

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

FIRST APPEAL NO.1222/2008

WITH

FIRST APPEAL NO.1223/2008

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1. Khoteja Parveen Alias Khudeja Parveen,
Aged about 45 years, Occ. Household.
2. Mohd. Shoebur Rahman S/o.
Anikur Rehman,
Aged about 24 yrs. Occ. Labourer.
3. Mohd. Shakibur Rahman S/o.
Anikur Rahman,
Aged about 22 yrs., Occ. Student.
4. Mohd. Shakibur Rahman S/o.
Anikur Rahman,
Aged about 19 yrs., Occ. Student.
5. Uzmatazeen d/o. Anikur Rahman,
Aged about 18 yrs., Occ. Student,
All R/o. Old City, Satranjipua, In front
of Jama Masjid, Balapur, Tq. Balapur,
Dist. Akola.

... APPELLANTS
On R.A.

----VERSUS----

1. National Insurance Co. Ltd.,
Through its Divisional Manager,
M.G.Road, Opp. Open Air Theater,
Akola, Tq. and Dist. Akola.
2. M/s. Swift Road Lines,
Shop No.25, Rajesh High Way Service
Station, Kapashare Border, New Delhi.

Appeal is dismissed
in default against
R.No.2 vide Reg.(J)
order dated
11.04.17.

3. The New India Assurance Co. Ltd.,
through its Divisional Manager,
Rajat Haveli, Old Cotton Market, Akola,
Tq. and Dist. Akola.
4. Ramesh Jangaluji Khobragade,
Aged about 42 yrs., Occ. Tata 407
owner, R/o. Ashoknagar, Akot file,
Akola, Tq. and Dist. Akola.
5. Respondent No.5 is dispensed with as ... **RESPONDENTS**
no relief granted in favour of him. **On R.A.**

WITH

FIRST APPEAL NO.1223/2008

1. Khoteja Parveen Alias Khudeja Parveen,
Aged about 45 years,
Occupation - Household.
2. Mohd. Shoebur Rahman S/o.
Anikur Rehman,
Aged about 24 years,
Occupation : Labourer.
3. Mohd. Shakibur Rahman S/o.
Anikur Rahman,
Aged about 22 years,
Occupation : Student.
4. Mohd. Shakibur Rahman S/o.
Anikur Rahman,
Aged about 19 years,
Occupation : Student.
5. Uzmatazeen D/o. Anikur Rahman,
Aged about 18 yrs.,
Occupation : Student,
All R/o. Old City, Satranjipua, In ... **APPELLANTS**
front of Jama Masjid, Balapur, Tq. **(Ori. Claimants)**
Balapur, Dist. Akola.

----VERSUS----

1. National Insurance Co. Ltd.,
Through its Divisional Manager,
M.G.Road, Opp. Open Air Theater,
Akola, Tq. and District - Akola.
2. M/s. Swift Road Lines,
Shop No.25, Rajesh High Way
Service Station, Kapashare Border,
New Delhi. Matter dismissed
against R-2 as per
Registrar (J)'s order
dtd 11.02.14.
3. The New India Assurance Co. Ltd.,
Through its Divisional Manager,
Rajat Haveli, Old Cotton Market,
Akola, Tq. and District- Akola.
4. Ramesh Jangaluji Khobragade,
Aged about 42 years,
Occupation - Tata 407 owner,
R/o. Ashoknagar, Akot file, Akola,
Tq. & District- Akola.
5. Respondent No.5 is dispensed with as no relief granted in favour of him. ... **RESPONDENTS**
Ori Respondents.

Mr. S. A. Mohta, Advocate for the Appellants in both Appeals.

CORAM : M. S. SONAK, J.

DATE : 07.12.2021.

ORAL JUDGMENT :

1. Heard Mr. S. A. Mohta, learned Counsel for the appellants in both these appeals.
2. Though the respondents are served, they are neither present nor represented.
3. Mr. S. A. Mohta, learned Counsel for the appellants submits that both these appeals can be disposed of by a common

judgment and order since they relate to the same accident. He points out that First Appeal No.1222/2008 has been instituted by the widow and children for the death of their husband in the accident that took place on 04.10.2006. He further points out that the First Appeal No.1223/2008 has been instituted by the very same claimants but for the death of their son/brother in the very same accident which took place on 04.10.2006. He submits that these appeals have been instituted because the claimants are dissatisfied with the quantum of compensation awarded by the Tribunal vide the impugned judgments and awards.

