

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

**FIRST APPEAL NO. 431 OF 2009**

New India Assurance Co. Ltd. Bhusawal                      ... Appellant  
Versus  
Ganesh Jayant Bhortakke and others                      ... Respondents

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Mr. Dhananjay Deshpande, Advocate for appellant  
Mr. C. K. Shinde, Advocate for respondent Nos. 1 to 3

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**CORAM : R. G. AVACHAT, J.**

**DATED : 22<sup>nd</sup> NOVEMBER, 2021**

**PER COURT :-**

.                      This is an Insurance Company's appeal, taking exception to the judgment and award granting compensation of Rs.3,93,500/- with interest @ 6% per annum on account of death occurred in vehicular accident.

2.                      Learned Advocate for the appellant – Insurance Company would submit that it was a case of composite negligence. It was an accident between an Auto-rickshaw and Matador. The deceased was one of the passengers in Auto-rickshaw. According to the learned Advocate, it was a case of head on collision between

between the two vehicles and as such, a case of composite negligence. The Tribunal erred in saddling the liability exclusively on owner or insurer of the Matador. On question of quantum, the learned Advocate would submit that the claimants had averred in the petition that the deceased was earning Rs.2,500/- per month. The Tribunal still considered notional income of the deceased at Rs.3,000/- per month. According to him, it should not have been more than Rs.15,000/- per annum. The deceased was a house wife. The petition was filed by her husband and two minor children. None of them was dependent on the deceased. A lesser multiplier ought to have been applied. The learned Advocate, therefore, urged for interference with the impugned judgment and award.

3. It was a case of accident between an Auto-rickshaw and a Matador. The deceased Vandana was travelling in an Auto-rickshaw. She died of injuries suffered in the very accident. On due investigation, the police had charged the tempo driver for being responsible to the accident. The F.I.R. was lodged by the Auto-rickshaw driver. There was nothing in the evidence to observe it to be a case of composite negligence. No interference is therefore warranted with the findings recorded by the Tribunal in this regard.

On the question of quantum of compensation, the Tribunal relied on the judgment in the case of ***Lata Wadhwa and others vs State of Bihar and others*** reported in ***2001 ACJ 1735***, wherein it was observed thus:-

*“Deceased housewives aged between 62 and 72, Death when pandal engulfed in fire during a function of the company. Value of domestic services assessed at Rs.20,000 p.a. and multiplier of 8 adopted plus conventional amount of rs.50,000.”*

4. Considering the same, the Tribunal notionally considered the income of the deceased at Rs. 36,000/- p.a. Deducted 1/3<sup>rd</sup> therefrom and considered it to be a case of loss of annual dependency to the tune of Rs.24,000/-. The accident took place in 1994. True, in the claim petition, the income of the deceased was claimed at Rs.2,500/- per month. Even we strictly go by averments in the claim petition, the annual income of the deceased would come to Rs.30,000/-. Nothing has been awarded by the Tribunal towards future prospects. The deceased was below 35 years of age. 40% of her notional income therefore needs to be added thereto towards future prospects. This way, her annual income would come to R. 42,000/-. On deducting 1/3<sup>rd</sup> thereof, the loss of dependency would come to Rs.28,000/-.

5. The Tribunal has not awarded each of the claimant a sum of Rs.40,000/- towards loss of love and affection. A meager amount has been awarded towards loss of consortium and funeral expenses. Although the claimants have not filed cross-objections or appeal for enhancement of compensation, they can very well justify the award.

6. In the fitness of things, the amount of compensation awarded by the Tribunal is found to be just and reasonable one, calling for no interference therewith. In the result, the appeal fails. The same is dismissed.

**[ R. G. AVACHAT, J. ]**

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