

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

FIRST APPEAL NO. 1610/2008

The Branch Manager, Oriental
Insurance Co. Limited, Bilaspur (M.P.)
through the Senior Divisional Manager,
Nagpur Divisional Office I,
A. D. Complex, Mount Road, Sadar,
Nagpur – 440 001.

**...APPELLANT/
(ORIGINAL RESPONDENT NO.1)**

// VERSUS //

1. Smt. Saheda Parveen wd/o
late Mohd. Shafi, Occ. Household,

2. Mohd. Shabbir s/o Abdul Gaffar,
aged major, Occ. Nil,

3. Mrs. Nurunissa Begum w/o,
Mohd. Shabbir, aged Major,
Occ. Household,

4. Smt. Bonobee w/o Mohd. Shabbir,
aged major, Occ. Household,

All R/o. Killa Road, Mahal, Nagpur,
Police Station Kotwali, Nagpur.

Original Respondents 1 to 4.

5. Kartarsing s/o. Laxmansingh Gotra,
Budhanagar, Plot No. 83, Pachpaoli Nagpur,
aged major, Occ. Business,

6. Gurnam Singh s/o. Kartar Singh,
Gargoriya, Buddhanagar, Plot No. 83,
Panchpaoli, aged major, Occ. Business,

**Original Respondents 2 & 3.
.... RESPONDENTS**

Shri D. N. Kukday, Advocate for appellant.
Shri S. I. Khan, Advocate for respondent Nos. 1 to 4

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 17.02.2021

JUDGMENT

The appellant - Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short “M. V. Act”) challenging the judgment and award dated 02.05.2003 in Claim Petition No. 812/1996. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs. 5,12,000/- with interest @ 9% per annum from the date of petition till actual realization.

2. The respondent Nos. 1 to 4 were original claimants in application filed under Section 166 of the M. V. Act and they shall be hereinafter referred to as the claimants.

3. It was the case of the claimants that on 24.05.1996 at about 19.00 hrs. Mohd Shafi, the husband of respondent No. 1 and son/step son of Respondent Nos. 2, 3 and 4 expired as a result of the injuries sustained in a motor vehicular accident involving truck bearing registration No. MP-26-D-1659-HGV on Kamptee Road. The claimants

state that deceased was 25 years of age and that he was self-employed earning Rs. 4,000/- per month. It is the case of the claimants that the accident was caused due to rash and negligent driving of the driver of the offending vehicle. The claimants stated that the offending vehicle was insured by the appellant - Insurance Company. The claimants therefore, claimed total compensation of Rs. 4,50,000/- from the owner, driver and the appellant Insurance Company.

4. The owner, driver as well as the insurer denied that the accident was caused due to rash and negligent driving of the driver of the offending vehicle. They have also asserted that the claimants are not entitled for the compensation as claimed.

5. The Tribunal upon considering the oral as well as documentary evidence on record observed that the accident was caused due to rash and negligent driving of the driver of the vehicle. The Tribunal has also recorded finding that the deceased was 24 years of age and was earning Rs. 4,000/- per month. Upon deducting the 1/3rd amount towards personal expenses and applying multiplier 17, the Tribunal assessed loss of dependency to Rs. 5,50,600/-. The Tribunal also awarded compensation of Rs. 10,000/- towards loss of consortium and Rs. 2,000/- towards loss of love and affection. Upon

deducting Rs. 50,000/- granted under Section 140 of the M. V. Act, the Tribunal directed the appellant – Insurance Company to pay to the claimants sum of Rs. 5,12,000/- with interest @ 9% per annum. This judgment and award is under challenge in this appeal.

6. The appellant has assailed the impugned judgment and award on the ground that the respondent No. 1 remarried about two years after the death of her husband and as such, she is not entitled for any compensation. It is further submitted that the respondent Nos. 2 and 3 were not dependents and hence they are not entitled for compensation. The appellant – Insurance company has also submitted that the Tribunal was not justified in computing the compensation on the basis of monthly income of Rs. 4,000/- per month.

7. I have perused the records and considered the submissions advanced by learned counsel for the respective parties. The question for consideration is whether the parents of the deceased who were not dependent on the income of the deceased can file application under Section 166 of the M. V. Act. This issue is no longer *res integra* in view of the decision in the case of the ***National Insurance Company Limited Vs. Birender and others, (2020) 11 SCC 356***, wherein the Apex Court has observed that the legal representatives of the deceased have a right

to apply for compensation under Section 166(1) of the M. V. Act and it would be bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representatives was fully dependent on the deceased and not to limit the compensation towards the conventional heads only.

8. In the instant case, the claimant Nos. 2, 3 and 4 are the parents of the deceased and are the legal representatives of the deceased Mohd. Shafi. Hence, as per the decision of the Apex Court, they are entitled to claim compensation under Section 166(1) of the M. V. Act. The Claimant No. 1 was the widow of the deceased Mohd. Shafi. She remarried about two years since the date of the accident. She cannot be deprived of compensation completely but would be entitled for compensation for loss of dependency, loss of consortium and compensation on other conventional heads till the time she ceased to be the legal representative.

9. The evidence on record indicates that the deceased was merely 24 years of age and self-employed. The Tribunal has considered his monthly income at Rs. 4,000/-, which cannot be considered otherwise as exorbitant or unreasonable, hence the Tribunal has not committed any error in computing the loss of dependency on

considering the income of the deceased at Rs. 4,000/- per month. The compensation awarded by the Tribunal is not exorbitant and does not warrant interference.

10. Considering the facts and circumstances, the appeal has no merits and is accordingly, dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

Gohane.