**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 1957 OF 2009
WITH
CIVIL APPLICATION NO. 8042 OF 2009
AND
CIVIL APPLICATION NO. 13223 OF 2010**

New India Assurance Co. Ltd., Divisional Manager, Aurangabad, Through its authorized signatory, Mr.Vishwas s/o. Bansi Gaikwad, Age.55 years, Occ. Service, Sr.Div., Manager New India Assurance Co. Ltd., Aurangabad.	..	Appellant [original Resp.No.1]

VERSUS

1. Savita wd/o. Abhijit Shah Age.34 years, Occ. Household, R/o. Vaijapur, Tq. Vaijapur, Dist. Aurangabad.	..	Respondents [original claimants and Resp.No.2]

2. Isha d/o. Abhijit Shah
Age. 12 years, minor, u/g. Of real
Mother, Resp. No.1 herein.

3. Aadit s/o. Abhijit Shah
Age.5 years, minor, u/g. Of real
Mother, Resp. No.1 herein.

4. Sunitabai w/o. Anil Shah
Age. 52 years, Occ. Household,
R/o. As above.

5. Badrinarayan s/o. Shriram Baheti
Age.45 yrs., Occ. Business,
Owner of Car MH 20 AG 7275
R/o. HUDCO, N-11, B-71/1, TV Center,
Aurangabad, Tq.Dist. Aurangabad.

Mr.Dnananjay Deshpande, Advocate for the appellant.
Ms.Fatema Kazi h/f. Mr.S.S. Kazi, Advocate for respondent Nos.1 to 4.
Mr.R.N. Chavan h/f. Mr.V.A. Bagdiya, Advocate for respondent No.5.

CORAM : VINAY JOSHI, J.
DATED : 14.01.2022

ORAL JUDGMENT :-

01. This appeal of the insurance company claims exception to the judgment and order passed by the Motor Accident Claims Tribunal, Aurangabad in MACP No.362 of 2007 dated 21.03.2009. The appellant-insurer challenged the impugned judgment on two counts, namely, limited liability of insurance company and quantum of compensation.

02. The facts in brief are that respondent Nos.1 to 4 (petitioners) have raised a claim on account of death of husband of respondent No.1 Savita in vehicular

accident dated 24.03.2007. It is petitioners' case that on 24.03.2007 deceased Abhijit was proceeding towards Kopargaon from Vaijapur as occupant in Maruti Alto car bearing registration No. MH-20-AG-7275. The car was owned by respondent No.5 whilst was duly insured with the appellant-insurance company. At the relevant time the driver of Maruti Alto car drove the vehicle in rash and negligent manner and gave dash to a stationary tractor near Belgaon village. The Maruti car gave dash to the backside of the trolley attached to the tractor. As an impact of said forceful dash, Abhijit, who was occupant of car sustained severe bodily injuries. He was hospitalized at Aurangabad. However, during treatment he succumbed to injuries. Said accident occurred due to sole rash and negligent driving of car driver. The police have registered office against him.

03. It is the petitioners' case that deceased was running a gift gallery shop at Vaijapur from which he was earning Rs.5000/- to Rs.6000/- per month. The deceased

was also cultivating agricultural land and was earning Rs. 60,000/- to Rs.70,000/- per annum. Due to sudden death of Abhijit, his legal heirs i.e. the petitioners have claimed total compensation to the tune of Rs.20 lakhs jointly and severally from owner and insurer of the car.

04. The claim petition was resisted by car owner and insurer. The appellant-insurer denied that the accident resulted due to negligence of car driver. It is stated that the tractor was negligently parked on the road and therefore due to negligence of tractor driver the accident occurred. It is contended that the deceased was a gratuitous passenger in a private car and therefore he cannot be termed as third party. Since no extra premium was paid, as per scheme of the policy, liability of the insurance company was restricted to the extent of Rs.1 lakhs only. Besides that the insurer denied income of the deceased. After considering the material on record, the Tribunal held that due to negligent driving of car

driver the accident occurred. The Tribunal considered notional income of the deceased to the tune of Rs.6,000/- per month and accordingly by use of multiplier of “16” awarded total compensation to the tune of Rs.7,83,000/-.

05. The learned Counsel appearing for the insurer firstly contended that the Tribunal erred in holding that the accident was out come of total negligence of car driver. It is contended that since the tractor was negligently parked on the road, negligence also attracts on his part. Perusal of evidence and particularly police paper indicates that the tractor and trolley was parked on the road. It is apparent that the car driver rammed on the stationary vehicle which itself indicates that the car was driven in high speed. The police paper also indicates that dash was on the backside of trolley meaning thereby without taking note of stationary vehicle, car was driven which attracts sole negligence of car driver.

06. According to the insurer the deceased was mere occupant of the car. The learned Counsel appearing for the insurer took me through the insurance policy to state that the insured has paid additional P.A. cover premium of Rs.250/- extending liability of Rs.1 lakh per person. As a matter of fact, undisputedly, it was a package policy. It is clear that the comprehensive/package policy of a private car covers the occupant and where vehicle is covered under a comprehensive policy, there is no need for tribunal to go into question whether the insurance company is liable to the extent of limited liability. Having regard to the nature of policy, the defence raised by the insurance company is not acceptable.

07. On the point of quantum, the widow led evidence on affidavit stating that the deceased was running a gift gallery shop from which he was earning Rs.5000/- to Rs.6000/- per month. It is her evidence that the deceased was also cultivating agricultural land from

which he was earning Rs.60,000/- to Rs.70,000/- per annum. The widow is cross-examined at length. However, nothing emerges to discard her evidence on the point of income. The learned Counsel for the appellant would submit that the Tribunal erred in holding notional income to the tune of Rs.6000/- per month. It is pertinent to note that the deceased was running a shop as well as doing agricultural work. Having regard to the nature of the work, monthly amount of Rs.6,000/- as assessed by the Tribunal is just and appropriate. So far as rest of the calculation is concerned, the parties have no dispute. Having regard to the above facts, the impugned judgment calls no interference. Hence, the appeal stands dismissed. The amount of compensation, if any, deposited with this Court be transmitted to the Tribunal. All pending civil applications stand disposed of.

[VINAY JOSHI,J.]