

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLANT JURISDICTION

FIRST APPEAL (STAMP) NO.5735 OF 2016
WITH
CIVIL APPLICATION NO.841 of 2016
WITH
CIVIL APPLICATION NO.842 of 2016
IN
FIRST APPEAL (STAMP) NO.5735 OF 2016

United India Insurance Company Limited
Motor Third Party Hub
Union Cooperative Insurance Building
5th Floor, Sir P.M. Road, Mumbai – 400 001.

...Appellant/
Applicant

Versus

1. Smt. Kunti Binod Pande
Aged about 32 years
2. Master Rahul Binod Pande
Age about 12 years
3. Master Amar Binod Pande
Age about 8 years
4. Ms. Anjali Binod Pande
Age about 4 years

All R./at Krishna Sagar Co-op. Hsg. Society
EC-87, Room No. 101,
Evershine City, Gokhivare,
Vasai (E), Dist. Thane.

5. Hakim Haroon Khan,
R/o House No. 762, Vasai Phata
Pelhar, Tal. Vasai, Dist. Thane.

...Respondents

WITH
CIVIL APPLICATION NO.2787 of 2019
IN
FIRST APPEAL (STAMP) NO.5735 OF 2016

1. Smt. Kunti Binod Pande
age about 37 years,
occupation Housewife,
widow of the deceased.

2. Master Rahul Binod Pande
age about 16 years,
occupation Student
(Son of the deceased)
3. Master Amar Binod Pande
age about 12 years,
occupation Student
(son of the deceased)
4. Ms. Anjali Binod Pande
age about 8 years,
occupation Student
(daughter of the deceased)

All R./at Krishna Sagar Co-op. Hsg. Society
EC-87, Room No. 101,
Evershine City, Gokhivare,
Vasai (E), Dist. Thane.

...Applicants

IN THE MATTER OF BETWEEN :-

United India Insurance Company Limited
Motor Third Party Hub
Union Cooperative Insurance Building
5th Floor, Sir P.M. Road, Mumbai – 400 001.

...Appellant/
Applicant

Versus

1. Smt. Kunti Binod Pande
Aged about 32 years
2. Master Rahul Binod Pande
Age about 12 years
3. Master Amar Binod Pande
Age about 8 years
4. Ms. Anjali Binod Pande
Age about 4 years

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5. Hakim Haroon Khan,
R/o House No. 762, Vasai Phata
Pelhar, Tal. Vasai, Dist. Thane.

...Respondents

Mr.Nikhil Mehta with Mr.Rahul Mehta /b M/s.KMC Legal Venture for the Appellant and Applicant in CAF/841/2016.

Ms.Rina Kundu for the Respondent Nos.1 to 4 and for the Applicants in CAF/2787/2019.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 27TH NOVEMBER, 2019
PRONOUNCED ON : 17TH DECEMBER, 2019

JUDGMENT :-

1. By this first appeal filed under section 173 of the Motor Vehicles Act, 1988, the appellant (original opponent no.2) has impugned the judgment and award dated 15th December, 2014 passed by the Motor Accident Claims Tribunal, Vasai (for short "MACT") in MACP No.144 of 2012 allowing the claims made by the respondent nos.1 to 4 (original applicants) partly and directing the appellant to pay an amount of Rs.89,75,500/- inclusive of "No Fault Liability" with interest at the rate of 8% p.a. from the date of application till realization jointly and severally with the original opponent no.1. It was further directed that the appellant shall indemnify the opponent no.1 insured and do pay the entire amount of compensation. By consent of the appellant and the respondents (original applicants), the first appeal is heard finally at the admission stage. Some of the relevant facts for the purpose of deciding the first appeal are as under :

2. The original applicants are wife, sons and the children of the deceased Vinod Pande respectively who met with a vehicular accident on 31st October, 2012 at 10.10 p.m. near Kitchen Garden Hotel, Waliv Naka. It was the case of the respondent nos. 1 to 4 that

on 31st October, 2012, the said deceased Vinod Pande was riding his motorcycle bearing registration No.MH 03 - AP – 8430 and was coming from Vasai Phata towards Vasai station by Station Road. A tanker bearing registration No.MH 04 – BU – 1772 (hereafter referred to as “the offending vehicle”) came from behind the deceased and ran over him. The lower limb of body was smashed. He was immediately taken to the Golden Park Hospital but was declared dead. It was the case of the respondent nos. 1 to 4 that the said accident occurred due to the sole negligence of the driver of the offending vehicle. The report of incident was lodged and a police case was registered. The offending vehicle was owned by the original opponent no.1 and was validly insured with the appellant (original opponent no.2).

3. The original opponent no.1 though was served with summons did not file any written statement. The appellant though was served with summons, neither filed written statement nor appeared before the MACT, Vasai. The matter thus proceeded *ex-parte* against both, the appellant as well as original opponent no.1. The MACT, Vasai framed four issues for determination. The respondent no.1 is the widow of the deceased and was examined on behalf of the respondent nos. 1 to 4 before the MACT, Vasai. In her deposition, the said witness deposed that the said deceased met with vehicular accident when he was riding the motorcycle bearing No.MH 03 – AP 8483. The offending vehicle came from behind and dashed the said deceased. The wheel of the offending vehicle ran over him

and thus his lower portion was smashed. The said person died in the accident. The said witness also tendered an FIR, spot panchnama, inquest panchanama and postmortem report. In the FIR filed by the respondent nos. 1 to 4, it was indicated that both the vehicles of the deceased and the offending vehicle were involved in the accident. The inquest panchanama was relied upon to show that the deceased met with an accident and succumbed to injuries.

4. The MACT, Vasai rendered the judgment and award on 15th December, 2014 and held that the respondent nos.1 to 4 (original applicants) had proved that the said deceased Vinod Pande had succumbed to injuries in an accident occurred on 31st October, 2012 involving the motorcycle bearing registration No.MH 03 – AP 8483 and the offending vehicle bearing registration No.MH 04 – BU 1772. It was also held that it was proved that the accident had occurred due to the negligent driving of the offending vehicle.

5. Mr.Mehta, learned counsel appearing for the appellant invited my attention to some of the findings rendered by the MACT, Vasai and would submit that the driver of the offending vehicle was driving the said offending vehicle in slow and moderate speed and was not negligent in any manner whatsoever and thus the appellant was not liable to pay any compensation to the original applicants. The original applicant no.1 was not an eye witness to the alleged accident and therefore her evidence being hearsay could not have been believed by the MACT, Vasai in awarding compensation

against the appellant.

6. It is submitted by the learned counsel for the appellant that in any event the MACT, Vasai ought to have apportioned the negligence between the driver of the insured offending vehicle and the deceased who was riding the vehicle in the ratio of 50:50 and could not have attributed the entire negligence on the driver of the offending vehicle.

7. It is submitted by the learned counsel that the MACT, Vasai could not have considered the average income for calculating the loss of dependency which would be at Rs.5,18,967/- (Rs.4,33,750/- for the financial year 2011-2012 + Rs.5,10,530/- for the financial year 2011-2012 + Rs.6,12,622/- for the financial year 2012-2013. He submits that the MACT, Vasai could not have awarded 40% towards future prospects in view of there being no iota of evidence produced by the original applicant. The entire compensation awarded by the MACT, Vasai is based on no evidence. It is submitted by the learned counsel that in paragraph 11 of the impugned judgment and award, the MACT, Vasai has considered the gross income for the year 2011-2012 of the said deceased and not the net income. The income tax and the professional tax amount had to be deducted from the said income. He submits that an amount of Rs.45,028/- towards income tax has not been deducted from the income of the said deceased.

8. Learned counsel placed reliance on paragraph 12 of the judgment and award and would submit that the MACT, Vasai could not have permitted the compensation towards consortium of Rs.1,00,000/- towards loss of estate, Rs.10,000/-, loss of love and affection to children Rs.25,000/-. He submits that even if any compensation was to be allowed under those heads, compensation would not have exceeded total of Rs.70,000/- under those heads as allowed by the Supreme Court in case of **National Insurance Company Limited vs. Pranay Sethi & Ors., (2017) 16 SCC 680.**

9. Learned counsel for the respondent nos.1 to 4 (original applicants) on the other hand invited my attention to various findings rendered by the MACT, Vasai and would submit that the MACT, Vasai rightly considered the annual income for last three financial years based on the income tax return filed by the original applicant no.1 and had taken average thereof. She submits that the deduction towards income tax in the sum of Rs.45,028/- had to be deducted while computing the loss of income. She submits that after deducting the income tax paid at Rs.45,028/- from the gross income of Rs.6,18,622/- from the business carried on by the said deceased. The total net income arrived at Rs.5,67,594/- as per the income tax return for the assessment year 2012-2013. She submits that 40% amount i.e. 2,27,037/- ought to have been added towards the prospective income as per the principles laid down by the Supreme Court in case of **National Insurance Company Limited vs. Pranay Sethi & Ors.** (supra) and more particularly in paragraph 61(iv). She

submits that out of the said sum of Rs.7,94,631/-, 1/4th amount will have to be deducted towards personal expenses of the said deceased on himself which came to be Rs.1,98,657/-. The remaining amount after deducting 1/4th for his personal expenses came to Rs.5,95,973/-.

