



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

FIRST APPEAL NO. 1328 OF 2010

1. Dattatraya s/o Namdeo Undare,
Age 42 years, Occupation Agriculturist,
2. Sau. Damyanti w/o Dattatraya Undare,
Age 37 years, Occupation Household,

Both R/o Washi Tq. Washi,
Dist. Osmanabad.

**...Appellants
(Original Claimants)**

VERSUS

1. Shrihari s/o Kalyanrao Parkale,
Age Major, Occupation Business,
R/o Hasegaon Tq. Kallam,
Dist. Osmanabad.

2. New India Assurance Co. Ltd.,
Through Branch Manager,
Near Sanjivani Hospital,
Osmanabad, Dist. Osmanabad.

**...Respondents
(Original Respondents)**

...

**Advocate for Appellant : Ms. Sayali S. Tekale and Mr. Prasanna
Dadpe**

Advocate for Respondent No.2 : Mr. A. B. Gatne

...

**WITH
FIRST APPEAL NO. 1329 OF 2010**

1. Arun s/o Bhagwat Shinde (Mali),
Age 55 years, Occupation Agriculture,
2. Sau. Mangal w/o Arun Shinde (Mali),
Age 49 years, Occupation Household,

Both R/o Washi Tq. Washi,
Dist. Osmanabad.

**...Appellants
(Original Claimants)**

VERSUS

1. Shrihari s/o Kalyanrao Parkale,
Age Major, Occupation Business,

R/o Hasegaon Tq. Kallam,
Dist. Osmanabad.

2. New India Assurance Co. Ltd.,
Through Branch Manager,
Near Sanjivani Hospital,
Osmanabad, Dist. Osmanabad.

**...Respondents
(Original Respondents)**

....

**Advocate for Appellant : Ms. Sayali S. Tekale and Mr. Prasanna
Dadpe**

Advocate for Respondent No.2 : Mr. A. S. Osmanpurkar

....

CORAM : ARUN R. PEDNEKER, J.

DATE : 08/03/2024

JUDGMENT :-

1. Heard the learned Advocate Ms. Sayali S. Tekale for the appellants and Mr. A. B. Gatne and Mr. A. S. Osmanpurkar for the respondent No.2- Insurance Company.

2. Both the appeals are identical and arise out of one accident, the claimants are identically placed. The facts and law involved is also identical. Thus, both the appeals are taken up for hearing together.

3. By the present appeals the appellants are challenging the Judgment and award dated 26/03/2010, passed by the learned Member, Motor Accident Claims Tribunal in M.A.C.P. No.100/2008 and M.A.C.P.No.101/2008, whereby the Tribunal was pleased to allow the

claim of the claimants against the opponent No.1 i.e. the owner of the offending insured vehicle and dismissed the claim against the opponent No.2 i.e. the New India Insurance Company Limited. The amount of Rs.1,50,000/- in each petition, is directed to be paid to the applicants by the opponent No.1 @ of 8% p.a. from the date of the petition until realization minus 'No fault liability' amount if any is already paid under section 140 of the Motor Vehicles Act.

4. The appeal is preferred against the order of the Tribunal by the claimants on two grounds. The first ground is that the liability should be jointly fastened upon the insurance company so also the opponent No.1. Alternatively the Insurance Company should have been directed to pay and recover from the opponent No.1. The second ground is as regards insufficient compensation granted to the claimants.

5. Briefly facts are summarized as under : -

The claimants/ appellants in both the petitions are the parents of the deceased Pallavi Dattatraya Undare, aged 14 years and deceased Revati, aged 15 years. Their daughters Pallavi and Revati were friends and were riding bicycle on Washi to Dasmegaon road. A truck No.MH-12/Q-9645 came in rash and negligent manner and gave dash to them. The truck was in a high speed and the deceased Pallavi and Revati sustained multiple grievous injuries on vital parts of the body and died

on the spot. Crime No.31/2008 was registered at Washi Police Station against the driver of truck and the driver of the truck was prosecuted for the offence punishable under Section 279, 304-A, 337, 338 of IPC and 184, 134 (A)(B) of M.V.Act. The claimants/parents of deceased also filed claim petitions before the Motor Accident Claim Tribunal. It is contended in the claim petition that the deceased Pallavi was 14 years of age and learning in 8th standard and while Revati was 15 years of age and learning in 9th standard. The claimant's daughters died of accidental death in the above accident and the parents claimed compensation @ Rs.1,50,000/-. The claim was resisted by opponent No.2 by filing written statement, whereas the opponent No.1- owner of the vehicle did not appear and contest the claim.

