IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.1661 OF 2008

The New India Assurances Co. Ltd.,
Branch at Yavatmal, District Yavatmal,
Through the Divisional Manager,
Dr. Ambedkar Bhavan, 4th Floor, NECL
Building, Seminary Hills, Nagpur
(Original Opponents No.3 on R.A.) **APPELLANT**

// VERSUS //

1) Smt. Chhayabai Sahebrao Jadhav,
Aged about 35 years, Occ. Nil,

2) Ku. Shardha d/o Sahebrao Jadhav,
Aged 18 years,

3) Sagar Sahebrao Jadhav,
Aged 14 years, Minor, GAL by
mother applicant no.1.

4) Ku. Pragati Sahebrao Jadhav,
Aged 9 years,

Respondent nos.3 and 4 minors
through their mother Respondent No.1.
All r/o Itava Ward, Pusad,
Tq. Pusad, District Yavatmal.

5) Mainabai Bhagwantrao Jadhav,
Aged about 70 years,
Occ. Agril., R/o Aregaon,
Post Moha, (Ijara) Tq. Pusad,
District Yavatmal.

As per Reg.(J)'s order dt. 1.9.09 appeal abates against R-5.

6) Kishor Vitthal Ukey,
Aged Adult, Occup. Driver,
R/o Waghapur Tekdi,
Shivaji Chowk, Yavatmal,
Tq. and Distt. Yavatmal.
(Driver of Matador no.MH-29-8337)

As per Reg.(J)'s order Dt. 1.9.09 appeal is dismissed against R-6.

RESPONDENTS
(On R.A.)

Shri Sandeep Marathe, Advocate for the appellant.
Shri K. S. Narwade, Advocate for respondent Nos.1 to 4.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 10/01/2023
PRONOUNCED ON : 30/03/2023

JUDGMENT

1. By preferring this appeal, the Insurance Company has challenged the Judgment and Award passed by Motor Accident Claims Tribunal, Pusad in Motor Accident Claim Petition No.66 of 2003 dated 19.03.2008.

2. Brief facts which are necessary to decide the appeal are as follows:

On 04.02.2003 at about 6.30 p.m. the deceased was returning to his village Aregaon on his bicycle. When he reached at Loni fata, one Metador bearing No. MH-29-8337 came from Mahur towards Pusad. The said Metador was driven by the respondent No.6 in rash and negligent manner without observing traffic rules and regulations, therefore he lost control over the offending vehicle and dashed against the bicycle of the deceased. Due to which, deceased Sahebrao sustained severe injuries. He was immediately shifted to Rural Hospital, Pusad for treatment. But, during treatment Sahebrao expired on 07.02.2003.

3. As per the contention of the original claimants alleged accident took place due to the rash and negligent driving of the Metador driver. Regarding the said accident, the crime was registered against the Metador driver vide Crime No. 42 of 2003 at Pusad Police Station under Section 279, 337, 338 and 304-A of the Indian Penal Code. The said vehicle was driven by respondent No.6 and owned by Atul Sudhakarrao Dhavande and validly insured with the New India Assurance Company vide its Policy No.160602/31/01/15988 for the period 12.02.2002 to 11.02.2003. As per the contention of the claimants, as alleged accident took place due to the rash and negligent driving of the Metador driver. All the respondents are jointly and severally liable to pay compensation.

4. It is further the contention of the original claimants that the deceased was working as a ‘Diwanji’ and drawing salary of Rs.2,000/- per month. He was also agriculturist and earning Rs.3,000/- per month from the agricultural land. The original claimant No.1 being widow and other claimants are the minor children of the deceased were depending upon the deceased, and therefore they have claimed compensation from the respondents.

5. In response to the notice, the Insurance Company resisted the claim petition by filing written statement and denied the contention of the claimants. It is the contention of the Insurance Company that the Metador driver was not holding valid and effective driving licence and committed the breach of the terms and conditions of policy, therefore Insurance Company is not liable to pay compensation and prayed for dismissal of the petition against the Insurance Company.