10. It is submitted by the learned counsel that the said deceased was 37 years old when accident took place. She placed reliance on the school leaving certificate of the said deceased which was also considered by the MACT, Vasai while applying the multiplier of 15. After applying multiplier of 15, compensation would be Rs.89,39,595/-. Learned counsel submits that the original applicant no.1 being the widow of the deceased is entitled to Rs.40,000/- by way of compensation towards consortium. The other three applicants being the children of the said deceased are entitled to the parental consortium at the rate of Rs.40,000/- each which comes to Rs.1,20,000/- in view of the principles of law laid down by the Supreme Court in case of **Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors. (2019) 4 Mh.L.J. 1.**

11. It is submitted by the learned counsel that the applicant nos.2, 3 and 4 are also entitled to be paid compensation towards loss of love and affection at Rs.50,000/- each. The applicants were entitled to Rs.15,000/- towards funeral expenses. She submits that the applicants were thus entitled for compensation of Rs.92,79,595/- from the appellant. The MACT, Vasai has awarded compensation

only in the sum of Rs.89,75,500/- and thus the applicants are entitled to the additional compensation of Rs.3,04,095/- with interest at the rate of 8% p.a. from the date of filing the application till its realization.

12. Mr.Mehta, learned counsel for the appellant submits that since the original applicants have not filed any cross appeal before this Court or any cross objection in the first appeal filed by the appellant, no additional compensation can be awarded by this Court in favour of the original applicants. He strongly placed reliance on the judgment delivered by a single Judge of this Court in case of **United India Insurance Company Limited vs. Rajani Suresh Bhore & Ors.** decided on 29th June, 2017 in First Appeal No.1344 of 2013 and in particular paragraphs 18 to 41 of the said judgment and would submit that after considering the judgment of Supreme Court in case of **Ranjana Prakash & Ors. vs. Divisional Manager & Anr. (2011) 14 SCC 639**, this Court has held that where an appeal is filed seeking reduction, a claim for enhancement (i.e. not on maintenance of the original award, nor for correction of an obvious error), or vice-versa, cannot be entertained without substantive appeal or cross objection as contemplated by Order 41 Rule 22 of the Code of the Code of Civil Procedure, 1908.

13. Ms. Rina Kundu, learned counsel for the respondent no.1 to 4 (original applicants) on the other hand on the issue as to whether filing of cross-objection or a separate appeal against the judgment and award of the Tribunal is mandatory or not for seeking the

enhancement of claim not fully awarded by the Tribunal or for additional claims by way of just compensation or not, have made various submissions. Learned counsel placed reliance on an unreported judgment delivered on 3rd July, 2017 delivered by Shri Justice G.S. Patel in case of **The Bajaj Allianz General Insurance Company Limited v/s. Kanchan Sunil alias Suman Sinha and Ors.** in First Appeal No. 269 of 2015 and would submit that in the said judgment, this Court has negated the submissions made by the learned counsel for the Insurance Company that in absence of substantive appeal by the original claimants, the amounts could not be enhanced.

14. This Court adverted to the earlier judgment in case of **United India Insurance Company Limited v/s. Rajani Suresh Bhore and Ors.** decided on 29th June, 2017 in First Appeal No. 1344 of 2013, judgment delivered by this Court exercising, in case of **State of Maharashtra v/s. Smt. Kamaladevi Kailashchandra Kaushal and Ors.** in First Appeal No. 103 of 2017 decided on 15th March, 2017 and in case of **New India Assurance Co. Ltd. v/s. Smt. Seema Sudam Auti and Ors.** in First Appeal No. 1991 of 2011 decided on 9th June, 2017. She submits that after adverting to various judgments, Shri Justice G.S. Patel enhanced various amounts in respect of the claims awarded by the Tribunal without any substantive appeal filed by the claimants. She distinguished the judgment of this Court delivered by Shri Justice G.S. Patel delivered on 29th June, 2017 in case of **United India Insurance Company**

Limited v/s. Rajani Suresh Bhore and Ors. She submits that this Court in the subsequent judgments delivered by the same learned Judge has taken different view without following the earlier view taken in the judgment delivered on 9th June, 2017 delivered by his Lordship.

