

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

**FIRST APPEAL NO.52 OF 2015
WITH
CIVIL APPLICATION NO.13058 OF 2014**

New India Assurance Co. Ltd.

..Appellant

Vs.

1. Manjushree w/o. Shridhar Tadkar
2. Shreya d/o. Shridhar Tadkar
3. Shradha d/o. Shridhar Tadkar
4. Shrawani d/o. Shridhar Tadkar
5. Rajashree w/o. Shripati Tadkar
6. Shripati s/o. Bhaurao Tadkar
7. Laxmikant s/o. Shripati Tadkar
8. Pramod s/o. Bhimrao Patil

..Respondents

Mr. S.G.Chapalgaonkar, Advocate for appellant

Mr. S.B.Gastagar, Advocate for respondent nos.1 to 6

**CORAM : R.G. AVACHAT, J.
DATE : DECEMBER 02, 2021**

ORDER :-

This is an insurance company's appeal taking exception to the judgment and award dated 30.07.2014 passed by the Motor Accident Claims Tribunal, Osmanabad, in Motor Accident Claim Petition No.137 of 2013.

2. Under the impugned award, a sum of Rs.17,86,800/- has been awarded as compensation on account of death in vehicular accident. The challenge is on the ground of quantum alone. The appellant-insurance company admits the award to the extent of Rs.10,00,000/-. As such, a sum of Rs.7,86,800/- is alleged to have been awarded in excess of the entitlement.

3. Heard learned counsel appearing for the parties.

4. Mr.S.G.Chapalgaonkar, learned counsel for the appellant – insurance company, would submit that only the widow of the deceased was examined in proof of income of the deceased. The deceased was said to have been an agriculturist by profession. He was said to have been running a Pan stall and would do milk business as well. According to learned counsel, based on oral evidence alone, the Tribunal held that the deceased would earn Rs.5,000/- from milk business; Rs.1,000/- from Pan stall; and Rs.2,000/- as agricultural income. According to learned counsel, the quantum of compensation awarded is very much on higher side. He would, therefore, urge for scaling it down to Rs.10,00,000/-.

5. Mr.S.B.Gastagar, learned counsel for respondent nos.1 to 6 - claimants supported the impugned award.

6. The Tribunal awarded compensation as under:-

Dependency	:	Rs.15,96,800/-
For consortium to claimant No.1	:	Rs. 1,00,000/-
Loss of estate and love and affection to claimant Nos.2 to 4	:	Rs. 75,000/-
Loss of estate and love and affection to claimant nos.5 and 6	:	Rs. 10,000/-
Funeral expenses	:	Rs. 5,000/-

Total compensation	:	Rs.17,86,800/-

7. Perusal of the evidence in the case would indicate that the Tribunal simply believed the oral evidence of the widow of the deceased. It is just difficult for the deceased to do simultaneously three businesses, i.e., agriculture, milk business and Pan stall. Only 1 H 60 R land was held by the deceased. The land has been inherited by the respondents-claimants on his death.

8. In the fitness of things, this Court is inclined to observe that the income from Pan stall ought not to have been considered by the Tribunal for assessment of loss of dependency, for want of evidence in that regard.

9. This Court is, therefore, inclined to reduce the amount of compensation granted considering the income from Pan-shop i.e.

Rs.12,000/- (Rs.1000 x 12 months). Multiplier of 16 was applied by the Tribunal. Therefore, applying of 16, the amount would come to Rs.1,92,000/- (Rs.12,000 x 16). In view of this Court, this much amount has been granted in excess. The amount under the impugned award is, therefore, scaled down to that extent.

10. In the result, the appeal partly succeeds in the following terms:-

- (i) The amount of compensation is scaled down to Rs.15,94,800 (Rs.17,86,800 – Rs.1,92,000).
- (ii) Rest of the terms of the impugned award to stand unaltered.
- (iii) The amount in deposit be paid to the respondents-claimants immediately in terms of the impugned award along with interest accrued thereon. Remaining amount, if any, be paid to the insurance company along with interest accrued thereon.
- (iv) The appeal stands disposed of accordingly. The Civil Application also stands disposed of.

[R.G. AVACHAT, J.]