6. The driver and the owner of the vehicle have not contested the claim though they served with the notice.

7. In support of the contention, original claimants adduced their evidence and after hearing both the sides the Tribunal has granted compensation to the claimants of Rs. 4,26,000/-.

8. Being aggrieved and dissatisfied with the said Judgment and Award, present appeal is preferred by the Insurance Company on the ground that the Motor Accident Claims Tribunal has not considered that the driver of the Metador was not holding valid and effective driving licence for driving the transport vehicle. The Insurance Company has also challenged the quantum of the compensation. As per the ground raised by the Insurance Company in the appeal is that, the offending

vehicle is transport vehicle and the respondent No.6 was holding valid driving licence of Light Motor Vehicle non-transport. Therefore, there is a breach of policy and hence Insurance Company is not liable to pay compensation, and therefore the Judgment and Award passed by the Motor Accident Claims Tribunal, Pusad is liable to be set aside.

9. Heard learned Advocate Shri. Sandeep Marathe for the appellant – Insurance Company. He vehemently submitted that the driver of the offending vehicle was not holding valid driving licence. The offending vehicle was a transport vehicle and the driver of the Metador i.e. respondent No.6 was holding driving licence for non-transport. Thus, the owner of the vehicle has committed breach of the terms and conditions of the policy, and hence Insurance Company is not liable to pay the compensation.

10. On the other hand, Advocate Shri. K. S. Narwade for respondent Nos.1 to 4 who are the original claimants submitted that the Insurance Company has not raised the defence before the trial Court that driver of the offending vehicle was not holding the driving licence for transport vehicle. Therefore, Insurance Company cannot raise the said defence first time in the appeal. He further submitted that only defence of the Insurance Company was that driver of the offending vehicle was

not holding valid driving licence. Moreover, the deceased was a third party and insurance company has to pay compensation when a valid certificate of insurance is issued. The insurer is at liberty to recover the said amount from the owner if the breach is proved. In addition to that, he also submitted that though the claimants have not filed cross-objection, but if this Court comes to the conclusion that inadequate compensation is awarded, then this Court can enhance the compensation in the appeal filed by the Insurance Company. He submitted that trial Court ought to have consider the notional income of the deceased. After considering the notional income Rs.3,000/- per month, the yearly income of the deceased comes to Rs.36,000/-. After deducting 1/4th towards his personal expenses as the number of the dependents were more than three. The yearly income comes to Rs.27,000/-. The deceased was aged about 30 years at the time of accident. After applying the multiplier of 16 the amount of compensation comes to Rs.4,32,000/-. After adding 40% towards future prospects, it comes to Rs.4,32,000/- + Rs.1,72,800/- = Rs.6,04,800/-. In addition to that the claimants are entitled to receive an amount of Rs.40,000/- each towards consortium and Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. He submitted that in view of that the claimants are entitled to receive the compensation at the enhanced rate and prayed for the enhancement of the compensation.

11. After hearing both the sides, following points arise for my determination and I answer the same as follows:

> *(i) Whether the appellant – Insurance Company established that owner of the Metador bearing No. MH-29-8337 has committed breach of policy on account of not holding the driving licence for transport vehicle and thereby committed breach of terms and conditions of policy?*
>
> *(ii) Whether claimants are entitled for enhanced rate of compensation?*

12. It is not disputed that on 04.02.2003 at about 6.30 p.m. when the deceased was returning to his village Aaregaon on his bicycle one Metador bearing No. MH-29-8337 came from Mahur towards Pusad, said vehicle was driven by its driver in a rash and negligent manner and gave dash to the bicycle of the deceased. Due to the severe dash, deceased sustained grievous injuries and succumbed to the death during the treatment on 07.02.2003. In support of the contention, the claimants have adduced the oral evidence. The claimant No.1 wife of deceased Chhayabai Sahebrao Jadhav stepped into the witness box vide Exh.34 and testified as per her pleadings. In support of her contentions, she placed reliance on certified copies of the charge-sheet, First Information Report Exh.36, Spot panchanama Exh.37, Death certificate Exh.40, Postmortem report Exh.41, Driving Licence of Metador Driver Exh.49, Learner's Licence of the Metador driver Exh.52, Certificate of

Registration of the vehicle Exh.53, Goods Carriage Permit Exh.56 and Copy of Insurance Exh.57. The claimant Chhayabai was cross-examined at length on behalf of the Insurance Company. She admitted during cross-examination that she has not witnessed the incident. She stated that she is not aware whether the driver of Metador was possessing valid driving licence. Besides her oral evidence, no other evidence is adduced on record. The Insurance Company has not adduced any evidence by examining the officials of the Regional Transport Office to prove that the Metador driver was not holding valid driving licence.

