IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 1213 OF 2016

1. Smt. Manisha wd/o Rajesh Padgilwar,
Aged about 45 yrs.,
Occ. - Household

2. Ms. Shivani d/o Rajesh Padgilwar,
Aged about 17 yrs.,
Occ. - Student

3. Master Shardul s/o Rajesh Padgilwar,
Aged about 12 yrs.,
Occ. - Student.

Nos.2 and 3 being minors,
through their Natural Guardian and
Next Friend – mother,
the Appellant No.1 – Smt. Manisha
wd/o Rajesh Padgilwar

All R/o. C/o Shri U.J. Bongirwar,
Bhavana Insurance Services,
Opp. Church, M.G. Road,
Hospital Ward, Chandrapur,
Tq. & Distt. Chandrapur

4. ~~Smt. Vijayabai wd/o Prabhakar Padgilwar,~~ **(Deleted as per Court's order dated 05/12/2018)**
~~Aged 77 yrs., Occ. Nil,~~
~~R/o. Digras,~~
~~Tq. Digras, Distt. Yavatmal~~ **...APPELLANTS**

VERSUS

1. Shri Vinod s/o Harichandra Labhane,
Aged Major, Occ. Business,
R/o. Babupeth, Samta Chowk,
Ward No.3, Chandrapur,
Tq. & District Chandrapur

2. The New India Assurance Company Ltd.,
to be served through its
Branch Manager,
Chandrapur Branch,
J.N. Gupta Building,
Kasturba Road, Chandrapur,
Tq. & Distt. Chandrapur

3. The National Insurance Company Ltd.,
to be served through its
Branch Manager,
Chandrapur Branch,
above Bank of India,
Jatpura Gate, Chandrapur,
Tq. & Distt. Chandrapur

...RESPONDENTS

Shri M.P. Khajanchi, Advocate for appellants.
Shri S.W. Sambre Advocate for respondent No.1.
Shri A.W. Paunikar, Advocate for respondent No. 2.

FIRST APPEAL NO. 1215 OF 2016

Smt. Manisha wd/o Rajesh Padgilwar,
Aged about 45 yrs.,
Occ. - Household
R/o. C/o Shri U.J. Bongirwar,
Bhavana Insurance Services,
Opp. Church, M.G. Road,
Hospital Ward, Chandrapur,
Tq. & Distt. Chandrapur

...APPELLANT

VERSUS

1. Shri Vinod s/o Harichandra Labhane,

Aged Major, Occ. Business,
R/o. Babupeth, Samta Chowk,
Ward No.3, Chandrapur, Tq. & District Chandrapur.

2. The New India Assurance Company Ltd.,
to be served through its
Branch Manager,
Chandrapur Branch,
J.N. Gupta Building,
Kasturba Road, Chandrapur,
Tq. & Distt. Chandrapur

3. The National Insurance Company Ltd.,
to be served through its
Branch Manager,
Chandrapur Branch,
above Bank of India,
Jatpura Gate, Chandrapur,
Tq. & Distt. Chandrapur

...RESPONDENTS

Shri M.P. Khajanchi, Advocate for appellant.
Shri S.W. Sambre Advocate for respondent No.1.
Shri A.W. Paunikar, Advocate for respondent No. 2.

FIRST APPEAL NO. 909 OF 2017

The New India Assurance Company Ltd.,
through Branch Manager,
J.N. Gupta Building,
Kasturba Road, Chandrapur-442402
Tq. & Distt. Chandrapur

...**APPELLANT**

VERSUS

1. Smt. Manisha wd/o Rajesh Padgilwar,
Aged about 45 yrs., Occ. - Household

2. Shivani d/o Rajesh Padgilwar,
Aged about 19 yrs., Occ. - Student

3. Shardul s/o Rajesh Padgilwar,
Aged about 14 yrs., Occ. - Student.

R. No.3 being minor,
through Natural Guardian Mother,
respondent No.1

All above respondent Nos.1 to 3 are
R/o. C/o U.J. Bongirwar,
Bhawana Insurance Services,
Opp. Church, M.G. Road,
Hospital Ward, Chandrapur,
Tq. & Distt. Chandrapur

4. ~~Prabhakar s/o Tukaram Padgilwar,~~ **(Deleted as per Court's order**
~~Aged about 73 yrs., Occ. Nil,~~ **dated 19/11/2018.**

5. ~~Vijayabai wd/o Prabhakar Padgilwar~~, **(Deleted as per Court's order**
~~Aged about 68 yrs., Occ. Nil,~~ **dated 05/12/2018.**
~~Respondent Nos. 4 & 5 are~~
~~R/o. Digras, Tah. Digras,~~
~~Distt. Yavatmal~~

6. Vinod s/o Harichandra Labhane,
Aged about Major, Occ.-Business, R/o.-Babupeth,
Samta Chowk, Ward No.3, Chandrapur
(Recorded owner of LCV No.MH-04/S-7353)

7. National Insurance Co. Ltd.,
through Branch Manager, above Bank of India,
Jatpura Gate Branch, Chandrapur. **...RESPONDENTS**

Shri A.W. Paunikar, Advocate for appellant.
Shri M.P. Khajanchi, Advocate for respondent Nos.1 to 3.
Shri Johar Shakil, Advocate h/f Shri S.W. Sambre, Advocate for respondent no.6.
Shri S. Zoting, Advocate for respondent no.7.

CORAM : PUSHPA V. GANEDIWALA, J.
DATED : AUGUST 24, 2021.

ORAL JUDGMENT :

Being aggrieved by the quantum of compensation awarded by the Claims Tribunal, the injured claimant-Manisha Padgilwar in her personal capacity and in the capacity of the legal representatives of the deceased – Rajesh Prabhakar Padgilwar on one hand, so also, the insurer of the offending vehicle - New India Assurance Company Ltd. on the other hand independently challenged the judgments and awards dated 19/08/2016 in M.A.C.P. Nos.101/2007 and 104 /2007, passed by the Motor Accident Claims Tribunal, Chandrapur, whereby the learned Tribunal saddled the liability of payment of compensation, jointly and severally on the owner and the insurer of the offending vehicle i.e. Truck bearing registration No. MH-04-S-7353. The learned Tribunal exonerated the insurer of the vehicle Hyundai Accent Car bearing Registration No. MH-31-BS-786 i.e. respondent No. 7-National Insurance Company from its liability to pay compensation, which was driven by the deceased.

2. The facts, in nutshell, in these Appeals are as under :-

On 23/09/2006 at about 10.30 a.m. the deceased along with his wife and children with one Shri Deorao Wankhede were traveling in Hyundai Accent Car from Chandrapur to Nagpur via Warora in a moderate speed. At that time, a truck bearing registration

No. MH-04-H-7353 suddenly came in a rash and negligent manner and at a high speed from the other side and gave a dash to the Hyundai Accent Car from the driver's side and accident took place. In the said accident, three persons seriously injured while one person namely Rajesh succumbed to the injuries during the course of treatment at hospital.

3. The Claim Petitions came to be filed by the legal representatives of the deceased as well as the injured victims of the accident. The appellant – New India Assurance Company Ltd. resisted the Claim Petitions and by way of specific pleadings took the defence of contributory negligence. The learned Tribunal framed necessary issues and recorded evidence as adduced by the parties. The claimant No.1 – Manisha Padgilwar was examined at Exh.26 and brought on record several documents while appellant – New India Assurance Company Limited examined driver of the offending truck namely Bandu Tukaram Shergure at Exh. 105.

4. On meticulous appreciation of evidence on record, the learned Tribunal recorded the findings that the claimants could have prove that due to rash and negligent driving of the truck bearing registration No. MH-04-S-7353, the deceased met with an accident and

died. It is further held that the respondent No.2 – New India Assurance Company Ltd. has failed to prove that there was a breach of terms and conditions of the insurance policy by respondent No.1 that is the owner of the offending vehicle. The learned Tribunal directed respondent No.2 – New India Assurance Company Limited to pay compensation to the claimants with interest at the rate of 7.5% per annum from 02/05/2014 till its full realization inclusive of 'No Fault Liability'.

5. In the impugned judgment in First Appeal No.1215/2016, the learned Tribunal directed respondent Nos.1 and 2 i.e. the owner and the insurer of the offending vehicle i.e. Truck bearing Registration No. MH-04-S-7353 to pay jointly and severally Rs.2,00,000/- to the claimant- Manisha wd/o Rajesh Padgilwar along with interest at the rate of 7.5% per annum from 02/05/2014 till its full realization.

6. While in First Appeal No.1213/2016, the learned Tribunal directed respondent Nos.1 and 2 i.e. the owner and the insurer of the offending vehicle i.e. Truck bearing Registration No. MH-04-S-7353 to pay jointly and severally Rs.33,08,687/- to the claimants i.e. the legal heirs of deceased Rajesh Padgilwar along with interest at the rate of 7.5% per annum from 02/05/2014 till its full realization.