15. Learned counsel placed reliance on the judgment delivered by this Court in case of **New India Assurance Co. Ltd. v/s. Smt. Seema Sudam Auti and Ors.** in First Appeal No. 1991 of 2011 and in particular paragraphs 17 and 19, which judgment was followed by Shri Justice G.S. Patel in case of **Bajaj Allianz General Insurance Company Limited** (supra). Learned counsel for the respondent nos. 1 to 4 also placed reliance on an unreported judgment of this Court in case of **National Insurance Co. Ltd. v/s. Mrs. Vaswati Samiran Ganguly and Anr.** delivered on 24th June, 2019 in First Appeal No. 368 of 2016 and in particular paragraphs 17 to 20 in support of the submission that even in an absence of any appeal or cross-objection, there was no embargo in enhancing the compensation.

16. Learned counsel for the respondent nos. 1 to 4 placed reliance on the judgment of Supreme Court in case of **Sanobanu Nazirbhai Mirza and Ors. v/s. Ahmedabad Municipal Transport Service** in Civil Appeal No. 8251 of 2013 reported in **(2013) 16 SCC 719** and in particular paragraph 9 in support of the submission that even in absence of any cross-objection by separate appeal, the Court

has ample power to enhance compensation. It is statutory duty of the Tribunal and the Appellate Court to award just and reasonable compensation to the legal representative of the deceased to mitigate their hardship and agony.

17. Learned counsel for the respondent nos. 1 to 4 also placed reliance on the judgment of Supreme Court in case of **Andhra Pradesh State Road Transport Corporation v/s. M. Ramadevi and Ors.** delivered on 25th January, 2008 in Civil Appeal No. 682 of 2008, reported in **(2008) 3 SCC 379** and in particular paragraphs 8 and 9 in support of the submission that filing of separate appeal or cross-objection for enhancement of claim for compensation is not mandatory.

18. Learned counsel for the respondent nos. 1 to 4 also strongly placed reliance on an unreported judgment delivered by Division Bench of this Court on 31st August, 2012 in case of **National Insurance Co. Ltd. v/s. Ms. Vaishali Harish Devare and Ors.** in First Appeal No. 1068 of 2012 and in particular paragraph 16 in support of the submission that even if there is no cross-appeal or cross-objection preferred by the claimants, the exercise of determining the just compensation will have to be carried out.

19. In so far as the quantification of various claims awarded by the Tribunal and claims which are sought to be enhanced by the respondent nos. 1 to 4 is concerned, learned counsel submits that

the Tribunal had rightly determined the gross income of the said deceased at Rs.6,12,622/- from the business being carried out by the said deceased. She submits that out of the said gross income of Rs.6,12,622/-, the amount of Rs.45,028/- towards income tax will have to be deducted. She submits that total income for the assessment year 2012-2013 thus would be Rs.5,67,594/-. The applicants would be entitled to 40% on the said amount towards future prospect which comes to Rs.2,27,037/-.

20. In support of this submission, learned counsel placed reliance on the judgment of Supreme Court in case of **National Insurance Company Limited v/s. Pranay Sethi & Ors.** (supra) and more particularly in paragraph 61(iv). She submits that after adding the prospective income at 40%, the applicants would be entitled to Rs.7,94,631/- as gross income. Out of the said amount of Rs.7,94,631/-, 1/4th thereof can be deducted for personal expenses of the said deceased which comes to Rs.1,98,657/-. The remaining income after deducting 1/4th towards personal expenses, the gross income comes to Rs.5,95,973/-. She submits that since the said deceased was 37 years old as can be verified from school leaving certificate of the said deceased, multiplier of 15 would have to be applied to ascertain the dependency income which comes to Rs.89,39,595/-.

21. It is submitted that the original applicant no.1 being widow would be entitled to a separate compensation towards consortium on

the sum of Rs.40,000/-. The applicant nos. 2 to 4 being children of the said deceased would also be entitled to parental consortium in the sum of Rs.40,000/- each. In support of this submission, learned counsel placed reliance on the judgment of Supreme Court in case of **Magma General Insurance Co. Ltd.** (supra) and more particularly in paragraph 8.7 thereof. She submits that the applicant nos. 2 to 4 being children of the said deceased would also be entitled to the compensation @ Rs.50,000/- each towards “loss of love and affection”. The applicants would also be entitled to Rs.15,000/- towards “loss to estate” in accordance with principles laid down by the Supreme Court and more particularly in paragraph 54 of the judgment in case of **National Insurance Company Limited v/s. Pranay Sethi & Ors.** (supra). The applicants would be also entitled to claim of Rs.15,000/- towards funeral expenses.

