IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.381 OF 2003

The New India Assurance Company Ltd.,
having it's Registered and Head Office at
New India Assurance Building 87, M.G.Marg,
Fort, Mumbai and Divisional Office, at
Aurangabad by it's authorised representative
Shri Namdeo Gangaram Mali
Age 49 years, Occ :- service, R/o Aurangabad. **… Appellant /**
(Ori. Resp.)

VERSUS

1. Gopal Manaji Patel,
Age 48 years, Occ. Saw Mill,
R/o : Ganesh Bhuwan, Karagaon,
Road, Chalisgaon, District – Jalgaon.

2. Radhaban w/o Gopal Patel,
Age 45 years, Occ. :- Household,
R/o as above.

3. Ku. Nita Gopal Patel,
Age 21 years, Occ. :- Education,
R/o :- as above.

4. Nilesh Gopal Patel,
Age 19 years, Occ. :- Education,
R/o :- as above,
(Nos. 3 and 4 were shown as minors
when claim petition was filed by lapse
of time they are now major therefore
shown as major).

5. The Chairman, Narmada Sugar
Co-operative Mandal Dharikheda,
Post : Tiwombi, Pratapnagar,
Tq. Nagol, Dist. Bharuch
(Owner of Jeep No. GJ-16-C-3959). **… Respondents**
(Ori. Claimants)

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Advocate for the Appellant : Mr. Mohit R. Deshmukh
Advocate for Respondent Nos. 1 to 4 : Mr. V. Y. Patil

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 28.07.2022
DELIVERED ON : 18.08.2022

JUDGMENT :

. The Appellant – Insurance Company, who is original respondent No. 2 in Motor Accident Claims Petition No. 453/1997, has challenged the award and judgment dated 01.02.2002 passed in the aforesaid claim petition by the learned Member, Motor Accident Claims Tribunal, Jalgaon (hereinafter referred to as 'the learned Tribunal') only on the ground that an exorbitant compensation is awarded. The appellant Company under this appeal has accepted liability of paying compensation to the tune of Rs. 1,50,000/- plus interest at the rate of Rs. 9 % per annum as awarded by the learned Tribunal. Accordingly, the appellant Company has also deposited the aforesaid admitted amount along with the interest in this Court.

2. The learned counsel for the appellant – Insurance Company vehemently submitted that though the dispute is not raised in respect of accidental death of one Girishkumar Gopal Patel i.e. the son of present respondent Nos. 1 and 2,

but the learned Tribunal has awarded exorbitant compensation amount by ignoring the facts. The deceased was only a student and was not having any independent source of income. The learned counsel for the appellant – Insurance Company has also argued that multiplier of “15” which has been applied by the learned Tribunal, is also on higher side and the contribution, presumed by the Tribunal, at the rate of Rs.1500/- by the deceased to his family, is not at all supported by any evidence. The learned counsel for the appellant – Insurance Company also submitted that no proper deduction on account of personal expenses in respect of the deceased were considered.

3. On the contrary, the learned counsel for the contesting respondent Nos. 1 to 4 supported the impugned judgment and prayed for dismissal of the appeal. On the other hand, respondent No. 5, who appears to be the owner of offending vehicle i.e. Jeep bearing registration No.GJ-16/C-3959, though served but failed to appear.

4. I have gone through the entire record along with the impugned judgment and also the record and proceedings before the learned Tribunal with the assistance of rival counsel

for the contesting parties, in the light of their respective submissions.

5. It is pertinent to note that the appellant - Insurance Company has not disputed the manner of accident wherein death of one Girish kumar took place. The challenge to the impugned judgment is only in respect of quantum, which according to the appellant – Insurance Company, is highly exorbitant and not supported by any evidence.

6. It is to be noted here that the case of the respondent Nos. 1 to 4, who are the original claimants, is that deceased Girish was a student and he also used to assist his father i.e. respondent No. 1 in the business of wood and thereby helping the family. Admittedly, no documentary evidence is on record in respect of the income of deceased Girish. However, there is only oral evidence of his father i.e. respondent No.1 that deceased Girish was assisting him by dealing in the business of sale and purchase of wood. Further, it appears that the original claimants have also examined one Harilal Jethalal Patel as their second witness who, after deposing as to how the accident took place, has stated that deceased Girish was assisting respondent No.1, i.e. his father in the business.

Except this, there is nothing on record about the income of deceased.

7. The learned Tribunal while calculating the compensation has arrived at the conclusion that the deceased Girish being the student aged about 19 years, must have assisted his father in the business relating to the wood. Though the learned Tribunal has nowhere mentioned in the judgment as to what was the income of deceased Girish, but has observed that Girish would have atleast contributed amount of Rs. 1,500/- per month to his family. It is extremely important to note that had this petition been decided considering the ratio laid down in ***'Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another in Civil Appeal No. 3483 of 2008 (Arising out of SLP [C] No. 8648 of 2007)'*** *case,* then the notional income of deceased Girish would have been taken to the tune of Rs. 3,000/- per month. Further, there would be half deduction to the said amount of Rs. 3,000/- considering the status of the deceased being a bachelor. Under such circumstances, though there was no proof in respect of income of deceased Girish but considering such notional income, the computation done by the learned

Tribunal appears perfectly appropriate. Moreover, the multiplier of “15” has been applied in the instant case by the learned Tribunal which is definitely less than the multiplier of “18” to be applicable in view of the judgment in ***Sarla Warma*** (supra). Moreover, only an amount of Rs. 20,000/- appears to be granted on account of mental agony, shock, loss of estate etc. which seems quite reasonable and specially considering the fact that the claim petition has been decided in the year 2002. Therefore, even if there is no income proof of the deceased on record, the learned Tribunal had granted just and reasonable amount of compensation which is not at all exorbitant as claimed by the appellant – Insurance Company. Therefore, considering all these facts, this Court is of the opinion that the amount granted by the learned Tribunal as a compensation which is of Rs. 2,90,000/- along with the interest at the rate of Rs. 9% per annum is just and proper and there is no reason to interfere with the same. Hence, I do not find any merit in the appeal which is liable to be dismissed.

8. The appellant has deposited amount of Rs. 1,50,000/- which it admits, along with the interest accrued thereon upto

filing of this appeal aggregating of Rs. 2,11,736/- in this Court. Further, it appears that this Court under order dated 07.07.2004 in Civil Application No. 10006 of 2003, has directed to pay the amount of Rs. 1,11,736/- out of the same to the claimants who are the present respondent Nos. 1 to 4. As such, balance amount of Rs. 1,00,000/- appears to be kept in F.D.R. by this Court. Under such circumstances, the appellant – Insurance Company is directed to deposit the remaining amount of Rs. 1,40,000/- (Rupees One Lakh Forty Thousand only) out of the total compensation in this Court along with accrued interest at the rate of Rs. 9 % per annum on it till the date, from the date of petition till its realization. The amount of Rs. 1,00,000/- (Rupees One Lakh only) invested in F.D.R. with accrued interest under the orders of this Court and the remaining amount of award alongwith interest till date if deposited be paid to the present respondent Nos. 1 and 2 in equal proportion.

9. The Appeal is hereby dismissed and disposed of accordingly.

(**SANDIPKUMAR C. MORE, J.**)

shp/-