6. After considering the evidence on record, the Tribunal held that the truck driver was negligent and that the truck was driven in rash and negligent manner, and there was no contribution of any negligence on the part of the cyclists, and as such, the tribunal held that the applicants have established that the accident had occurred due to the rash and negligent driving of Truck bearing No.MH-12/Q-9645. The Tribunal further held that the driver of the truck was holding LMV licence only at the relevant time and did not hold a licence for driving heavy vehicle, and as such, the liability was only fasten on the

opponent No.1- the owner of the truck, and the Insurance Company was absolved from the liability. Against the order passed by the Tribunal absolving the Insurance Company, the present petitions are filed.

7. The learned Advocate **Ms. Sayali S. Tekale** appearing for the appellants relied upon the Judgment in ***Shamanna and Another Versus Divisional Manager, Oriental Insurance Company Limited and Others, reported in (2018) 9 Supreme Court Cases 650***, and also relied upon the Judgment in ***S. Iyyapan Versus United India Insurance Company Limited and Another, reported in (2013) 7 Supreme Court Cases 62***, to contend that when a third party suffers on account of the negligent act of the driver of the insured vehicle, then the insurance company is liable to pay compensation to the claimants even if the driver of the insured vehicle does not have a valid licence or no licence at all. The learned Advocate submits that in such a situation the settled law is that the insurance company has to pay first and is entitled to recover from the insured/owner of the insured vehicle.

8. The learned Advocate also relied on the paragraph No.10 of the Judgment of Hon'ble Supreme Court in ***Meena Devi's Versus Nunu Chand Mahto @ Nemichand Mahto & Ors. reported in (2023) 1 SCC 204***, wherein Judgment of ***M. S. Grewal and another Versus***

Deep Chand Sood and Others, reported in (2001) 8 SCC 151, and Kishan Gopal and another Versus Lala and Others, reported (2014) 1 SCC 244, are discussed. In case of ***Kishan Gopal (Supra)***, a child of ten years had died in the accident which took place on 19/07/1992 and the notional income was accepted of Rs.30,000/- in place of Rs.15,000/- and the computation was calculated @ of Rs.5,00,000/-. The learned Advocate for the appellants submits that she would be entitled for compensation more than granted at paragraph No.10 of the above Judgment of ***Meena Devi (Supra)*** as the deceased were brilliant girls of 14 and 15 years of middle income family when the accident had take place.

9. Per contra, the learned Advocate **Mr. A. B. Gatne** and **Mr. A. S. Osmanpurkar** appearing for the Insurance Company in respective appeals submits that as regards the first contention of the petitioner that in case of a third party liability, it is not disputed that now the law is settled that the insurance company have to pay and recover the claim amount. However, they have placed reliance upon the Judgments of this Court in case of ***National Insurance Co. Ltd. Versus Veena and others, reported in 2018 ACJ 1558,*** to contend that before the claim amount is disbursed, the owner of the offending vehicle should be directed to furnish the security of entire

compensation amount which the insurer will have to pay to the claimants.

10. With response to the submissions in relating to the Judgment relied upon by the appellant in ***Meena Devi's Versus Nunu Chand Mahto @ Nemichand Mahto & Ors. (Supra)*** for enhancement of compensation, the learned Advocate for the Insurance Company submits that no such grounds are raised in the petition.

11. As regards the submission of 'pay and recover', the Hon'ble Supreme Court in the case of ***Parminder Singh Versus new India Assurance Company Limited and Others, reported in (2019) 7 Supreme Court Cases 217***, relying upon the Judgment of the Supreme Court in case of ***Shamanna Versus Oriental Insurance Co. Ltd. (Supra)*** has held that if the driver of the offending vehicle does not possess a valid driving licence, the principle of 'pay and recover' can be applied to direct the insurance company to pay the claimant, and then recover the amount from the insured /owner of the offending vehicle. There is no contest on the same proposition by the Insurance Company, as such, the directions of "pay and recover" can be made in this case also. However, learned Advocate for the Insurance Company has placed reliance upon the Judgment of this Court in the case of ***National Insurance Co. Ltd. Versus Veena***

and others, reported in 2018 ACJ 1559, wherein this Court at paragraph No.36 and 38 has observed as under :-

