

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 1500 OF 2004
WITH CIVIL APPLICATION NO.10703 OF 2004**

United India Insurance Co.Ltd., Dhule,
through it's Divisional Manager and
authorised representative and signatory,
Jalgaon Divisional Office, Mansingh
Market, Iind Floor, Near Railway
Station, Dist. Jalgaon.

.. Appellant
(Original opponent No.3)

Versus

- 1] Bayatibai Harsing Pawara,
Aged 64 years,
- 2] Sangeta Dharamsing Pawara,
Aged 32 years,
- 3] Kalpesh Dharamsing Pawara,
Aged 09 years,
- 4] Ashvini D/o. Dharamsing Pawara,
Aged 07 years.

Respondents
(R-1 to 4 original claimants)

Nos. 2 and 3 minor through guardian mother,
petitioner No.2.
All R/o. Hadakhed, Taluka Shirpur,
District Dhule.

- 5] Hari Singh Bhanwai Singh
Aged Adult, Occ. Business,
R/o. Bhanpur, Dist. Rena (M.P.)
- 6] Dattatraya Shankar Patil
Aged Adult, Occ. Business
- 7] The New India Assurance Co. Ltd.,

(Respondent Nos. 5 to 7
original Opponent Nos. 1,3 and 4.)

...
Mr. A.B. Gatne, Advocate for appellant;
Mr. P.P. Patil, Advocate for respondent No.1
Respondent No.2 to 4 and 6 served,
against respondent No.5 appeal already dismissed.

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CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 10th February 2023
PRONOUNCED ON : 20th February, 2023

JUDGMENT :-

1. The appellant/insurance company prefers this appeal under Section 173 of the Motor Vehicles Act, taking exception to the judgment and award dated 19.7.2004 passed by the Motor Accident Claims Tribunal, Dhule (for short "Tribunal") in MACP No. 459 of 2001.

2. The dependents of deceased Dharamsingh Pawra, instituted MACP No. 459 of 2001 before the Tribunal at Dhule. It is the case of the claimants that deceased Dharamsing was traveling in the jeep bearing Registration No.MH-18/C-385 from Dhule towards Shirpur. The driver of the jeep was friend of deceased. While said jeep was passing in the vicinity of Savalda village on Mumbai-Agra road, offending truck bearing No. MP-06/E-2269 came from opposite direction collided to the jeep. Dharamsing suffered fatal injuries in the accident.

3. The claimants are dependents of the deceased who was serving as a teacher and getting a monthly salary of Rs. 7,000/- p.m. He was aged 32 years at the time of his death. The claim was contested on behalf of

the appellant/insurer of the truck attributing rash and negligent driving on the part of the jeep driver. It is further contended that the claim is excessive and exorbitant. The insurance company of the jeep had also filed written statement and attributed negligence of the truck driver.

4. Tribunal framed issues on the basis of the pleadings of the parties and recorded evidence. The claimant No.2 Sangita recorded her oral evidence and relied upon documentary evidence i.e. copy of FIR Exh.25, Spot Panchanama Exh.27, Inquest Panchanama Exh.28, School Leaving Certificate Exh.32,. The salary certificate “Exh.33” issued by the Zilla Parishad which depicts that the deceased was getting a monthly salary of Rs. 8,632/-. The learned Tribunal, after considering the evidence on record allowed the claim petition and passed award of Rs. 6 Lakh alongwith interest @ 9% p.a. against the opponent Nos. 1 and 2 i.e. owner and insurer of the truck.

5. Mr. Atul Gatne, learned advocate appearing on behalf of the appellant would submit that the Tribunal, erroneously considered the gross salary of the deceased while working out the compensation. He would submit that in view of the law laid down by the Supreme Court of India in case of *Asha and others Vs. United India Insurance company reported in 1(2004) ACC 533 (SC)*, the net salary of the deceased ought to have been considered. No other ground is pressed into service on behalf of the appellant.

6. Per contra, Mr. P.P. Patil, learned advocate for respondent No.1 submits that the tribunal awarded just amount of compensation to be paid to the respondents, hence, no interference is warranted in appeal.

7. Reliance placed by appellant on the judgment delivered by the Supreme court of India in the matter of Asha(supra) would be misplaced in view of the recent development of law. The Supreme Court of India, in the matter of ***“National Insurance Co. Ltd. Vs. Indira Srivastava and others” (2008)2 SCC 763*** has laid down that various perks and packages receivable to deceased employee are part of salary and will have to be considered while computing loss of dependency to the claimants. Further in the case of ***“National Insurance Company Vs. Pranay Sethi and others” (2017)16 SCC 680*** the Supreme Court has considered the Gross Salary minus statutory pay-outs, to be the income of the deceased for the purpose of working out the compensation. In the present case, the Tribunal has rightly passed an award of Rs.6,50,000/- only in favour of the claimants. Consequently, no interference is called.
8. The appeal is dismissed with costs. The amount of compensation, if any, deposited by the appellant be released to claimants.
9. In view of dismissal of writ petition, civil application stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE