IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1802 OF 2019

The New India Assurance Company Ltd.
A Subsidiary of the General Insurance
Corporation of India and a company
Incorporated under the Companies Act
having one of its Divisional office at
Adalat Road, Aurangabad
Through its Manager (Legal Hub) &
Authorized signatory
Shri Sanjeev s/o Ramrao Gaisamudre
Age 52 yrs, occu. Service at
The New India Assurance Co.,
D.O. No.1 Adalat Road, Aurangabad … **Appellant**
(Rg.Resp.No.3.)

VERSUS

1) Namabai widow of Dasu Rathod
Age 45 yrs, occ-household,
r/o Umbarkheda, Tq. Kannad,
Dist. Aurangabad

2) Alasing s/o Dasu Rathod,
age 23 years,
Occu. Labour, r/o as above

3) Udaysing s/o Dasu Rathod,
age: 17 years, Occ. Nil,
U/g claimant No.1,

4) Ishwar s/o Dasu Rathod,
age 15 years,
U/g claimant No.1,

5) Kailas s/o Dasu Rathod,
age 13 years,
U/g claimant No.1,

6) Sitabai d/o Dasu Rathod,
age 11 years,
U/g claimant No.1,

7) Gitabai d/o Dasu Rathod,
age 9 years,
U/g claimant No.1,

8) Sanjay s/o Mahadu Kshirsagar,
age major, occupation – business,
r/o Dhorkin, Tq. Paithan,
Dist. Aurangabad

9) Shaikh Shamim s/o Shaikh Shabed
Age: 30 years, Occupation – Driver,
r/o Nagapur, Tq. Kannad … **Respondents**
(R.Nos. 1 to 7 : Org.Clmt.
R.Nos. 8 & 9: Org.R.Nos.1 & 2)

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Mr. A. B. Kadethankar, Advocate for Appellant
Mr. Y. B. Bolkar, Advocate for

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WITH
CROSS OBJECTION NO. 37 OF 2021
IN FIRST APPEAL NO. 1802 OF 2019

1) Namabai w/o Dasu Rathod
Age: 60 years, Occu,: Household

2) Alasing S/o Dasu Rathod,
Age 35 years, Occu. Labour,

3) Udaysing S/o Dasu Rathod,
Age: 27 years, Occ. Nil,

4) Ishwar S/o Dasu Rathod,
Age 25 years, Occu: Nil,

5) Kailas S/o Dasu Rathod,
Age 22 years, Occu: Education

6) Sitabai D/o Dasu Rathod,
Age 25 years, Occu: Education

7) Gitabai D/o Dasu Rathod,
Age 20 years, Occu: Education

All R/o.: Umbarkheda, Tq. Kannad,
District Aurangabad … **Objection Petitioners**
(Orig. Claimants)

VERSUS

1. The New India Assurance Company Ltd.
A Subsidiary of the General Insurance
Corporation of India and a company
Incorporated under the Companies Act
having one of its Divisional office at
Adalat Road, Aurangabad
Through its Manager (Legal Hub) &
Authorized signatory
Shri Sanjeev s/o Ramrao Gaisamudre
Age 57 yrs, occu. Service at
The New India Assurance Co.,
D.O. No.1 Adalat Road, Aurangabad

2. Sanjay s/o Mahadu Kshirsagar,
Age major, Occupation – Business,
r/o Dhorkin, Tq. Paithan,
Dist. Aurangabad

3. Shaikh Shamim s/o Shaikh Shabed
Age: 35 years, Occupation – Driver,
r/o Nagapur, Tq. Kannad
District Aurangabad … **Respondents**

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Mr. Y. B. Bolkar, Advocate for Objection Petitioners
Mr. A. B. Kadethankar, Advocate for respondent No.1

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 12 MARCH 2024

PER COURT :-

1. The Appellant Insurance Company presented this appeal under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 21.09.2010 passed by the learned Member, Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No.193 of 2008 praying for quash and set aside the Award. The Respondents/Original claimants have filed Cross Objection No. 37 OF 2021 seeking enhancement compensation arising out of said judgment and award. Therefore, Appeal and Cross Objection taken together.