22. It is submitted by the learned counsel that the applicants thus would be entitled to receive the compensation in the sum of Rs.92,79,595/-. However, the Tribunal has awarded compensation in the sum of Rs.89,75,500/-. The applicants would be entitled to Rs.3,04,095/- from the appellant with interest @ 8% p.a. from the date of filing claim for compensation till its realization.

23. Learned counsel for the respondent nos. 1 to 4 placed reliance on the income tax returns of the said deceased for the assessment year 2012-2013 showing the gross income at Rs.6,12,622/- and also the amount of income tax at Rs.45,028/- and

would submit that the respondent nos. 1 to 4 had no objection, if the said amount of Rs.45,028/- is deducted from the gross income of the said deceased.

24. Mr. Mehta, learned counsel for the appellant in rejoinder submits that in so far as the judgment of this Court in case of **National Insurance Co. Ltd. v/s. Mrs. Vaswati Samiran Ganguly and Anr.** (supra) relied upon by the learned counsel for the respondent nos. 1 to 4 is concerned, this Court had not considered the judgment of Supreme Court in case **Ranjana Prakash & Ors. v/s. Divisional Manager and Anr.** (supra) and is thus clearly distinguishable in the facts of this case.

25. In so far as the judgment of this Court in case of **New India Assurance Co. Ltd. v/s. Smt. Seema Sudam Auti and Ors.** (supra) relied upon by the learned counsel for the respondent nos. 1 to 4 is concerned, it is submitted by the learned counsel for the appellant that in the said judgment this Court had not considered the provisions of Order XLI, Rule 22 of the Code of Civil Procedure, 1908 and thus the said judgment would not assist the case of the respondent nos. 1 to 4. In so far as the unreported judgment dated 13th July, 2017 delivered by Shri Justice G.S. Patel in case of **Bajaj Allianz General Insurance Company Limited** (supra), which was relied upon by the respondent nos. 1 to 4 is concerned, it is submitted by the learned counsel that this Court had considered the conventional heads of compensation and not other heads of

compensation and thus the said judgment is distinguishable in the facts of this case.

26. In so far as the quantification is concerned, learned counsel submits that the loss of income at the most could be awarded at Rs.4,25,695/-, on which multiplier of 15 could be applied which would amount of Rs.63,85,426/-. The respondent nos. 1 to 4 would be entitled to 30% of the said amount of Rs.63,85,426/- under the head of "future prospects" which come to Rs.19,15,627.80/-. He submits that in accordance with the principles laid down by the Supreme Court in case of **National Insurance Company Limited v/ s. Pranay Sethi & Ors.** (supra), the respondent nos. 1 to 4 could claim only Rs.70,000/- under those four heads and not the substantial amount as awarded by the Tribunal. He submits that the Tribunal has thus allowed excess amount of Rs.6,04,534/- as compensation by allowing the claim at Rs.89,75,587/- as against Rs.83,71,053.50/-.

REASONS AND CONCLUSION

27. This Court shall first decide the issue whether the original applicant is required to file any cross-appeal or cross-objection for seeking enhancement of the claims not awarded by the Tribunal or for seeking additional claim for compensation under various heads in the First Appeal filed by the Insurance Company impugning the part of the judgment and award rendered by the Tribunal.

28. Learned counsel for the appellant and the respondent nos. 1 to 4 have relied upon several judgments in support of their rival contentions on this issue which are being referred to and dealt with in the later part of this judgment. The Supreme Court in case of **Ramla and Ors. v/s. National Insurance Company Limited and Ors., (2019) 2 SCC 192** has held that there is no restriction that the Court cannot award compensation exceeding the claim amount, since, the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award 'just compensation'. The Motor Vehicles Act is a beneficial and welfare legislation. A 'just compensation' is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time barred. Further, there is no need for a new cause of action to claim an enhanced amount. The Supreme Court adverted to its earlier judgment in case of **Nagappa v/s. Gurudayal Singh, (2003) 2 SCC 274**, in case of **Magma General Insurance Co. Ltd.** (supra) and in case of **Ibrahim v/s. Raju, (2011) 10 SCC 634**.

29. Supreme Court in case of **Andhra Pradesh State Road Transport Corporation v/s. M. Ramadevi and Ors.** (supra) after adverting to its earlier judgment in case of **Nagappa v/s. Gurudayal Singh** (supra) rejected the contention that when there was no cross-appeal or no cross-objection filed by the claimants in the appeal filed by the appellant-corporation, the High Court could not have enhanced the amount. The Supreme Court enhanced the compensation awarded by the Tribunal in the said judgment. The

Supreme Court in case of **Sanobanu Nazirbhai Mirza and Ors.** (supra) adverted to its earlier judgment in case of **Nagappa v/s. Gurudayal Singh** (supra) and enhanced the amount of compensation.

