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

**CIVIL APPLICATION (CAF) NO.1027/2021.
AND
FIRST APPEAL (ST) NO. 13445/2020**

Shriram General Insurance Co. Ltd. Through its Authorized Signatory E-8 EPIP, RIICO Industrial Area, Sitapura, Jaipur-302022 [Rajasthan] having its Branch Office at Shraddha House, 3rd Floor, Beside Shri Mohini Complex, 345, Kingsway, Sadar, Nagpur, Through its Legal Officer.	**...APPELLANT.** (On R.A.) Ori. Resp. No.2.

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1.	Smt. Shobha Wd/o. Aklesh Bangre, Aged About 40 Years. Occupation : Household	Ori. Claimant -1
2.	Ku. Sejal D/o. Aklesh Bangre, Aged About 13 Years, Occupation : Nil	Ori. Claimant -2
3.	Ku. Prachi D/o. Aklesh Bangre, Aged About 11 Years, Occupation : Nil	Ori. Claimant-3
4	Shreyash S/o. Aklesh Bangre, Aged About 9 Years, Occupation :Education.	Ori. Claimant -4
5	Ramesh S/o. Nathu Bangre, Aged About 64 Years, Occupation : Nil.	Ori. Claimant-5
6	Smt. Shila W/o. Ramesh Bangre, Aged About 57 Years, Occupation : Nil, [Resp. No.2 to 4 though minor through their natural guardian mother i.e. respondent no.1] All R/o. Ward No.2, Garra Bagheda, Tah. Tumsar, Dist. Bhandara (M.S.)	Ori. Claimant-6
7	Mrs. Shaila W/o. Narisingh Kaweri, Aged Major, Occupation : Transporter, R/o. Plot No.15, Gajanan Mandir Square, Bapat Nagar, Chandrapur -492001. **Respondent No.7 stands deleted vide order dated 17.11.2021 in C.A.F. No.1027/2021.**	Ori. Resp.No.1. **...RESPONDENTS** (On R.A.)

Corrected as per Hon'ble Court's Order Dated - 21/12/2021.

Mr. H. N. Verma, Advocate for Appellant/applicant.
Mr. Asghar Hussain, Advocate for Respondent Nos.1 to 6.

CORAM : M. S. SONAK, J.

DATE : 09.12.2021.

CIVIL APPLICATION (CAF) NO.1027/2021.

1. Heard Mr. H. N. Verma, learned Counsel for the appellant/applicant, and Mr. Asghar Hussain, learned Counsel for the respondent/non-applicant Nos.1 to 6.

2. The appellant/applicant seeks condonation of a delay of 198 days in instituting the appeal. Sufficient reasons have been set out in the Civil Application, including the reason that the appeal could not be filed due to the Covid-19 pandemic.

3. The application is not seriously opposed by the learned Counsel for the respondent/non-applicant Nos.1 to 6, therefore, the application is allowed. The delay in instituting the appeal is condoned.

FIRST APPEAL (ST) NO. 13445/2021.

ORAL JUDGMENT :

1. Heard Mr. H. N. Verma, learned Counsel for the appellant/applicant and Mr. Asghar Hussain, learned Counsel for the respondent/non-applicant Nos.1 to 6.

2. **ADMIT**.

3. At the request of the learned Counsel for the parties, this appeal is taken up for final disposal forthwith.

4. The learned Counsel for the parties state that the challenge in this appeal is only on the quantum of compensation and the interest awarded.

5. Mr. Verma, learned Counsel for the appellant submits that in this case, the Tribunal erred in accepting the evidence of the employer of the deceased that he was paying him a salary of Rs.16,000/- per month. He submits that no documentary evidence was produced by his employer and even otherwise, it is inconceivable that a driver would be paid a salary of Rs.16,000/- per month.

6. Mr. Verma, learned Counsel for the appellant submitted that in this case, the Tribunal has awarded interest at the rate of 9% per annum in respect of an accident that took place in the year 2018. He submits that this is quite excessive and consistently over the past few years that the Hon'ble Apex Court has been awarding an interest rate of 6% per annum.

7. Mr. Hussain, the learned Counsel for the claimants submits that there was no dent made to the examination of AW-3 -

employer during cross-examination. He submits that the employer has clearly deposed that the salary was Rs.10,000/- and he was paying a Bhatta of Rs.200/- per day. He submits that there is no error in the finding recording by the Tribunal on this aspect. Mr. Hussain learned Counsel for the claimants also submits that interest has been appropriately awarded. He submits that at least interest at the rate of 7.50 % per annum should be awarded.

8. I have considered the rival contentions and am satisfied that the contention on the aspect of salary cannot be accepted but the contention regards the interest awarded deserves to be accepted.

9. In this case, Shiodas (AW-3) – the employer of the deceased stepped into the witness box and in clear and cogent terms deposed to the salary/Bhatta charges which he was paying to his deceased – driver. Tribunal had correctly observed that the testimony of AW-3 was not shaken in cross-examination. True, no documentary evidence was produced but, the amounts stated by the AW-3 are within bounds of reasonability and the Tribunal was justified in accepting the evidence of AW-3 on the aspect of the salary of the deceased – driver. In such matters, even in the absence of documentary evidence, reasonable income can be determined having regard to potentiality [**See** - ***Basanti Devi And Anr. vs. Divisional Manager, The New India Assurance Co. Ltd.***

And Ors., LL 2021 SC 728]. Therefore, there is no warrant for interference with the impugned award on that scope.

10. In so far as the interest is concerned, Mr. Verma, the learned Counsel for the appellant is quite right in his submission that 9% in respect of an accident which has taken place in the year 2018 is quite excessive. In the case of ***Smt. Sarla Verma & Ors.Vs. Delhi Transport Corporation & Anr. reported*** in ***2009(4) ALL MR 429*** **(S.C.)** and ***National Insurance Company Limited Vs. Pranay Sethi and Ors.*** reported in ***2018(3) Mh.L.J. 70*** the interest awarded was 6% per annum. Therefore, following the two decisions and having regard to the circumstance that the accident took place in the year 2018, the interest rate is reduced from 9% to 6% per annum.

11. The appeal is, therefore, partly allowed by reducing the rate of interest from 9% to 6% per annum. However, the rest of the award is not interfered with.

12. The claimants will be entitled to withdraw the compensation amount in terms of the modification now made.

13. The registry to transfer the proportionate amounts to the bank accounts of the claimants as expeditiously as possible.

14. The balance will have to be refunded to the appellant – Insurance Company.

15. Needless to add that both the parties will be entitled to proportionate interest, if any, that may have accrued on the deposited amount.

16. The appeal is disposed of in the aforesaid terms.

17. Pending civil applications, if any, do not survive and even they are disposed of.

(M. S. SONAK, J.)

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