7. The claimants challenged the aforesaid award for the

enhancement of compensation while the Insurance Company has a grievance that the learned Tribunal has committed a gross error in exonerating the respondent No.7 i.e. the National Insurance Company Ltd. with whom the vehicle Hyundai Accent Car bearing Registration No. MH-31-BS-786 was insured.

8. I have heard Shri M.P. Khajanchi, learned Counsel appearing on behalf of the claimants, Shri A.W. Paunikar, learned Counsel appearing for the New India Assurance Company Limited, Shri S. Zoting, learned Counsel appearing for the National Insurance Company Ltd. and Shri Johar Shakil, learned Counsel holding for Shri S.W. Sambre, Advocate for the owner of the offending truck bearing registration No. MH-04-S-7353.

9. Shri Khajanchi, learned Counsel for the claimants, restricted his claim towards interest part on the amount of compensation and also for addition of amount towards the heads future prospects and consortium in terms of the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors.,*** *reported in* ***(2017) 16 SCC 680***.

10. It is urged that the learned Tribunal in M.A.C.P. No.

101/2007 while calculating compensation has not considered the future prospects at 40% of the income of the deceased as the age of the deceased was 40 years and was self-employed, funeral charges of Rs.15,000/- and consortium of 5 dependents at the rate of Rs.40,000/- per person i.e. Rs.2,00,000/-.

11. With regard to the interest, it is submitted that the learned Tribunal has granted interest @7.5% per annum from the date 02/05/2014 i.e the date of commencement of recording of evidence and not from the date of the application. The delay was attributed by the learned Tribunal to the claimants as well as the respondents.

12. So far as the period for which the interest is to be calculated is concerned, a perusal of the order sheet from the record and proceedings, with the assistance of both the learned counsel, reflects that during the period from filing of the petitions till the time of recording of the evidence, on many dates, the proceedings came to be adjourned as the Tribunal was busy in some other matters. For some dates the learned presiding officer of the Tribunal was on leave. Therefore, the learned Tribunal is not justified in awarding interest from 02/05/2014 i.e. the date on which examination-in-chief on behalf of the claimant was recorded. This Court as well as the Hon'ble Apex

Court in most of the cases have granted interest from the date of the application. Grant of compensation in terms of *pendente lite* and future interest, is the discretion of the Court. In the considered opinion of this Court, as the delay is not fully attributed to the claimants, it would be unjustified to deny the interest *pendente lite* fully to the claimants.

13. Shri Khajanchi, learned counsel for the applicants also argued for enhancement rate of interest at 12% per annum whereas, Shri Paunikar, learned Counsel for the respondent no.2, on the other hand, strongly opposed the prayer. Both the learned counsel cited various judgments of the High Courts as well as the Hon'ble Supreme Court wherein different rates ranging from 6% to 12% have been awarded by the Hon'ble Supreme Court. Considering the date from which the interest has to be calculated i.e. from 2007 and the present situation of rate of interest, the Tribunal has judiciously exercised the discretion for awarding interest at the rate of 7.5% per annum.

14. With regard to enhancement of compensation, the claimants are entitled for the compensation in accordance with the ratio laid down by the Constitution Bench of the Hon’ble Supreme Court in the case of ***Pranay Sethi*** (supra) i.e. 40% towards future prospects, Rs.15,000/- towards funeral expenses, Rs.40,000/-each

towards consortium to all the dependents and Rs.15,000/- towards loss of estate. Accordingly, the amount of compensation can be calculated as under:-

	Rs.2,50,000/-	Annual Income
	Rs.1,00,000/-	(40%) Future prospects
(-)	Rs.87,500/-	One fourth deduction towards personal expenses of deceased.
	Rs.2,62,500/-	Total Salary
(X)	16	Multiplier applied as deceased was 40 years of age.
	Rs. 42,00,000/-	Total
	Rs.2,00,000/-	Loss of consortium (5 dependents)
(+)	Rs. 15,000/-	Funeral Expenses
(+)	Rs.15,000/-	Loss of estate not granted.
	Rs. 44,30,000/-	Total compensation considered

15. In First Appeal No.909/2017, the appellant – New India Assurance Company Ltd. has challenged the impugned award mainly on the ground that the learned Tribunal erred in not considering the contributory negligence on the part of the Accent Hundai car. The learned counsel Shri. Paunikar appearing for the appellant-insurance company submitted that the Tribunal has failed to consider the situation of the road on which the accident took place. It was 25 feet in width. The car was dashed on the driver's side and the learned Tribunal has failed to appreciate that the driver of the truck had applied breaks

to avoid accident from a distance of 15 feet ahead of car, while tyre marks of truck at the time of application of breaks, are clearly seen on road as per the spot panchanama. It is further stated that the Tribunal while delivering its judgment has failed to consider the time of accident as 10.00 a.m. and if the same is considered, there is every possibility that the driver of the car could have avoided the accident in broad day light. It is further urged that the driver of the car is guilty of contributory negligence and, therefore, the impugned judgment and award deserve to be set aside.