30. A learned Single Judge of this Court in case of **New India Assurance Co. Ltd. v/s. Umedlal Samanaji Oswal, 2019 SCC OnLine Bom 4138** after adverting to the judgment of Supreme Court in case of **Andhra Pradesh State Road Transport Corporation v/s. M. Ramadevi and Ors.** (supra), judgment of Division Bench of this Court in case of **National Insurance Co. Ltd. v/s. Ms. Vaishali Harish Devare and Ors.** (supra), judgment delivered by a Single Judge of this Court in case of **State of Maharashtra v/s. Smt. Kamaladevi Kailashchandra Kaushal and Ors.** (supra) and in case of **New India Assurance Co. Ltd. v/s. Smt. Seema Sudam Auti and Ors.** (supra) held that it shall be an endeavour of the Tribunal/Court to ensure awarding of 'just compensation'. There is no bar for the Claims Tribunals or the Court to award the compensation in excess of what is claimed. It is the obligation of the Court to decide 'just compensation' even in the absence of cross-appeal or cross-objection.

31. The learned Single Judge of this Court in case of **Kelkar and Kelkar v/s. Shripad Narayan Gore and Others, 2019 SCC OnLine Bom 4140** after adverting to the judgment of Supreme Court in case of **Ranjana Prakash & Ors. v/s. Divisional Manager and**

Anr. (supra) and also adverting to the judgment of Supreme Court in case of Nagappa v/s. Gurudayal Singh (supra) and various other judgments held that while dealing with the claim petition under Section 166 of the Motor Vehicles Act, which is benevolent provision, the Tribunal/Court is not bound by the pleadings or strict rules of evidence. The Tribunal/Court is under a statutory obligation to determine 'just compensation' without succumbing to the niceties or technicalities of the matter. It is held by this Court that there is no embargo for the Claims Tribunal or the Court to award compensation in excess of what is claimed. Since, it is statutory obligation of the Court to do complete justice to the parties and to award just compensation, there is no restriction to enhance the compensation in appropriate case even in the absence of cross-appeal or cross-objection. This Court accordingly after applying the principles of law laid down by the Supreme Court in case of National Insurance Company Limited v/s. Pranay Sethi & Ors. (supra) awarded additional compensation which were allowed by the Supreme Court in the said judgment.

32. This Court in case of Bajaj Allianz General Insurance Company Limited (supra) delivered by Shri Justice G.S. Patel in First Appeal No. 269 of 2015 has rejected the contention of the learned counsel for the Insurance Company that the claim amount awarded by the Tribunal cannot be enhanced in absence of substantive appeal by the claimants. This Court adverted to the earlier judgment delivered by Shri Justice G.S. Patel in case of

United India Insurance Company Limited v/s. Rajani Suresh Bhore and Ors. decided on 29th June, 2017 in First Appeal No. 1344 of 2013 and also adverted to another judgment delivered by this Court Shri Justice M.S. Sonak in case of **State of Maharashtra v/s. Smt. Kamaladevi Kailashchandra Kaushal and Ors.** in First Appeal No. 103 of 2017 decided on 15th March, 2017 and in case of **New India Assurance Co. Ltd. v/s. Smt. Seema Sudam Auti and Ors.** in First Appeal No. 1991 of 2011 decided on 9th June, 2017 and allowed additional compensation in the First Appeal without any substantive appeal by the claimants or without any cross-objection from the claimants.

33. This Court in case of **National Insurance Co. Ltd. v/s. Mrs. Vaswati Samiran Ganguly and Anr.** (supra) delivered on 24th June, 2019 in First Appeal No. 368 of 2016 after adverting to various judgments of Supreme Court has held that there is no embargo in enhancing the compensation in absence of cross-appeal or cross-objection. This Court allowed various additional compensation allowed by the Supreme Court in case of **National Insurance Company Limited v/s. Pranay Sethi & Ors.** (supra) and in case of **Magma General Insurance Co. Ltd.** (supra).

34. A Division Bench of this Court in case of **National Insurance Co. Ltd. v/s. Ms. Vaishali Harish Devare and Ors.** (supra) has held that even if there is no cross-appeal or cross-objection preferred by the claimants, the exercise of determining the

just compensation will have to be carried out. Such adjudication can be made even without taking recourse to Rule 33 of Order XLI of Code of Civil Procedure.

