

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

FIRST APPEAL NO. 1391 OF 2013

The Oriental Insurance Co. Ltd.	... Appellant
Versus	
Nirmala Vasant Shende/Wani & Ors	... Respondents

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Mr. A. S. Deshpande and Mr. A. A. Puranik, Advocates for appellant
Mr. Amol Gandhi, Advocate for respondent Nos. 1, 3 to 5

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CORAM : R. G. AVACHAT, J.

DATED : 25th NOVEMBER, 2021

PER COURT :-

. This is Insurance Company's appeal taking exception to the judgment and award granting compensation on account of death in vehicular accident. The claim was preferred by parents and siblings of the deceased.

2. The deceased died bachelor. The Tribunal considered the income of the deceased at Rs. 8,500/- per month, as his salary certificate was on record indicating the same. The Tribunal awarded a sum of Rs. 8,88,500/-, with interest @ 6% from the date of petition till its realization.

3. Learned Advocate for the appellant – Insurance Company would submit that it was a case of contributory negligence. The driver of the Truck and the Omni car were equally responsible to the accident as it was a head collision. He would further submit that the deceased died bachelor. The Tribunal still deducted 1/3rd of his income towards his personal and living expenses instead of 1/2. According to him, the amount of compensation awarded by the Tribunal is therefore required to be substantially scaled down.

4. The learned Advocate for the respondents – claimants would, on the other hand, submit that it was a death claim. Meager amount has been awarded towards future prospects. Multiplier has been applied considering the age of mother. Nothing has been awarded for loss of love and affection. According to him, the amount of compensation deserves to be enhanced manifold.

5. It was an accident between the truck and Omni car. The deceased was one of the occupants in the Omni car and was not at its wheel. As such, for the respondents – claimants, it is a case of composite negligence, entitling them to proceed against both or any of the vehicles. The owner and the driver of the Omni car were not

parties before the Tribunal. The learned Advocate for the appellant, therefore, could not be heard to claim it to be a case of composite negligence. On the question of quantum of compensation, the learned Advocate may be right. Since the deceased died bachelor, 50% of his established income should have been deducted towards his personal and living expenses. There is, however, other aspect of the matter, the Tribunal awarded compensation considering the age of the mother of the deceased, instead the age of the deceased. Moreover, nothing has been awarded towards future prospects. In terms of the Apex Court judgment in the case of *National Insurance Company Limited Vs Pranay Sethi and others – (2017) 16 SCC 680*, 40% of his established income warrants on account of future prospects. Moreover, the Apex Court judgment in the case of *Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others – (2018) 18 SCC 130*, each of the claimants deserve grant of Rs.40,000/- on account of loss of love and affection, but for want of appeal or cross objection for enhancement of compensation. In an appeal preferred by the Insurance Company, the respondents – claimants are very much entitled to defend the amount granted under the impugned award. As such, had the claimants – respondents being in appeal for enhancement, they would have

necessarily succeeded. As such, they could successfully defend the amount granted under the impugned award.

6. As such, no case is made out for reduction of the amount of compensation. The appeal, therefore, fails. The same is dismissed.

7. It is submitted by the learned Advocate for the Insurance Company that the father of the deceased passed away pending the appeal. The award is part of his asset. It stands inherited by his legal representative, who have already been on record. Therefore, this aspect would not lead this Court to reduce the amount of compensation.

8.. The entire amount in deposit be paid to the mother of the deceased with interest accrued thereon, immediately.

[R. G. AVACHAT, J.]

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