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

FIRST APPEAL NO. 64/2021

National Insurance Co. Ltd.,
Akola Divisonal Office, M. G. Road,
Open Air Theater, Akola through
the Regional Manager, Nagpur Regional Office,
5th Floor, Fidvi Towers, Mount Road,
Sadar, Nagpur.

...**APPELLANT**
(Ori. N.A.No.3)

// VERSUS //

1. Sangita Ajabrao Phuse,
   Aged about 37 years,
   Occ. Household work,

2. Gopal S/o Ajabrao Phuse,
   Aged about 10 years, Occ. Education,
   R.2, Minor through his mother and natural
   guardian, the respondent No. 1.

3. Smt. Manorama Shriram Phuse,
   Aged about 60 years, Occ. Nill,

   All the respondent Nos. 1 to 3
   R/o. 662, Mundgaon, Tq. Akot,
   Dist. Akola. (Orig. claimants)

4. M. Rajaram Muthu Varathan,
   Adult, owner of truck and trailor,
   R/o. Old No. 354-C, new No. 5,
   Manipuram, Surmangalam,
   Main Road, Salem-636009 (Tamil Nadu) (Orign. N.A. No.2)

.... **RESPONDENTS**
(On R.A.)

Shri D. N. Kukday, Advocate for appellant.
Shri S. D. Chopde, Advocate for respondent Nos. 1 to 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 24.02.2021

JUDGMENT

With consent, heard finally at the stage of admission.

2. The appellant - Insurance Company has challenged the judgment and award dated 06.11.2017 in MACP No. 51/2016. By the impugned judgment, the Claims Tribunal has awarded compensation of Rs. 18,60,000/- with interest @ 7% per annum from the date of the petition till final realization.

3. The respondent No. 1 is the widow, respondent No. 2 is the minor son and the respondent No. 3 is the mother of the deceased Ajabrao, who died in motor vehicular accident on 25.01.2016. The respondent Nos. 1 to 3 who shall be hereinafter referred to as claimants, had filed an application under Section 166 of the Motor Vehicles Act, 1988 (for short 'M. V. Act') claiming that the death of Ajabrao was due to rash and negligent driving of the driver of the offending vehicle i.e. Truck bearing registration No. TN-30-AC-3408/-. They claimed total compensation Rs. 10,00,000/- under different

heads.

4. The appellant – Insurance Company denied that the accident was caused solely due to rash and negligent driving of the driver of the offending vehicle and raised plea of contributory negligence. The appellant – Insurance Company further claimed that the claim was exorbitant.

5. The Claims Tribunal after considering the oral as well as documentary evidence held that the accident was caused due to rash and negligent driving of the driver of the offending vehicle. The Claims Tribunal considered the age of the deceased as 41 years and salary as Rs. 10,000/- per month. The Tribunal added 40% towards future prospects and upon deducting 1/3rd towards personal expenses and on applying multiplier 15, the Tribunal assessed loss of dependency at Rs. 4,80,000/-. The Tribunal also awarded compensation of Rs. 1,00,000/- towards love and affection, Rs. 40,000/- towards spousal consortium, Rs. 15,000/- towards loss of estate, Rs. 10,000/- toward transportation expenses and Rs. 15,000/- towards funeral expenses. The Tribunal awarded total compensation of Rs. 18,60,000/-. Being aggrieved by the judgment and award, the appellant – Insurance

Company has filed this appeal under Section 173 of the M. V. Act.

6. Mr. D. N. Kukday, learned counsel for the appellant submits that the challenge in the appeal is restricted only to the quantum of the compensation awarded by the Tribunal. He submits that there is no evidence to prove that the deceased was in permanent employment. He therefore, claims that the Tribunal erred in adding 40% of the actual salary towards future prospects. He further states that the age of the deceased as per the school leaving certificate is forty plus and hence, multiplier applicable was 14. He submits that the Tribunal has also erred in awarding compensation on separate heads of loss of love and affection and transport expenses.

7. Learned counsel for the claimants submits that the Tribunal has not awarded any compensation towards loss of filial and parental consortium.

8. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties. The only question for consideration is whether the compensation awarded by the Tribunal is just compensation.

9. The evidence on record reveals that deceased was earning fixed salary of Rs. 10,000/- per month. As such, the salary of the

deceased is Rs. 1,20,000/- per annum. The Tribunal did not add any amount towards future prospects. Considering the fact that the deceased was between the age group of 40 to 50 years and was employed on fixed salary, an addition of 25% of actual salary is required to be made to the income of the deceased towards future prospects. The total income of the deceased works out to Rs. 1,50,000/-. Considering the number of dependents and upon deducting 1/3rd amount towards personal expenses and on applying multiplier of 14, the loss of dependency works out to Rs. 14,00,000/-. The claimant No. 1 is the widow whereas the claimant No. 2 is the minor child and claimant No. 3 is the mother of the deceased. Each of these claimants entitled for compensation of Rs. 40,000/- towards loss of spousal consortium, filial consortium and parental consortium. These claimants are thus entitled for total compensation of Rs. 1,20,000/- towards loss of consortium. In addition, the claimants are entitled for compensation of Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expense. Hence, the claimants are entitled for total compensation of Rs. 15,50,000/- as against compensation of Rs. 18,60,000/- awarded by the Tribunal. The impugned judgment and award needs to be modified accordingly. Hence appeal is allowed.

10. It is held that claimants are entitled to total compensation of Rs. 15,50,000/- (inclusive of compensation paid under Section 140 of the M. V. Act), with interest @ 7% per annum from the date of filing of the application till final realization.

11. Leave is granted to the claimant No. 1 to withdraw compensation of Rs. 5,00,000/- with proportionate interest accrued thereon and to the claimant No. 3 to withdraw compensation of Rs. 2,00,000/- with proportionate interest accrued thereon. An amount of Rs. 8,50,000/- shall be invested in the name of the claimant No. 2 in fixed deposit in any nationalized bank for a period of six years.

12. The statutory deposit and the balance amount along with proportionate interest accrued thereon shall be refunded to the appellant – Insurance Company.

(**SMT. ANUJA PRABHUDESSAI, J.)**

Gohane.