35. In so far as the judgment of this Court delivered by Shri Justice G.S. Patel in case of **United India Insurance Company Limited v/s. Rajani Suresh Bhore and Ors.** (supra) relied upon by the learned counsel for the appellant is concerned, the said judgment was delivered by Shri Justice G.S. Patel on 29th June, 2017. In paragraph 10 of the said judgment, a reference is made to the judgment delivered by Shri Justice G.S. Patel on 29th June, 2017 in case of **United India Insurance Company Limited v/s. Rajani Suresh Bhore and Ors.** (supra), judgment delivered by Shri Justice M.S. Sonak in case of **State of Maharashtra v/s. Smt. Kamaladevi Kailashchandra Kaushal and Ors.** (supra) and in case of **New India Assurance Co. Ltd. v/s. Smt. Seema Sudam Auti and Ors.** (supra) and has rejected the submission made by the learned counsel for the Insurance Company that in absence of a substantive appeal by the claimants, amounts of compensation cannot be enhanced which were not considered by the Tribunal. However, in case of **United India Insurance Company Limited v/s. Rajani Suresh Bhore and Ors.** (supra) which was decided earlier, this Court held that the judgment delivered by Shri Justice M.S. Sonak in case of **State of Maharashtra v/s. Smt. Kamaladevi Kailashchandra Kaushal and Ors.** (supra) did not indicate that Court could grant additional compensation without any substantive

appeal or cross-objection by the claimant.

36. Be that as it may, Shri Justice G.S. Patel in the later judgment delivered on 13th July, 2017 after adverting to the earlier judgment delivered by him in First Appeal No. 1344 of 2013 on 29th June, 2014⁷ and judgments delivered by Shri Justice M.S. Sonak which were distinguished in the said judgment dated 29th June, 2017, in the later judgment dated 13th July, 2017 has taken a view that in absence of substantive appeal filed by the claimant, amounts can be enhanced by the Court in the first appeal filed by the Insurance Company. In my view, the judgment delivered by this Court on 29th June, 2017 in case of **United India Insurance Company Limited v/s. Rajani Suresh Bhore and Ors.** (supra) is *per-incuriam*. Be that as it may, Shri Justice G.S. Patel in the later judgment after adverting to the said judgment has taken a different view.

37. In so far as the judgment of Supreme Court in case of **Ranjana Prakash & Ors. v/s. Divisional Manager and Anr.** (supra) is concerned, the said judgment has been interpreted by this Court in various judgments already referred to aforesaid and after considering the later judgment of the Supreme Court, it is held by this Court that filing of substantive appeal or cross-objection by the claimant for seeking enhancement of the claims is not necessary. The principles of law laid down by the later judgment of Supreme Court and this Court in large number of judgments referred to aforesaid, apply to the facts of this case. The reliance placed by the learned counsel for the

appellant on the judgment delivered by Shri Justice G.S. Patel on 29th June, 2017 in case of **United India Insurance Company Limited v/ s. Rajani Suresh Bhore and Ors.** (supra) is misplaced. The judgment of the Supreme Court in the aforesaid judgment taking a different view, apply to the facts of this case. I am respectfully bound by the said judgment.

38. In my view, there is thus no embargo on this Court to enhance the claims not awarded by the Tribunal in favour of the original claimant. Those compensation can be awarded to grant “just compensation” in favour of the claimant to do complete justice in the matter. In my view, there is thus no substance in the submission of the learned counsel for the appellant that various judgments referred to and relied upon by the learned counsel for the respondent nos. 1 to 4 had not considered the provisions of Order XLI Rule 33 of the Code of Civil Procedure, 1908. The Division Bench of this Court in case of **National Insurance Co. Ltd. v/s. Ms. Vaishali Harish Devare and Ors.** (supra) had considered the provisions of Order XLI Rule 33 of Code of Civil Procedure in the said judgment. In my view, since it is the statutory obligation of the Tribunal and also the Court to do complete justice to the parties and award “just compensation”, there is no restriction to enhance the compensation in appropriate case even in absence of cross-appeal or cross-objection. Appeal proceedings are in continuation of proceedings before Tribunal. In my view, claimant can be permitted to pay an additional amount of Court fees, if any on the additional compensation, allowed by the Appellate

Court on the differential amount.

39. I shall now consider whether the respondent nos. 1 to 4 (original applicants) would be entitled to any additional compensation which are not granted by the MACT, Vasai as claimed across the bar without filing any substantive appeal or cross-objection. The Tribunal has considered the income tax return of the said deceased for the financial year 2010-2011, 2011-2012 and for 2012-2013 filed by the witness examined by the respondent nos. 1 to 4. The respondent nos. 1 to 4 had also claimed non pecuniary losses like consortium, the loss of guidance to the children, the funeral expenses as well as future prospects before the Tribunal.