"36. In my considered opinion, however, though this submission appears to be 'just', so as to subserve the cause of justice, having regard to the law laid down by the Hon'ble Apex Court in all the above said authorities like Challa Bharathamma, 2004 ACJ 2094 (SC); Mushtari Begum, 2004 ACJ 1903 (SC); and others, this court cannot deviate from the mode prescribed by the Hon'ble Supreme Court, in order to enable the claimants to get amount of compensation. After all, the appellant insurance company, which is required to be exonerated from paying the compensation amount in view of the breach of the terms and conditions of the insurance policy, is now being directed to pay the said amount and, therefore, the interests of the insurance company are also required to be protected before the claimants are permitted to withdraw the said amount. The court has to, in such cases, take the balanced view. Therefore, the directions given in the said authorities need to be issued in this case also, so as to safeguard the rights of appellant insurance company and also that of the respondents-claimants."

"38. As a result, the appeal stands dismissed. The direction given by the Claims Tribunal to appellant to satisfy the award and recover the same from the owner in execution proceeding is confirmed with further direction as follows :

Before the release of the amount of compensation

deposited by the appellant in this court to the respondents-claimants, the owner of the offending vehicle, respondent, shall furnish security for the entire amount which the insurer will pay to the claimants.

If necessity arises, the executing court shall take the assistance of the concerned Regional Transport Authority for attachment of the vehicle.

The executing court shall pass appropriate order in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer.

In case there is any default, it shall be open to the executing court to direct realization of the amount by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle.

In this case, considering the quantum involved, it is left to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured...."

12. The learned Advocate for the Insurance Company submits that the Supreme Court in the case of **National Insurance Co. Ltd. Versus Challa Upendra Rao and Others, reported in (2004) 8 Supreme Court Cases 517** and **Pramod Kumar Agrawal and another Versus Mushtari begum and Others, reported in 2004 ACJ 1903**, has prescribed a mode for release of compensation amount to the claimant, whereby directions are given to take security of the

entire amount from the insured /owner of the offending vehicle before releasing the claim amount to the claimants and submitted that similar directions be passed in the present matter.

13. The question thus arises before this Court is,

*"whether the directions to give security by the insured to the insurer before the disbursement of the claim amount to the claimant is the ratio decidendi of the Judgments of the Supreme Court in the case of **Challa (Supra)** and **Mushtari Begum (Supra)** as quoted in the case of **Veena (Supra)** and thus constitutes a binding precedent and has to be followed in all the cases ?"*

14. Before dealing with the said Judgment of **Veena (Supra)**, it is necessary to consider the Judgment of this Court in **Writ petition No.4147 of 2015, Manish Madhukar Gajbhiye and Others Versus The Oriental Insurance Co. Ltd. And Another, decided on 02/09/2016, (Coram: Prasanna B. Varale, J. as he then was)**, wherein this Court after considering the Judgment of the Hon'ble Supreme Court in the case of **Pramdo Kumar Vs. Mushtari Begum (Supra)** and also by considering the Judgment of the High Court of Allahabad in the case of **I.C.I.C.I. Lombard General Insurance Co. Ltd. Versus Sirajuddin and Ors., reported in I (2014) ACC 958 (All)** has held that, when the owner is avoiding service with an

intention and with purpose is not attending the claim tribunal, the claimants for the willful act of the respondent owner may not be subjected to sufferance for indefinite period and that the claimants were permitted to withdraw the amount deposited in the claim tribunal without furnishing the surety by the insured, and the Insurance Company was permitted to recover the same from the owners of the offending vehicle.

15. It is also required to be noted that in the case of ***Parminder Singh (Supra)***, the Supreme Court while considering the case of the offending insured vehicle driven by a person who did not have a licence to drive, had directed the Insurance Company to pay the compensation to the claimants and applied the principle of "pay and recover", and gave following directions in the Judgment : -

"7. On the issue of liability to pay the compensation awarded, we affirm the view taken by the High Court that the respondent Insurance Company is absolved of the liability to bear the compensation, as evidence has been produced from the office of the Regional Transport Office to prove that the drivers of the two offending trucks were driving on the basis of invalid driving licences. It is also relevant to note that the owners and drivers of the offending trucks have not appeared at any stage of the proceedings, including this Court.

