

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

907 FIRST APPEAL NO. 2139 OF 2018

NEW INDIA ASSURANCE COMPANY LTD.
VERSUS
LATABAI VIJAY KHARAT AND OTHERS

...
Advocate for Appellant: Mr. A. B. Kadethankar.

Advocate for Respondent Nos.1 to 5 : Mr. Ajay T. Kanawade.

...

CORAM : **SHRIKANT D. KULKARNI, J.**

DATE : 29th April, 2022.

PER COURT:

. Heard finally at admission stage with consent of both the sides.

2 This appeal takes an exception to the impugned judgment and award passed in MACP No.14 of 2009 by the Member, MACT, Kopargaon, District Ahmednagar, to the extent of quantum of compensation determined by the Tribunal.

3 Heard Mr. A. B. Kadethankar, learned counsel for appellant/insurance company and Mr. A. T. Kanawade, learned counsel for respondent Nos.1 to 5/claimants. Respondent No.6 is stated to be owner of vehicle, whose participation is not necessary to decide this appeal by looking to the issue raised in the appeal.

4 Mr. Kadethankar, learned counsel for appellant invited my attention to the impugned judgment, more particularly paragraph 7. He pointed out that the Tribunal has committed an error in awarding double compensation under the head of future prospects. He further pointed out that the Tribunal has miscalculated certain heads, which has resulted in awarding excess amount of compensation. He, therefore, urged to reduce the amount of compensation in view of the judgment of the Honourable Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others***, reported in, ***2018 (3) Mh.L.J. 70*** by correcting the figures under respective heads.

5 Mr. Kanawade, learned counsel for the claimants supported the findings recorded by the Tribunal. He submitted that the Tribunal has considered all these aspects and evidence on record and rightly determined the amount of compensation. There is no need to reduce any amount.

6 I have considered the submissions of the learned counsel for acquiring body and the learned counsel for claimants. Perused the impugned judgment and award passed by the Member, MACT, Kopargaon, District Ahmednagar in MACP No.14 of 2009.

7 On going through the impugned judgment paragraph 7 and the findings recorded against respective issues, it is evident that the Tribunal has committed errors while making calculations. Further, it is evident that the Tribunal has awarded double compensation under the head of future prospects. Even though defence of contributory negligence is raised by the insurance company, no witness is examined in support of defence. As such, that finding needs to be upheld.

8 Having considered the submissions of both the sides and considering the decision of the Honourable Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** (supra), the compensation is re-assessed as under:

1	Gross Salary	19,149
2	Annual Income	2,29,788
3	+30% rise towards future prospects	68,936
4	Total income	2,98,724
5	-10% deduction towards income tax	29,872
6	Total income	2,68,852
7	-1/4 th deduction towards personal expenses	67,213
8	Total income	2,01,639
9	Multiplier (41 to 45 years)	14
10	Future pecuniary compensation	28,22,946

11	<u>Non pecuniary damages:</u> Consortium Funeral Expenses Shock and sufferings Loss of estate Loss of love and affection to parents	2,50,000
12	Total compensation	30,72,946

9 The share of claimant Bhaskar Kashinath Kharat (since deceased) shall be distributed equally amongst the remaining claimants.

10 Accordingly, the original claimants are entitled to get Rs.30,72,946/- with interest at the rate of 8% per annum from the date of filing of claim petition till its realization. Accordingly, the following order is passed:

ORDER

- I. The appeal stands partly allowed as under:
- II. The appellant shall pay compensation of Rs.30,72,946/- with interest at the rate of 8% per annum from the date of claim petition till its realization to claimants within a period of two months from today.

- III. If amount is deposited by the appellant/insurance company with the Court, the compensation shall be paid to the claimants with interest.
- IV. The Registry to take necessary steps accordingly for payment of compensation to the claimants with interest.
- V. The award passed by Member, MACT, Kopargaon, District Ahmednagar in MACP No.14 of 2009 stands modified partly to the extent of amount of compensation.
- VI. Rest of the award stands confirmed.
- VII. No order as to costs.
- VIII. After deducting compensation amount of Rs.30,72,946/-, balance amount be paid to the appellant/insurance company
- IX. The amount of compensation shall be paid to the respective claimants as per apportionment made by the Tribunal while passing operative part of the judgment and award including the share of deceased claimant Bhaskar Kashinath Kharat.

- X. The appeal stands disposed of.
- XI. R & P, if any, be sent back to the Tribunal.
- XII. In view of disposal of first appeal, pending civil applications, if any, also stand disposed of.

[SHRIKANT D. KULKARNI, J.]

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