IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO.2535 OF 2016

New India Assurance Company Ltd.
A Company registered under the
Companies Act & a subsidiary of
General Insurance Company of India Ltd.
Having one of its Divisional Office at
Adalat road, Aurangabad
through its authorized signatory ... **Appellant**
(Orig. R.No.2)

Versus

1. Sonali Ramdas Shirsath
Age 22 yrs, Occ. Household
r/o Babhulkheda, Tk. Newasa
Dist. Ahemadnagar

2. Ravi Ramdas Shirsath
Age 5 yrs, u/g R.No.1

3. Gauri Ramdas Shirsath,
Age 3 yrs, u/g R.No.1

4. Ashok Laxman Shirsath,
Age 55 yrs, Occ. Labourer
r/o as above

5. Mirabai Ashok Shirsath
Age 50 yrs, occ. Household
r/o as above

6. Avi Ramdas Shirsath
Age 11 yrs, u/g R.No.1

7. Amol Chandrakant Bankar
Age major, occ. Agriculture
r/o 457, Karande Vasti
AP Dehere Tk. Dist. Ahemadnagar

8. Suryabhan Bhausaheb Jadhav
Age major, occ. Driver
r/o Shingave Tukai
Tk. & Dist. Ahemadnagar … **Respondents**
(R.Nos. 1 – 6:Org.clmt
R.No. 7 – 8: Org. R.Nos. 1 - 2)

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Mr. A. B. Kadethankar, Advocate for appellant
Mr. R. B. Deshpande, Advocate for respondent Nos. 1 to 6

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CORAM : R. G. AVACHAT, J.
DATED : 11th AUGUST, 2021

O R D E R :-

. The appellant – New India Assurance Company Limited has preferred this appeal, challenging the judgment and award dated 29.01.2016 passed by the Member, Motor Accident Claims Tribunal (M.A.C.T.) in Motor Accident Claim Petition (M.A.C.P.) No. 431 of 2014.

2. The deceased – Ramdas died in the accident involving motor vehicles on 25.03.2014. It was a tempo bearing No.MH-04/CA-3897, proceeding from Rahuri towards Ahmednagar. It was driven in rash and negligent manner. Since driver of the

tempo lost his control, it turtled. The deceased was travelling in the said ill-fated tempo. As a result of the injuries suffered in the said accident, he succumbed thereto. His widow, three minor children and parents, therefore preferred M.A.C.P., for compensation.

3. The deceased was serving as a cleaner with ill-fated tempo. Since there was no cogent evidence regarding income of the deceased, the Tribunal considered it notionally at Rs.4,000/- per month. This way, the annual income of the deceased come to Rs.48,000/-. Considering the number of dependents being six, the Tribunal deducted $1/4^{th}$ of the annual income of the deceased towards expenditure which he would have incurred for self, had he been alive. The Tribunal awarded a sum of Rs.8,62,000/- towards compensation with 6% interest thereon from the date of the petition to the date of realization of the amount.

4. The learned Advocate for the appellant – Insurance Company would submit that there was no cogent evidence regarding monthly income of the deceased. A sum of Rs.4,000/- per month considered by the Tribunal as notional income, was on higher side. The fitness certificate of the vehicle was expired before it met with the accident. As such, it was a breach of terms and conditions of the

policy of the insurance. The Tribunal, therefore, ought not to have passed the direction to pay first and then recover the amount of compensation from the original respondent Nos. 1 and 2. He, therefore, urged for exonerating the appellant – Insurance Company from liability to pay compensation.

5. Learned Advocate for the respondents – claimants supports the impugned award. Nothing had been urged for enhancement of compensation.

6. Considered the rival submissions. Perused the impugned award and gone through the relevant evidence to find the Tribunal to have passed the impugned award with reasons, which call for no interference.

7. In the result, the appeal fails. The Appeal is therefore dismissed.

8. Pending civil application No.1543 of 2020 is disposed of.

9. The amount of compensation in deposit with this Court be paid to the claimants – respondents with interest accrued thereon, immediately.

10. The amount payable to minors be kept in fixed deposit until they attain the age of majority.

[R. G. AVACHAT, J.]

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