7.1 This Court in Shamanna v. Oriental Insurance Co.

Ltd., held that if the driver of the offending vehicle does not possess a valid driving licence, the principle of "pay and recover" can be ordered to direct the insurance company to the pay the victim, and then recover the amount from the owner of the offending vehicle.

7.2 We deem it just and fair to direct the respondent Insurance Company to pay the enhanced amount of compensation as indicated in para 6 above, to the appellant within a period of 12 weeks from the date of this judgment. The respondent Insurance Company is directed to make out a demand draft in the name of the appellant, which can be used for his care for the rest of his life. The respondent Insurance Company is entitled to recover the amount from the owners and drivers of the two offending trucks."

16. From the directions as quoted above in the case of ***Parminder Singh (Supra)***, it would be clear that the Supreme Court has not directed the insured/ owners of the vehicle to furnish security before the release of the claim amount to the claimant. The Supreme Court directed the Insurance Company to make payments within 12 weeks, and such a direction is also not issued by invoking Article 142 of the Constitution of India.

17. The Hon'ble Supreme Court in case of ***Pappu and Others Versus Vinod Kumar Lamba and Another, reported in (2018) 3***

Supreme Court Cases 208, considered the question that in absence of a valid licence of the driver of the insured vehicle, whether the insurance company can be directed to pay the claim amount with liberty to recover the same from the owner of the insured vehicle. In response to the question formulated before Supreme Court, the Supreme Court relied upon the Judgment of *National Insurance Co. Ltd. Versus Swaran Singh*, reported in 2 (2004) 3 SCC 297, and held as under : -

"16. The next question is: whether in the fact situation of this case the insurance company can be and ought to be directed to pay the claim amount, with liberty to recover the same from the owner of the vehicle (respondent No.1) ?"

"17. This issue has been answered in the case of *National Insurance Company Ltd.* In that case, it was contended by the insurance company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. However, this Court held that even if the insurer succeeds in establishing its defence, the Tribunal or the Court can direct the insurance company to pay the award amount to the claimant(s) and, in turn, recover the same from the owner of the vehicle. The three-Judge Bench, after analysing the earlier decisions on the point, held that there was no reason to deviate from the said

well-settled principle. In paragraph 107, the Court then observed thus:

“107. “We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realize the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it has not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between

the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage."

18. ...

"19. In the present case, the owner of the vehicle (Respondent 1) had produced the insurance certificate indicating that Vehicle No.DIL 5955 was comprehensively insured by Respondent 2 (insurance company) for unlimited liability. Applying the dictum in National Insurance Co. Ltd. Versus Swaran Singh, to subserve the ends of justice, the insurer (Respondent 2) shall pay the claim amount awarded by the Tribunal to the appellants in the first instance, with liberty to recover the same from the owner of the vehicle (Respondent 1) in accordance with law."

The Supreme Court has held in case of **Pappu (Supra)** that even if the insurer succeeds in establishing its defence, the Tribunal or the Court can direct the insurance company to pay the claim amount to the claimant(s) and, in turn, the insurance company may recover the same from the owner of the vehicle. The same has been held by placing reliance upon the Judgment of **Swaran Singh (Supra)**.

18. Thus, in the above Judgment of **Pappu (Supra)**, so also the Judgment in case of **Parminder Singh (Supra)**, the Supreme Court has not directed the insured/ owner of the vehicle to give security for

release of the claim amount to the claimants. In the above Judgment of the Supreme Court there is direction to the insurance company to make the payment and it is observed that the insurance company would be entitled to recover the same from the insured.

19. While dealing with the doctrine of precedent, in case of ***Laxmi Devi Versus State of Bihar and Others., reported in (2015) 10 SCC 241***, has observed at paragraph No.23 and 24 as under : -

"23. The following paragraph from the determination of the Three-Judge Bench in Sanjay Singh vs. U.P. Public Service Commission, Allahabad, 2007 (3) SCC 720, is instructive and is reproduced for this reason :

"10. The contention of the Commission also overlooks the fundamental difference between challenge to the final order forming part of the judgment and challenge to the ratio decidendi of the judgment. Broadly speaking, every judgment of superior courts has three segments, namely, (i) the facts and the point at issue; (ii) the reasons for the decision; and (iii) the final order containing the decision. The reasons for the decision or the ratio decidendi is not the final order containing the decision. In fact, in a judgment of this Court, though the ratio decidendi may point to a particular result, the decision (final order relating to relief) may be different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do

complete justice in the matter. It is the ratio decidendi of a judgment and not the final order in the judgment, which forms a precedent.