4. In this case, there are no cross-objections or cross-appeals instituted by any of the respondents and therefore, the issue which is required to be decided in both these appeals is, whether just compensation has been awarded by the Tribunal to the claimants.

5. In First Appeal No.1222/2008 arising out of the death of Anikur Rahman Abdul Rahman, the Tribunal has awarded compensation of Rs.3,00,000/- including no-fault liability compensation.

6. For this purpose, the Tribunal has taken the income of the deceased at Rs.3,000/-.

7. There is evidence on record that the deceased was working as a driver and driving a Mini truck for about 20 years before his unfortunate demise in the accident. Having regard to this circumstance, the Tribunal was not justified in treating his monthly income as only Rs.3,000/-. In my judgment, in the year 2005, his monthly income should have been taken as a minimum of Rs.6,000/- per month. The deceased was a skilled person in the sense that he was driving a Mini truck and had an experience of almost 20 years doing the same. His son was assisting him and unfortunately, even his son died in the same accident. The Tribunal has held that the son was earning a monthly income of Rs.2,500/- If the assistant-son was earning Rs. 2500/-per month, then surely it is reasonable to hold that the deceased was earning Rs.6000/- per month.

8. Now, having regard to the law laid down in the case of ***United India Insurance Co. Ltd. Vs. Satinder Kaur alias Satwinder Kaur and Others with Satinder Kaur alias Satwinder Kaur & Ors. Vs. United India Insurance Co. Ltd.*** reported in AIR 2020 SC 3076, there is no dispute that in terms of the prevalent legal position, $\frac{1}{4}^{\text{th}}$ is required to be deducted towards personal expenses. This means that the contribution of the deceased towards his dependents could be taken as Rs.4,500/-. The Tribunal in this case has applied the multiplier of 11 having regard to the age of

the deceased. Therefore, the compensation towards dependency, in this case, would come to Rs.4,500/- x 12 x 11 =5,94,000/-.

9. Besides, the claimants would be entitled to Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. The claimants would also be entitled to the spousal consortium and parental consortium assessed as Rs.40,000/- each. This means that, towards consortium, the claimants would be entitled to the total compensation of Rs.2,00,000/-.

10. The just compensation in this case, therefore, comes to Rs.8,24,000/- as against the compensation of Rs.3,00,000/- determined by the Tribunal. The impugned award is therefore modified and the compensation is enhanced from Rs.3,00,000/- to Rs.8,24,000/- in First Appeal No.1222/2008.

11. The First Appeal No.1222/2008 is allowed accordingly.

12. The owner, driver, and the Insurance Company are directed to pay the claimants compensation of Rs.8,24,000/- after deducting therefrom the compensation amount already paid to the appellants. The Insurance Company i.e. respondent No.1 is directed to deposit this amount within two months in this Court so that the same can be withdrawn by the claimants. The directions regard payment of interest etc. are hereby maintained.

13. In the First Appeal No.1223/2008, the Tribunal has taken the income of the deceased (son) Rs.2500/- and on this basis determined the dependency at Rs.3,51,936/- after making proportionate deductions. This is correct and warrants no interference. The claimants are entitled to compensation of Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

14. The claimant's mother, as well as the siblings, are entitled to a consolidated consortium of Rs.2,00,000/- determined at the rate of Rs.40,000/- each, having regard to the circumstance, the claimant No.1 has lost her son, the remaining claimants have lost their brother. The total compensation in First Appeal No.1223/2008 is therefore determined as Rs.5,81,936/- as against the compensation of Rs.3,25,000/- determined by the Tribunal.

15. The First Appeal No.1223/2008 is also allowed and respondents are directed to jointly and severally pay the compensation of Rs.5,81,396/- to the claimants. Respondent No.1 – Insurance Company is directed to deposit this compensation amount after making adjustments for the compensation already paid within 2 months from today in this Court so that the claimants can withdraw the same.

16. The directions for payment of interest in the impugned award are hereby maintained.

17. Both the appeals are disposed of in the aforesaid terms.

18. Pending application(s), if any, do not survive(s) and even the same are disposed of.

(M. S. SONAK, J.)

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