

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

**FIRST APPEAL NO. 3528 OF 2018**

|                                   |                 |
|-----------------------------------|-----------------|
| National Insurance Company Ltd.   | ... Appellant   |
| Versus                            |                 |
| Savita Rajkumar Warkad and others | ... Respondents |

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Mr. S. V. Kulkarni, Advocate for appellant  
Mr. D. A. Mane, Advocate h/f Mr. Umesh Bodkhe Patil, Advocate for  
respondent Nos. 1 to 4

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

**DATED : 30<sup>th</sup> SEPTEMBER, 2021**

**PER COURT :-**

. This is Insurance Company's appeal, taking exception to the judgment and award, directing to pay a sum of Rs.12,90,000/- with interest @ 9% p.a. as compensation on account of death occurred in vehicular accident. The challenge is mainly on the ground of false implication of the vehicle allegedly involved in the accident and on quantum as well.

2. Heard.

Learned Advocate for the appellant – Insurance Company would submit that it was a case of hit and run accident.

First Information Report (FIR) was lodged against unknown vehicle. There is no evidence to indicate involvement of the truck No.RJ-19-1G-5711 in the accident. On the question of quantum, the learned Advocate would submit that the sugar factory with which the deceased was serving, had been closed down. The deceased had therefore started his own business. There is no concrete evidence about his income. The Tribunal, therefore, ought to have considered his income notionally at rupees not more than 4,000/-. Learned Advocate therefore urged for allowing appeal by setting aside the impugned order.

3. Learned Advocate for the claimants would, on the other hand submit that although FIR was registered against unknown vehicle, the involvement of the vehicle surfaced in the statements of two of the witnesses. Their statements have been recorded next day of the accident. On due investigation, the charge-sheet has been filed against truck driver. Both the driver and the owner did not file their written statement. On the contrary, the truck owner made a written communication to the Investigating Officer acknowledging involvement of his truck in the accident. On the question of quantum, the learned Advocate would submit that the deceased was

serving with the sugar factory at monthly pay of Rs.9590/-. The deceased was a Tracer-cum-Junior Engineer, a qualified person. Since the sugar factory was closed down, the deceased started business in Weight and Measure. The Trial Court, therefore, rightly considered his income notionally at Rs.300/- per day. Learned Advocate would submit that the Tribunal has not granted any compensation towards future prospects. According to him, enhancement in the compensation is warranted in the facts and circumstances of the case.

4. The deceased met with accident while he was on his way on his motorbike on 03.12.2012. An unknown truck is said to have knocked him down. The report of the accident was therefore lodged against the unknown vehicle. The police immediately arrived at the spot. Investigation commenced. There is on record police statements of Sachin and Sandip Kamble. Both of them claimed to have had witness accident. In the statement of Sachin, the truck has been identified with its number. The Investigating Officer, therefore, reached out to the owner of the vehicle. The owner made a communication in writing admitting the involvement of the truck in the accident. On due investigation, the truck driver was proceeded

against. In the petition for compensation, both the owner and the truck driver did not file their written statement. The appellant – Insurance Company did not lead any evidence in this disproof of the claim. As such, based on the eye witness account, the involvement of the truck in the accident was made out. The Tribunal was therefore justified in holding the appellant – Insurance Company, which had granted the insurance cover to the truck in accident, to be liable to pay compensation.

5. On the question of quantum, it is to be stated that the deceased was well educated. He had been serving with the sugar factory at a monthly pay of Rs.9,500/-. He was Tracer-cum-Junior-Engineer. True, the sugar factory was closed down. He, therefore, started his own business in Weights and Measure. The accident dates back to December 2012. The Tribunal was therefore justified in observing that the person like the deceased must have been earning at least Rs.300/- per day. It therefore considered the notional income at Rs.9,000/- per month and granted compensation. On close reading of the impugned award this Court finds the Tribunal to have granted compensation in the light of observations in the Apex Court judgment in the case of *National Insurance Company Limited Vs*

***Pranay Sethi and others – (2017) 16 SCC 680.*** It, however, appears to have not granted any compensation on account of future prospects. For want of appeal or cross objection for enhancement of compensation, the claim for future prospects cannot be considered. The appellant – Insurance Company failed to make out a case for interference with the impugned judgment and award.

6. In the result, the appeal fails. The same is dismissed.

7. The amount in deposit with this Court be paid to the claimants along with interest accrued thereon, immediately.

8. Pending civil application No.9740 of 2021 is disposed of.

[ R. G. AVACHAT, J. ]

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