"24. We also commend a careful reading of the following paragraphs from the decision of the Constitution Bench in Islamic Academy of Education vs. State of Karnataka, 2003 (6) SCC 697, which we shall reproduce for facility :

"139. A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal. (See Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C.Budharaj)."

"140. In Padma Sundara Rao v. State of T.N it is stated: (SCC p. 540, paragraph 9)

"9. ...There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board(Sub nom British Railways Board v. Herrington). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

145. It is further trite that a decision is an authority for what it decides and not what can be logically deduced therefrom."

20. The Supreme Court in the above Judgment of ***Laxmi (Supra)*** while considering the earlier Judgments has held that it is the ratio decidendi of the Judgment that forms the precedent and not the final order in the Judgment.

21. The Hon'ble Supreme Court in the case of ***Suneja Towers private Limited and Another Versus Anita Merchant, reported in (2023) 9 Supreme Court Cases 194***, considered the case of *Manjeet Kaur Monga Versus K.L. Suneja (2018) 14 SCC 679*, wherein the Competition Appellate Tribunal, while exercising powers under Section 12-B of the MRTP Act, directed the builder to pay compound interest @ 15% p.a. from the date of deposit and until the date on which allotment was cancelled. In view of the Judgment of *Manjeet Kaur* the question arose whether compound interest could be granted as a measure of compensation. The Supreme Court in ***Suneja Towers (Supra)*** observed that, the question raised in the case of ***Manjeet Kaur Monga (Supra)*** was not as regards grant of compound interest as a measure of compensation, and at paragraph No.48, 49 and 51 observed as under : -

"48. In the aforesaid decision in Dr. Manjeet Kaur Monga by this Court, the question was not raised as to whether compound interest could be granted as a

measure of compensation nor this Court decided so. The question raised had been the other way round that COMPAT had not specified the amount of compensation payable, to which, this Court observed that calculating the amount as per directions of COMPAT would lead to the quantum of compensation."

"49. What has been argued before us on behalf of respondent is essentially on the basis of the relief granted by COMPAT to the said complainant Dr. Manjeet Kaur Monga, which was not interfered with by this Court. That aspect, in our view, only relates to the conclusion of the decision and not to its ratio decidendi."

"51. Keeping the principles aforesaid in view and for what has been discussed hereinbefore in regard to ratio decidendi of the decision in Dr. Manjeet Kaur Monga, it is but clear that the said decision cannot be read in support of the principle that compensation and/or punitive damages in terms of the Act of 1986 could also be by way of compound interest. As noticed, the State Commission has awarded compound interest, and National Commission has approved such awarding of compound interest to the present respondent, only with reference to the said decision in the case of Dr. Monga. When we do not find ratio decidendi of Dr. Monga leading to the enunciation in favour of awarding compensation and/or punitive damages by way of compound interest, the substratum of the orders

impugned is knocked to the ground."

22. From the Judgment of **Laxmi Devi (Supra)** and **Suneja Towers (Supra)**, it is apparent that it is the ratio decidendi of the Judgment is the binding precedent which has to followed and not the final order. The final order directing the insured to give security before the claim amount is disbursed to the claimant is not the ratio decidendi of the Judgment of the Supreme Court Judgments in **Challa Upendra Rao (Supra)** and **Mushtari Begum (Supra)**. These are mere final directions given in the fact situation and also is apparent from the Judgments of the Supreme Court in the cases of **Pappu (Supra)** and **Parminder Singh (Supra)** that similar directions need not be issued in every case to the insured to give security before the disbursement of compensation amount to the claimant and the same would depend upon the fact of each case. The Judgments of the Supreme Court as referred in the case of **Veena (Supra)** does not lay down a law that the owners of the insured vehicle be directed to give security before release of the compensation amount to the claimants where the defence under Section 149 (2) of the MV Act is established by the insurance company. The final order would be depending upon the fact situation. No clear formulation is made in that regard.