40. In so far as the gross income of the said deceased considered by the Tribunal is concerned, the Tribunal has considered the gross annual income for the financial year 2012-2013 at Rs.6,12,622/-. The accident of the said deceased had taken place on 31st October, 2012. The Tribunal has deducted 1/4th towards personal and living expenses out of the said amount of Rs.6,12,622/- and has arrived at the figure of Rs.4,59,466/- p.a. The Tribunal has however considered only 30% of the future prospects though the respondent nos. 1 to 4 would be entitled to claim compensation towards prospective income at 40% in view of the principles of law laid down by the Supreme Court in case of **National Insurance Company Limited v/s. Pranay Sethi & Ors.** (supra). The respondent nos. 1 to 4 thus would be entitled to Rs.7,94,631/-.

41. After addition of Rs.2,77,037/- towards 50% of the income as future prospect, the amount arrived at would be Rs.7,94,631/-. There would be deduction of 1/4th thereby personal expenses of the said deceased which would be Rs.1,98,657/-. After deducting those personal expenses at 1/4th, the loss of dependency would be Rs.5,95,973/-. Since, the said deceased was 37 years old as is proved from the School Leaving Certificate produced before the Tribunal, the income of Rs.5,95,973/- would have to be applied multiplier of 15, which comes to Rs.89,75,595/-. The respondent no.1 being widow would be entitled to Rs.40,000/- towards compensation as per judgment of the Supreme Court in case of **National Insurance Company Limited v/s. Pranay Sethi & Ors.** (supra). The respondent nos. 2 to 4 being children of the said deceased are also entitled to compensation under the heads of parental consortium at Rs.40,000/- each.

42. The respondent nos. 2 to 4 would be also entitled to compensation under heads of loss of love and affection at Rs.50,000/- each. The respondent nos. 1 to 4 would be entitled to recover Rs.15,000/- towards loss to estate according to the judgment of Supreme Court in case of **National Insurance Company Limited v/s. Pranay Sethi & Ors.** (supra) and funeral expenses in the sum of Rs.15,000/-. After considering the aforesaid heads of compensations, which were not fully granted by the Tribunal, the respondent nos. 1 to 4 would be entitled to compensation of Rs.92,79,595/- whereas the

Tribunal has awarded compensation in the sum of Rs.89,75,500/-. The respondent nos. 1 to 4 would be also entitled to interest @ 8% p.a. as awarded by the Tribunal from the date of filing of application till realization.

43. I therefore pass the following order:-

- (a) Respondent nos. 1 to 4 would be entitled to the compensation of Rs.92,79,595/- inclusive of 'no fault liability' with interest @ 8% p.a. from the date of application till realization.
- (b) The respondent nos. 1 to 4 will be entitled to share the said decretal amount with interest in equal share.
- (c) The respondent nos. 3 and 4 are still minors. The share of the respondent nos. 3 and 4 thus shall be deposited by the MACT in their name in the Fixed Deposit of any Nationalized Bank for the period till they attain the age of majority under the guardianship of the respondent no.1. Upon attaining the age of majority, the respondent nos. 3 and 4 would be entitled to recover the amount deposited in the Fixed Deposit. The respondent no.1 will be entitled to receive the quarterly interest on the said amount invested for the purpose of maintenance and

education for the respondent nos. 3 and 4 till they attain the age of majority.

- (d) If there is any shortfall in recovering the decreetal amount from the amount deposited by the appellant before the M.A.C.T., the same shall be deposited by the appellant within 2 weeks from the date of computation of the decreetal amount by M.A.C.T., If there is any surplus amount after making payment of the decreetal amount to the respondent nos. 1 to 4 as mentioned above, the same shall be returned to the appellant by the M.A.C.T.
- (e) The differential amount of court fees, if any shall be paid by the respondent nos. 1 to 4, in view of the additional amounts of compensation allowed by this judgment before the M.A.C.T. within 2 weeks from the date of computation of such additional court fees. The M.A.C.T. to permit withdrawal of the amount upon payment of such differential amount of court fee, if any by the respondent nos. 1 to 4.
- (f) Operative part of the judgment and award dated 15th December, 2014 is substituted and modified by the aforesaid judgment.

(g) The parties as well as the M.A.C.T., Vasai are directed to act on the authenticated copy of this order.

(h) In view of the disposal of the First Appeal, pending Civil Applications, if any also stand disposed of. No order as to costs.

(R.D. DHANUKA, J.)