16. This Court examined the spot panchanama and the testimonies of the claimant – Manisha Padgilwar and the driver of the offending truck. The spot panchnama Exh.39 would show that the driver of the offending vehicle by name Bandu Shergure has shown the spot. There is description about position of both the vehicles and the damage caused to the vehicles. The spot panchanama is concluded with the inference that 'on collective inspection of the spot, it appears that due to rash and negligent driving of the driver of the Truck bearing registration No. MH-04-S-7353, the accident occurred'. Furthermore, if we peruse the cross-examination of the said driver namely Bandu Shergure conducted by learned counsel Shri Khajanchi on behalf of the claimants, he has stated that after seeing upcoming vehicle, he has

applied the breaks from 20 to 25 meters. However, in his cross examination he has clearly admitted that till the accident took place, his vehicle did not stop. This admission itself speaks about the speed of the vehicle and at what moment he might have applied the brakes. In addition to this, the injured eye-witness to the accident i.e. claimant – Manisha deposed that her husband – deceased Rajesh was driving his car slowly by his side and when they came near Takli Naka between Bhadrawati and Warora road on Chandrapur-Nagpur road the driver of Truck bearing registration No. MH-04-S-7353 came from the opposite direction in a very high speed and in a very rash and negligent manner and gave dash to the car from the driver's side, as a result of which deceased – Rajesh, she herself, her daughter – Shivani, son- Shardul and one Wankhede sustained injuries. The record is fully silent with regard to any injury caused to the truck driver in the said accident. In such circumstances, the learned Tribunal has correctly appreciated the evidence on record and rightly rejected the plea of contributory negligence of the driver of the Hyundai Accent Car. Furthermore, F.I.R. came to be registered against the driver of the offending vehicle.

17. Considering the aforesaid, the negligence in driving the Hyundai Accent Car cannot be attributed to the deceased and,

therefore, the learned Tribunal has rightly concluded that due to the rash and negligent driving of the driver of the offending truck accident took place and, therefore, the owner and the insurer of the offending truck is liable to pay compensation. For the aforesaid reasons, I do not find any merit in First Appeal No.909 of 2017 of the Insurance Company and it needs to be dismissed and the same is accordingly dismissed.

18. At the same time, the Appeals of the claimants i.e. First Appeal Nos. 1213/2016 and 1215/2016 on the aspect of calculation of interest and compensation in accordance with the ratio laid down by the Hon'ble Supreme Court in its judgment in the case of ***Pranay Sethi*** (supra), are partly allowed. Hence, I pass the following order :

O R D E R

(i) The First Appeal No. 909/2017 filed by the appellant- the New India Assurance Company Limited is dismissed and First Appeal Nos. 1213/2016 and 1215/2016 of the claimants are partly allowed.

(ii) The owner of the offending truck and the insurer- the New India Assurance Company Ltd. are jointly and severally liable to pay Rs.44,30,000/- (rupees forty four lakh thirty thousand only) inclusive of 'no fault liability' to the claimants /legal heirs of deceased Rajesh and Rs. 2,00,000/- (rupees two lakh only) to the injured claimant Manisha Padgilwar, with interest at the rate of 7.5% per annum from the date of petition till its realization.

(iii) Needless to say that the amount which is already deposited shall be deducted from the aforesaid compensation.

(iv) The claimants are permitted to withdraw the amount of compensation which has already been deposited by the appellant – Insurance Company with the Registry of this Court.

(v) The New India Assurance Company is directed to pay the enhanced amount of compensation in terms of this judgment. Thereafter, the claimants are permitted to withdraw the aforesaid amount with accrued interest thereon.

(vi) The directions in Clause 5 of the operative part of the impugned judgment and order in First Appeal No.1213/2016 with regard to depositing Rs.2,00,000/- each and keeping the same in fixed deposit are recalled, considering the fact that the period of five years has already been lapsed.

19. The Appeals stand disposed of.

JUDGE

**DB*