IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.599 OF 2007 WITH
CIVIL APPLICATION NO.4451 OF 2007

New India Assurance Co. Ltd. … APPELLANT

VERSUS

Vijaykumar Doulatro Pokharna,
Died, through L.Rs.
Sachin Vijaykumar Pokharna & ors. … RESPONDENTS

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Shri Dhananjay Deshpande, Advocate for appellant
Shri A.D. Hande, Advocate holding for
Shri A.M. Gaikwad, Advocate for respondents No.1-A to 1-C

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CORAM : R. G. AVACHAT, J.
DATE : 30th NOVEMBER, 2021

O R D E R :

This is Insurance Company’s appeal, taking exception to the quantum of compensation of Rs.3,53,000/-, awarded on account of death in vehicular accident.

2. The claim was filed by the father of deceased Deepali. A Luxury Bus bearing No.MH-12/UA-2341 was on its way to Ahmednagar. The deceased Deepali was traveling therein. The bus hit side wall of the bridge. As a result of the injury suffered in the said accident, Deepali died same day.

Her father, therefore, preferred the claim petition for compensation.

3. Deepali was 20 years of age. She was said to have been serving with a medicine shop and grocery shop as well. Her monthly income was stated to be Rs.2500/-. The Tribunal, considering the income of the deceased at Rs.2500/-, deducted one third thereof towards her personal and living expenses. Applying the multiplier of 17, the amount of compensation on account of loss of dependency was worked at Rs.3,53,068/-. A sum of Rs.10,000/- was awarded towards loss of love and affection plus Rs.3000/- for funeral expenses.

4. According to learned counsel for the appellant Insurance Company, the deceased was unemployed. Her notional income ought not to have been more thanRs.15,000/- per annum. Since the deceased died spinster, one half of her notional income ought to have been deducted towards her personal and living expenses. According to learned counsel, the amount of compensation awarded by the Tribunal needs to be scaled down.

5. Considered the submissions made by learned counsel for the appellant Insurance Company. Perused the

evidence in the case. Gone through the impugned judgment and award. The deceased was 20 years of age. True, since the claim petition was filed by the father alone, one half of notional income of the deceased ought to have been deducted towards her personal and living expenses. The accident dates back to June 2002.

6. The Apex Court judgments in case of **National Insurance Company Limited Vs. Pranay Sethi and others [(2017) 16 SCC 680]** and **MAGMA General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram & ors. [(2018) 18 SCC 130]**, were not in the field when the impugned judgment was passed. Although the claimant has not filed any appeal for enhancement of compensation, he is entitled to defend the amount of compensation granted under the impugned award. Even the submissions made by learned counsel for the appellant Insurance Company are acceptable, the Tribunal has not granted anything towards future prospects. The deceased died young. 40% of her notional income could have been added towards future prospects. Moreover, a sum of Rs.40,000/- could have been awarded towards loss of love and affection besides a sum of Rs.30,000/- towards funeral expenses and loss of estate. As such, even we accept the submissions of the learned counsel

counsel for the appellant Insurance Company, the amount of compensation would not be required to be reduced substantially. In the fitness of things, this Court is not inclined to interfere with the impugned award.

7. In the result, the appeal fails. It is dismissed. The amount in deposit be paid to the respondents claimants along with interest accrued thereon, immediately.

(R. G. AVACHAT)
JUDGE

fmp/-