13. It is well settled that when Insurance Company comes with the specific case, then burden is on the Insurance Company to prove the same. Admittedly in the present case, Insurance Company neither examined any officials of the Insurance Company, nor examined any official from the R.T.O. It is pertinent to note that though Insurance Company has raised ground in the appeal that driver of the Metador was not holding driving licence to drive the Metador, which is a transport vehicle. However, said defence was not raised by the Insurance Company before the Tribunal. There was no pleadings to that extent. Admittedly, applicant has filed on record the copies of driving licence obtained from the Investigating Officer, it shows that Metador driver was having driving licence to drive the motor vehicle which is non-transport

and it was valid on the date of accident. Thus, the contention of the Insurance Company that driver of the Metador was not holding valid driving licence is not sustainable as the document on record shows that he was holding valid driving licence at the time of accident. Admittedly, Insurance Company has not raised the specific defence before the Tribunal that the Metador driver was holding non-transport vehicle licence, whereas the accident occurred by the transport vehicle. The driving licence issued to the Metador driver was for the light commercial vehicle. However, as per the contention of the Insurance Company, the Metador was a commercial vehicle. In fact, no such defence was raised by the Insurance Company before the Tribunal and no evidence was adduced to that effect. Admittedly, deceased was third party. The accident occurred when deceased was proceeding on his bicycle and the offending vehicle Metador gave dash to the deceased and due to the said severe dash, deceased sustained injury and succumbed to the death.

14. Hon'ble Apex Court in the case of **S. Iyyapan Vs. United India Insurance Company Ltd. and another** reported in **2013(6) Mh.L.J. 1,** it is held that the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but driven light motor vehicle which is used as a commercial vehicle, no endorsement to drive commercial vehicle was obtained on the driving

licence. It is further held by the Hon'ble Apex Court that in any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

15. In fact, in the present case, only defence raised by the Insurance Company was that the driver was not holding valid and effective driving licence, but Insurance Company has not adduced any evidence in support of the contention. On the contrary, the documents filed on record by the claimants show that Metador driver was holding driving licence which was valid and effective on the date of accident. First time in the appeal, the Insurance Company has raised the defence that the Metador driver was not holding driving licence to drive the transport vehicle and Metador is a transport vehicle. The Insurance Company has raised the ground that Metador driver was holding licence to drive non-transport vehicle, whereas he has driven the transport vehicle at the time of accident. It is well settled that Insurance Company has to raise the defence in a written statement and in support of the defence burden is on the Insurance Company to prove that there is violation of the terms and conditions of the Insurance policy.

16. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action *inter alia* on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly valid licence, and (iii) person driving the vehicle was disqualified to hold and obtain the driving licence.

17. It has not been disputed that the vehicle was Metador which is a transport vehicle. It is also not undisputed that the driving licence which was produced on record by the appellant shows that driver of the said vehicle was holding driving licence for the non-transport vehicle. However, the defence was not raised by the Insurance Company before trial Court that the owner of the vehicle has committed breach as Metador driver was not holding valid driving licence. The Insurance Company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. The liability of the insurer is statutory one.

18. The Hon'ble Apex Court in the judgment referred above **S. Iyyapan** (supra) held that the breach of policy condition i.e. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to

have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

19. Here in the present case, only defence raised by the Insurance Company is that the Metador driver was not holding valid driving licence. No specific defence was raised by the Insurance Company that Metador driver was not holding driving licence to drive transport vehicle and no evidence is adduced to that effect. Thus, Insurance Company failed to prove that the Metador driver was not holding the driving licence to drive the commercial vehicle or transport vehicle, and therefore Insurance Company is not liable to pay compensation. As Insurance Company failed to raise the plea and prove the defence, Insurance Company cannot raise the said defence in appeal directly. Therefore, the Insurance Company is liable to pay compensation to the claimants.