2. The present appellant is the original respondent No.3 – Insurance Company and Respondent Nos. 1 to 7 are the original claimants, who are legal heirs of deceased Dasu Nanu Rathod, who succumbed due to severe injuries received in an accident occurred on 15.10.2007. Respondent No.8/original Respondent No.8 is the owner of vehicle. The Respondent No.9/original Respondent No.2, driver of the vehicle.

3. For the sake of brevity, hereinafter parties to present appeal shall be referred in their original capacity as claimants and Respondents.

4. In nutshell claim of the claimants is that, on 15.10.2007, the deceased Dasu Nanu Rathod along with other villagers were travelling in mini-door bearing registration No. MH-20-T-2464. They were going to Nagapur, Tq. Kannad for purchasing the fertilizers and when above said vehicle reached near the field of Shri Vithal Sapate at that time, the Respondent No.9 driver deluded the vehicle coming from opposite directions, due to which mini-door turtled and deceased had received multiple injuries and he succumbed due to accidental injuries while Hospitalization at Rural Hospital, Kannad. Accordingly, an F.I.R. bearing Crime No.103 of 2007 was registered against the Respondent No.9. As, deceased died due to accidental injuries, therefore, the claimants/respondent Nos. 1 to 7 have filed M.A.C.P. No.193 of 2008 and thereby prayed for compensation to the tune of Rs.7,00,000/-. According to the claimants at the time of accident, the deceased was 47 years old and he was working as 'Mason' and was drawing income of Rs.4,500/- per month. The

respondents' have filed their respective written statement thereby they denied the claim of the claimants.

5. After conclusion of trial, the learned Member, Motor Accident Claims Tribunal has passed the impugned judgment and award and granted compensation to the tune of Rs.3,47,000/- including 'no fault liability' and directed the respondents to pay the said amount jointly and severally to the claimants.

6. Mr. A. B. Kadethankar, the learned Counsel appearing for the Appellant/ Insurance Company in vehemence canvassed that, the sitting capacity of the offending vehicle was 3+1, however, at the time of accident, more than 8 to 9 persons were travelling in the offending vehicle. So also, the offending vehicle was insured under the policy of passengers carrying commercial vehicle. But, at the relevant time, more person than the capacity were travelling in insured vehicle. Therefore, there is breach of policy. Therefore, as per the terms and conditions of the policy, the claimants are not entitled to receive the compensation as against the appellant Insurance Company. However, the learned Member, M.A.C.T., failed to consider this material evidence and passed the impugned Judgment and Award. Therefore, prayed for quash and set aside the same.

7. Per contra, the original claimants have filed cross objection and prayed for enhancement of compensation. The learned counsel appearing for the Respondents/Claimants submits that, the learned Member, Motor Accident Claims Tribunal, Aurangabad has wrongly considered income of the deceased of Rs.3,000/- per month, though at the relevant time, the deceased was earning Rs.5,000/- per month. Further, the learned Member, M.A.C.T. wrongly considered dependency, though all the claimants were dependent on the income of the deceased and due to sudden death of bread earner their family, whole family members are suffering from starvation, however, this factor not been considered.

8. The learned counsel for the Respondents/ Claimants further argued that, the learned Member wrongly considered the age of deceased without applying proper multiplier and granted meagre amount of compensation. So also, meagre amount of Rs.35,000/- granted under conventional head.

9. In support of these submissions, the learned Counsel for respondent Nos. 1 to 7/original claimants relied on following Judgments:-

(i) Sarla Verma and others Vs. Delhi Transport Corporation and another – (2009) 6 SCC 121;

(ii) Reshma Kumari and others Vs. Madan Mohan and another – (2013) 9 SCC 65;

(iii) Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram and others – (2018) 18 SCC 130;

(iv) Janabai Wd/o Dinkarrao Ghorpade and others Vs. ICICI Lambord Insurance Company Limited – (2022) 10 SCC 512;

(v) Kirti and another Vs. Oriental Insurance Company Limited – (2021) 2 SCC 166;

(vi) Sidram Vs. Divisional Manager, United India Insurance Company Limited and another – (2023) 3 SCC 439.