23. The Judgment of this Court in the case of **Manish Gajbhiye**

(Supra) is not noticed in the subsequent Judgment in **Veena (Supra)** and so also for the fact that it is not the law laid down by the Supreme Court that a particular modality has to be followed while directing the Insurance Company to “pay and recover” as is apparent from the Judgment of **Parminder (Supra)** and **Pappu (Supra)** that the Supreme Court has not subsequently applied any such method of taking security while directing “pay and recover”. Thus, the claimants cannot be made to wait forever for the security from the insured of the claim amount and thus it would be appropriate to direct Insurance Company to pay the claim amount to the claimants and liberty being granted to the insurance company to recover the same from the insured/owner of the vehicle, if so desired by them. The insurance company is a business entity and is aware of the risk of ‘pay and recover’. It is also to be noted that the third party insurance is a statutory insurance and the third party cannot be made to wait until the insurance company is able to secure the claim amount from the insured.

24. Now coming to the next submission as regards enhancement of compensation, in the case of **Meena Devi (Supra)** at paragraph No.14 the Supreme Court has observed that the Three-Judge Bench of the Supreme Court in **Nagappa Vs. Gurdayal Singh and others, (2003)**

2 SCC 274, that there is no restriction that the Tribunal/Court cannot award compensation exceeding the amount so claimed. The Tribunal/Court ought to award 'just' compensation which is reasonable in the facts relying upon the evidence produced on record. Therefore, less valuation, if any, made in the claim petition would not be impediment to award just compensation exceeding the claimed amount.

25. In the case of **Meena Devi (Supra)** the Hon'ble Supreme Court at paragraph No.10 and 14 has observed as under : -

*"10. Thus relying upon the observation, it is said that in place of issuing any guidelines for determination of compensation in case of death of a child, it may be left open to be decided in the facts and circumstances of each case. In the case of **M. S. Grewal (Supra)**, 14 school students died due to drowning in a river. This Court noticing that the students were belonging to upper middle class background, however awarded the compensation to the tune of Rs.5,00,000/-. Thereafter in the case of **Kishan Gopal (Supra)**, a child aged about 10 years died in a road accident took place on 19/7/1992, this Court made departure from the IInd Schedule of M.V.Act and accepted the notional income of Rs.30,000/- in place of Rs.15,000/- applying the analogy that the value of rupee has come down drastically since 1994 when the notional income of Rs.15000/- was fixed in IInd Schedule of the MV*

Act. However accepting the notional income as Rs.30,000/- and as per the age of the parents i.e. 36 years, the loss of dependency was calculated applying the multiplier of 15 at Rs.4,50,000/- and a sum of Rs.50,000/- was awarded under conventional heads awarding a total sum of compensation of Rs.5,00,000/-."

"14. At this stage, it is necessary to clarify that as per the decision of a Three-Judge Bench of this Court in Nagappa vs. Gurdayal Singh and others (2003) 2 SCC 274, it was observed that under the MV Act, there is no restriction that the Tribunal/Court cannot award compensation exceeding the amount so claimed. The Tribunal/Court ought to award 'just' compensation which is reasonable in the facts relying upon the evidence produced on record. Therefore, less valuation, if any, made in the claim petition would not be impediment to award just compensation exceeding the claimed amount."

26. Coming to the quantum of the compensation, in a case of **Meena Devi (Supra)**, at paragraph No.10 has applied the quantum of compensation for minors as discussed in case of **Kishan Gopal (Supra)**. The same can be applied in the instant case also. In the facts of present petition young brilliant girls studying in private school of 14 and 15 years have died in the accident. Therefore, accepting the notional income of Rs.30,000/- including the future prospect and applying the multipliers of 15, and the loss of dependency, the amount

comes to Rs.4,50,000/- and Rs.50,000/- in conventional heads, then the total sum of compensation comes to Rs.5,00,000/- in each petitions.

27. It is directed that the claimants should get Rs.5,00,000/- in each of the claim petitions after deducting the amounts already paid (if any). The enhanced balance amount shall carry interest at the rate of 7% per annum from the date of the claim petition till the realization of the amount due to be paid by the respondent No.2 New India Assurance Co. Ltd., within a period of six weeks from the date of uploading this Judgment. The respondents No.2 New India Assurance Co. Ltd., would be entitled to recover the amount of compensation from the insured respondent No.1.

28. With directions as above, the First Appeals are allowed.

(ARUN R. PEDNEKER, J.)

vj gawade/-.