

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

FIRST APPEAL NO. 38 OF 2017

M/s Shriram General Insurance Company
Limited ... Appellant

Versus

Sunanda Ashok Aher and others ... Respondents

....
Mr. S. G. Chapalgaonkar, Advocate for appellant
Mr. V. S. Bedre, Advocate for respondent Nos. 1 to 3
....

CORAM : R. G. AVACHAT, J.
DATED : 04th OCTOBER, 2021

PER COURT :-

. Heard.

2. The Insurance-Company is in appeal, challenging grant of compensation on account of death in a vehicular accident. The challenge is only to the extent that instead of making addition of 40% towards future prospects, the Tribunal has granted it 50%. Another ground of challenge is that the income of the deceased was considered at Rs. 6275/- per month instead of Rs.6,000/- per month.

3. The impugned award has also been challenged on grant of contributory negligence. It appears to be an accident between a truck and motorcycle rider.

On appreciating the evidence in the case, the Tribunal has rightly answered the said issue.

4. Perused the impugned award. The submission as regards quantum of monthly income of the deceased is not acceptable. However, the Tribunal has made addition of 50% of the established income of the deceased towards future prospects. Admittedly, the deceased was in private service. In terms of the directions in Constitution Bench Judgment of the Apex Court in the case of *National Insurance Company Limited vs Pranay Sethi and others – (2017) 16 SCC 680*, it should have been 40%. To that extent, the impugned award needs to be modified. Hence, following order:-

ORDER

- (i) The appeal is partly allowed.
- (ii) The amount of compensation be re-worked out, considering addition of 40% towards future prospects instead of 50%.

- (iii) Rest of the terms of the impugned award to stand unaltered.
- (iv) The amount in deposit, if any, with this Court or Tribunal, be paid to the claimants. Thereafter, the balance, if any, be paid back to the appellant – Insurance Company.
- (v) Civil application No.3740 of 2020 is disposed of.

[R. G. AVACHAT, J.]

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