs. Association of victims of Upahaar Tragedy" [(2011) 14 SCC 481]**, the claimant Sagar is entitled to interest at the rate of 9% per annum from the date of filing of petition till realization of entire compensation amount.

52. The compensation amount shall be inclusive of the compensation under "no fault liability" already received by the claimant.

53. Thus, the compensation awarded by the Tribunal in M.A.C.P. No.38/2006 as Rs. 1,55,000/- needs to be enhanced to the tune of Rs.5,34,000/- (inclusive of compensation under head "no fault liability") by allowing Cross-objection (Stamp) No.29692 of 2017 and by dismissing First Appeal No.1137 of 2018.

54. Accordingly, my conclusion is that the contention of learned Counsel for the Insurer regarding exorbitant compensation awarded by the Tribunal is not at all accepted. On the other hand, contention of the claimant deserves to be accepted for enhancement of compensation.

55. I hold that claimant is entitled to compensation in each claim petition as below :

M.A.C.P. No. 36/2006 :- Rs. 26,04,338/-.

M.A.C.P. No. 37/2006 :- Rs. 7,30,000/-

M.A.C.P. No. 38/2006 :- Rs. 5,34,000/-

56. It follows that First Appeal No.1138 of 2018 filed by Insurer against judgment and award passed in M.A.C.P. No.37/2006 deserves to be dismissed and Cross-objection (Stamp) No. 31115 of 2017 filed by original claimant deserves to be allowed. So also, First Appeal No. 1137 of 2018 filed by Insurer against judgment and award passed in M.A.C.P No.38/2006 deserves to be dismissed and Cross-objection (Stamp) No. 29692 of 2017 filed by claimant deserves to be allowed.

57. Accordingly, First Appeal No.275 of 2012, Cross-objection (Stamp) No. 31115 of 2017 and Cross-objection (Stamp) No. 29692 of 2017 are allowed and First Appeal No. 1037 of 2019, First Appeal No. 1137 of 2018 and First Appeal No. 1138 of 2018 are dismissed.

58. The award passed by Motor Accident Claims Tribunal, Jalgaon in M.A.C.P. No.36/2006 is modified to enhance the compensation to the tune of Rs. 26,04,338/- (inclusive of compensation under "no fault liability") with interest thereon at

the rate of Rs.9 % per annum from the date of filing of petition till realization of entire compensation amount.

59. The award passed by Tribunal, Jalgaon in M.A.C.P. No.37/2006 is modified to enhance compensation to the tune of Rs.7,30,000/- (inclusive of compensation under "no fault liability") with interest thereon at the rate of Rs.9 % per annum from the date of filing of petition till realization of entire compensation amount.

60. The award passed by Tribunal, Jalgaon in M.A.C.P. No.38/2006 is modified to enhance compensation to the tune of Rs.5,34,000/- (inclusive of compensation under "no fault liability") with interest thereon at the rate of Rs.9 % per annum from the date of filing of petition till realization of entire compensation amount.

61. As claimant No.2 Jaubai, who was the grandmother of claimant No.1 Sagar, died during pendency of the appeal, only claimant Sagar Ramesh Barhate is entitled to receive this entire compensation amount. Accordingly, claimant Sagar Ramesh Barhate, who has now attained majority, is entitled to receive the entire compensation awarded in M.A.C.P. No. 36/2006, M.A.C.P.

No.37/2006 and M.A.C.P. No.38/2006.

62. On deposit of the above-mentioned compensation amount before the Tribunal, 50 % amount out of total compensation amount shall be invested in fixed deposit in the name of claimant Sagar Ramesh Barhate in any Nationalized Bank of his choice for a period of five years and the remaining 50% amount shall be paid to him by issuing account payee cheque in his name through the Tribunal.

63. The award passed by Motor Accident Claims Tribunal, Jalgaon in M.A.C.P. No.36/2006, M.A.C.P. No.37/2006 and M.A.C.P. No.38/2006 be modified in above-said terms.

64. Parties to bear their respective costs of appeals.

65. The compensation amount, if any, deposited by the Insurer of the offending vehicle in these appeals be transmitted to Motor Accident Claims Tribunal, Jalgaon for its disbursement to the claimant Sagar Ramesh Barhate in accordance with modified award.

66. Claimant Sagar is permitted to withdraw the said deposited compensation amount from the Tribunal.

67. Pending Civil Applications are disposed of accordingly.

(SUNIL K. KOTWAL)
JUDGE

vdd/