20. Now, the question is whether the claimants are entitled for the enhancement of the compensation in absence of any cross-objection. Learned Advocate Shri. Narwade for the respondent Nos.1 to 4 vehemently submitted that it is well settled that just compensation is to be awarded to the claimants or the affected persons. He further submitted that though the cross-objection or the appeal is not filed by the claimants for enhancement of the compensation, this Court can grant enhanced compensation. In support of his contentions he placed reliance on **Surekha and others vs. Santosh and others** reported in AIR **2020 SC (Supp) 578,** wherein it is held that it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the Court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants. Hon'ble Apex Court held that merely because cross-objection is not filed enhancement of the compensation cannot be refused to the claimants.

21. He further submitted that in view of catena of decision the Hon'ble Apex Court just and reasonable compensation is to be paid to the claimants. It should neither a bonanza nor a source of profit nor a pittance, compensation to be quantified taking into consideration the facts and the circumstance and attending peculiar or special features

which requires judicial and rational approach. In support of the contentions he placed reliance on **State of Haryana and another Vs. Jasbir Kaur and others** reported in **(2003) 7 SCC 484**. He also placed reliance on **Rambati Madiya and others Vs. Budanti and others** reported in **MANU/CG/0340/2008** and **Sarla Verma and others Vs. Delhi Transport Corporation and others** reported in **(2009) 6 SCC 121** and **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram and others** reported in **(2018) 18 SCC 130**.

22. It is not in dispute that the provisions in Motor Vehicles Act are enacted in order to protect the victim of road accident travelling in the vehicle or using the road and thereby made it obligatory that no motor vehicle shall be used unless the vehicle is compulsory insured against the third party risk. The right of the victim of a road accident to claim compensation is statutory one.

23. Here in the present case, while awarding the compensation to the claimants, the Tribunal had taken into consideration the oral evidence of the claimant No.1 who testified that her husband was working as a Diwanji with one Ashok Jaiswal and getting Rs.2,000/- per month. Her evidence further disclosed that deceased was also holding agricultural land and was earning Rs.3,000/- per month from the said

agricultural land. Admittedly, no evidence is adduced to show that her husband was serving as a Diwanji with one Ashok Jaiswal and getting Rs. 2,000/- per month. However, she placed on record 7/12 extract which shows that deceased Sahebrao Bhagwanrao Jadhav was holding agricultural land to the extent of 64 R. The cultivation column of the said 7/12 extract shows that he was cultivating the vegetables in the said land. Thus, it is apparent that the deceased was cultivating the land and was getting the income from the said land. It is pertinent to note that said land after the death of the deceased remained with the claimants. However, claimants have suffered the loss as they have to manage the said agricultural land by appointing somebody. Thus, the loss of the claimants is in the managerial capacity. They have to incur the expenses to appoint somebody to cultivate the land, and therefore the said loss is to be taken into consideration. Therefore, it would be just and appropriate to consider the notional income of the deceased as Rs.3,000/- per month. After considering the income of the deceased as Rs.3,000/- per month, the yearly income of the deceased comes to Rs.36,000/- per year. After deducting 1/4th considering four persons were dependent on the deceased, it come to Rs.27,000/- per year. The aspect of future prospects is considered by the Hon'ble Apex Court in the **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **(2017) 16 SCC 680** wherein Hon'ble Apex Court has held that, although the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc.

24. It is held by the Hon'ble Apex Court in the Judgment in **Sarla Verma (supra)** the Court has made it as a rule that 50% of the actual salary could be added if the deceased had permanent job and if the age of the deceased is between 40 to 50 years. It further ruled that where the deceased was self-employed or was on a fixed salary, the courts will usually take only the actual income at the time of death and the departure is permissible only in rare and exceptional cases involving

special circumstances.