10. Having regard to submissions canvassed on behalf both the sides, I have gone through the record. It is not disputed that, on 15.10.2007, the deceased Dasu, the husband of claimant No.1 and father of claimant Nos. 2 to 7, was travelling in vehicle bearing Registration No. MH-20-T-2464 and the present respondent No.9 was plying the said vehicle. It is an admitted fact that, the present respondent No.8 is the owner of offending vehicle, which was duly insured with the present appellant Insurance Company. The accident occurred on 15.10.2007 during the existence of policy.

11. After going through the evidence of the claimants, it prima facie appears that, accident took place due to negligence on the part of respondent No.9 Driver and death of deceased caused due to severe injury received in the accident. The claimants proved the F.I.R.,

spot panchanama Exh.25 and 26. As per F.I.R. and spot panchanama, three more persons were travelling in the offending vehicle including the deceased. The offence was registered as against respondent No.9 driver. In the cross examination, the appellant insurance company tried to bring on record that, 7 to 8 passengers were travelling in the mini-door/offending vehicle, which has met with an accident, but said suggestions denied by the claimants.

12. Needless to say that, merely the informant stated in the F.I.R. Exh.25 that, 7 to 8 persons were travelling, however, the insurance company fail to solicit that 7 to 8 persons were traveling in the offending vehicle at the time of accident. Though, the Appellant/Insurance Company filed W. S., and pleaded about breach of conditions of insurance policy, because 7 to 8 persons were traveling in vehicle is breach of policy, but the appellant insurance company fail to examine any witness to prove the said defense. Therefore, merely raising defense in the written statement cannot be said to proved automatically without corroborative piece of evidence.

13. As per postmortem report Exh.27, death of deceased Dasu caused due to head injury and the accident is caused due to rash and negligent driving on the part of respondent No. 9 driver. No doubt,

the claimants claimed that, the deceased was earning Rs.4,500/- per month, but they fail to prove the income proof of the deceased. On perusal of the impugned Award it appears that, the learned Member, M.A.C.T., has considered notional income of the deceased pertinent to 2007, i.e. the year of accident. The claimants failed to produce documentary evidence to prove age of the deceased. The learned Member, considered the medical evidence available on record and held that, the deceased was in between 50 to 54 years of age and as per ***Sarla Verma's case*** (supra), the multiplier would be applicable '11' and ascertained compensation to the tune of Rs. 2,97,000/- and Rs.35,000/- towards love and affection, Rs.5,000/- towards funeral expenses and Rs.10,000/- towards loss of consortium. However, it is submitted that, in the case of ***Pranay Sethi*** cited (supra), it was held that, entitlement of Rs.70,000/- on consortium head, namely, loss of estate, loss of consortium and funeral expenses respectively should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- =Rs.70,000/-.

14. In the case in hand, the learned Member, M.A.C.T., has granted Rs.35,000/- under the conventional heads, which is certainly contrary to the view taken by the Hon'ble Supreme Court in ***Pranay Sethi's*** case. Therefore, to my view, the claimants are entitled for

enhanced compensation to the extent of Rs. 35,000/- only, with interest in terms of the award from the date of award till its realization.

15. In view of the above discussions, I do not find merit to interfere with the findings recorded by the learned Member, hence, appeal is liable to be dismissed. However, the respondent Nos. 1 to 7/ original claimants are entitled to receive enhanced compensation to the extent of Rs.35,000/- with interest at the rate 7% p. a. from the date of award till its realization.

16. Accordingly, I proceed to pass the following order:-

ORDER

(i) The First Appeal is hereby dismissed.
(ii) Cross objection is partly allowed.
(iii) The impugned judgment and award dated 21.09.2010 passed by the learned Member, Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No.193 of 2008, is hereby partly modified. The compensation granted under the head of conventional to the extent of Rs.35,000/- is hereby enhanced with interest at the rate of 7% p. a. from the date of the award till its realization.
(iv) The appellant - insurance company is hereby directed to deposit the said amount in this Court within a period of eight weeks from today.
(v) Decree be drawn accordingly.

[Y. G. KHOBRAGADE, J.]

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