25. The Hon'ble Apex Court further held in **Pranay Sethi** (supra), that in case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was not on a fixed salary would not be entitled to the benefit of future prospects for the propose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such is a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-

employed or on a fixed salary. But not to apply the principle of standardisation on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years, an addition of 25% where the deceased was between the aged of 40 to 50 years would be reasonable.

26. Here the deceased was 30 years old and his income after deducting 1/4th is taken into consideration as Rs.27,000/- per year and after adding 40% which comes to Rs.10,800/-. After adding 40% towards future prospects yearly income comes to Rs.37,800/-. As per postmortem report age of the deceased was 30 years. In absence of any other evidence regarding the age, the age mentioned in the postmortem report is taken into consideration. Considering the age of the deceased as 30 years multiplier 17 is to be applied. So, Rs.37,800/- X 17 comes to Rs.6,42,600/-. Besides the above said amount, the claimants have also claimed the amount towards the consortium, loss of estate and funeral expenses. The trial Court has only granted Rs.3,000/- towards funeral

expenses. In view of the judgment of the Hon'ble Apex Court in case of **Pranay Sethi** (supra) the claimants are entitled to receive the compensation under the head of funeral expenses at the rate of Rs.15,000/- considering only Rs.3,000/- was granted additional amount of Rs.12,000/- the claimants are entitled to receive. Besides the expenses towards the funeral expenses the claimant Nos.1 to 4 are also entitled to receive loss of estate at the rate of Rs.15,000/- each which comes to Rs.15,000/- X 4 = 60,000/-.

27. The claimants have also claimed the compensation towards the consortium. The Hon'ble Apex Court in the case of **Pranay Sethi** (supra) has considered the aspect of consortium and held that the concept of loss of consortium in legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. Said non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even

during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable to award at least rupees one lakh for loss of consortium.".

28. In the judgment of **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram and others** (supra), wherein by referring the judgment of Constitution Bench in Pranay Sethi the Hon'ble Apex Court held that, in legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right of consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training." Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child

causes great shock and agony to the family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Whereas consortium to the spouse would include sexual relations with the deceased spouse. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation'.

29. In the light of the above principles laid down by the Hon'ble Apex Court, here in the present case the trial Court has not considered this aspect and awarded inadequate compensation. The concept of just compensation envisaged under Section 168 that the compensation is to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion is vested

in a tribunal yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and by applying appropriate multiplier.

30. In the light of the above said principles, the claimants are entitled to receive the enhanced amount of compensation as follows:

Yearly income of the deceased after deducting 1/4th --- **Rs. 27,000/-** (Rs.3,000/- per month early income comes to Rs.36,000/-)	
After adding 40% to the income, it comes to ---**Rs. 37,800/-**	
After applying the multiplier of 17 = the amount towards the loss of income	---Rs.6,42,600/-
Compensation under the head of funeral expenses. (Tribunal has awarded Rs.3,000/-)	---Rs. 12,000/-
Loss of estate Rs.15,000/- each to the claimant Nos.1 to 4.	---Rs. 60,000/-
Loss of consortium Rs.40,000/- each to the claimant Nos.1 to 4.	---Rs.1,60,000/-
Total compensation of amount comes to	**---Rs.8,74,600/-**

31. Thus, the claimants/respondent Nos.1 to 4 are entitled to receive the compensation of Rs.8,74,600/- along with the interest at the

rate of 7.5% from the date of filing of the appeal. In view of the observations, I proceed to pass following order.

(i) The appeal is dismissed.

(ii) The claimants/respondent Nos.1 to 4 are entitled to receive compensation of Rs.8,74,600/-.

(iii) The compensation is to be paid after deducting the amount of compensation already awarded by the Tribunal with interest at the rate of Rs.7.5 % from the date of filing of the appeal.

(iv) The claimants/respondent Nos.1 to 4 are directed to deposit deficit Court Fee stamp on enhanced compensation amount.

(v) The Insurance Company is directed to deposit the enhanced amount of compensation within two months from the date of judgment.

(vi) The respondents/claimant Nos.1 to 4 are entitled to withdraw the amount of compensation after depositing the deficit Court Fee stamp on the enhanced amount of compensation.

(URMILA JOSHI-PHALKE, J.)

Sarkate./-