



This Order is corrected as per the speaking to the minutes order dated 23.10.2024
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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1821 OF 2018

1. Smt. Chandrakala w/o Dilip Pawar APPELLANTS
Age - 43 years, Occ - Household
R/o Mogras, Taluka - Akole
District - Ahmednagar
2. Jayashree d/o Dilip Pawar,
Age - 24 years, Occ - Household
R/o Mogras, Taluka - Akole
District - Ahmednagar
3. Pravin s/o Dilip Pawar
Age - 20 years, Occ - Education
R/o Mogras, Taluka - Akole
District - Ahmednagar
4. Sandip s/o Dilip Pawar
Age - 17 years, Minor under
Guardian of his mother
Smt. Chandrakala Dilip Pawar
Age - 43 years, Occ - Household
R/o Mogras, Taluka - Akole
District - Ahmednagar
5. Baburao s/o Rambhau Pawar
Age - 70 years, Occ - Agriculture
R/o Mogras, Taluka - Akole
District - Ahmednagar
6. Shakuntala w/o Baburao Pawar
Age - 63 years, Occ - Household
R/o Mogras, Taluka - Akole
District - Ahmednagar

VERSUS

1. N. K. Kumarasamy s/o Natrajan RESPONDENTS
Age - Major, Occ - Business
R/o No. 8, S. S. S. Building - 1,
Main A. V. Road, Chamraj Peth,

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Bengaluru (Karnataka State)

2. The Branch Manager,
New India Assurance Company Ltd.,
Swatantra Chowk, Sangamner,
Taluka - Sangamner, District - Ahmednagar

.....
Mr. Rajendra L. Kute, Advocate for the appellants
Mr. M. M. Ambhore, Advocate for respondent No.2

.....
WITH
FIRST APPEAL NO.3142 OF 2019

The New India Assurance Company Ltd.,
D. O. No.1, Adalat Road, Aurangabad,
Through its Authorized Signatory,
Achyut s.o Purushottam Kulkarni,
Age - 57 years, Occ - Service
R/o Aurangabad

APPELLANT

VERSUS

1. Smt. Chandrakala w/o Dilip Pawar
Age - 42 years, Occ - Household
R/o Mogras, Taluka - Akole
District - Ahmednagar
 2. Jaishri d/o Dilip Pawar,
Age - 23 years, Occ - Education
R/o Mogras, Taluka - Akole
District - Ahmednagar
 3. Pravin s/o Dilip Pawar
Age - 22 years, Occ - Education
R/o Mogras, Taluka - Akole
District - Ahmednagar
 4. Sandip s/o Dilip Pawar
Age - 20 years, Occ - Education
R/o Mogras, Taluka - Akole
District - Ahmednagar
 5. Baburao s/o Rambhau Pawar
Age - 65 years, Occ - Agriculture
R/o Mogras, Taluka - Akole
- RESPONDENTS

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District - Ahmednagar

6. Shakuntala w/o Baburao Pawar
Age - 60 years, Occ - Household
R/o Mogras, Taluka - Akole
District - Ahmednagar
7. N. K. Kumarasamy s/o Natrajan
Age - 50 years, Occ - Truck Owner
R/o No. 8, S. S. C. Building,
1-Main, A. V. Road, Chamraj Peth,
Bengaluru (State - Karnataka)

.....
Mr. M. M. Ambhore, Advocate for the appellant
Mr.R. L. Kute , Advocate for respondents No.1 to 6 - claimants

.....
WITH
FIRST APPEAL NO.2094 OF 2019

1. Smt. Sangita Sunil Pawar
Age - 30 years, Occ - Household
 2. Kunal Sunil Pawar,
Age - 7 years, Occ - Educatio
 3. Chetan Sunil Pawar
Age - 6 years, Occ - Education
Nos. 2 and 3 are minors through
Legal Guardian Appellant No.1, Mother
All R/o Sharmgatha Colony,
Ekta Chowk, Behind Law College, Sangamner
District - Ahmednagar
- APPELLANTS

VERSUS

1. N. K. Kumarasamy s/o Natraja
Age - Major, Occ - Truck Owner
R/o 8, S. S. S. Building, 1- Main
A. V. Road, Chamraj Peth,
Banglore Karnataka
 2. Branch Manager,
New India Assurance Company Ltd.,
Swatantra Chowk, Sangamner,
Taluka - Sangamner, District - Ahmednagar
- RESPONDENTS

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.....
Mr. Rajendra L. Kute, Advocate for the appellants
Mr. M. M. Ambhore, Advocate for respondent No.2

.....
WITH
FIRST APPEAL NO.2093 OF 2019

The New India Assurance Company Ltd., APPELLANT
D. O. No.1, Adalat Road, Aurangabad,
Through its Authorized Signatory,
Achyut s.o Purushottam Kulkarni,
Age - 57 years, Occ - Service
R/o Aurangabad

VERSUS

1. Smt. Sangita Sunil Pawar RESPONDENTS
Age - 30 years, Occ - Household

2. Kunal Sunil Pawar,
Age - 7 years, Occ - Educatio

3. Chetan Sunil Pawar
Age - 6 years, Occ - Education
Nos. 2 and 3 are minors through
Legal Guardian Appellant No.1, Mother
All R/o Sharmgatha Colony,
Ekta Chowk, Behind Law College, Sangamner
District - Ahmednagar

4. N. K. Kumarasamy s/o Natrajan EXEMPTED
Age - Major, Occ - Truck Owner
R/o No. 8, S. S. S. Building,
1-Main A. V. Road, Chamraj Peth,
Bengaluru (State - Karnataka)

.....
Mr. M. M. Ambhore, Advocate for the appellant
Mr.R. L. Kute , Advocate for respondents No.1 to 3 - claimants
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 18th SEPTEMBER, 2024
PRONOUNCED ON : 1st OCTOBER, 2024

JUDGMENT:

1. All these first appeals arise out of the same accident. Hence, they were heard together and are being decided by this common judgment.

First Appeals No. 1821 of 2018 and 2094 of 2019 are filed by claimants, challenging Judgment and Award dated 30th January, 2018 Passed by learned Member, Motor Accident Claims Tribunal, Sangamner in MACP No. 200 of 2008 and dated 29th March, 2018 in MACP No. 225 of 2008, seeking enhancement of compensation.

Insurance Company challenged the said Judgments and Awards, by filing First Appeals No. 3142 of 2019 and 2093 of 2019.

2. Brief facts, giving rise to present First Appeals can be stated thus; on 1st August, 2008 Dilip Baburao Pawar was travelling to Sangamner from Samsherpur on motorcycle driven by Sunil Pawar. Near Vikas Dhaba, on Nashik-Sangamner Road, at Ghulewadi, a truck bearing registration No. KA-02-D-7567, hit their motorcycle. Both the motorcycle riders died in the said accident. Claimants, therefore, filed claim petitions. Appellants in First Appeal No. 1821 of 2018 filed MACP No. 200 of 2008 and

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appellants in First Appeal No. 2984 of 2919 filed MACP No. 225 of
2008, claiming compensation.

3. Tribunal partly allowed MACP No. 200 of 2008 and awarded compensation of Rs.7,00,000/- to the dependents of deceased Dilip Pawar, along with simple interest @ 8 % p.a. for the period of 3 years during the pendency of application and further till realization of the entire amount of compensation.

The Tribunal partly allowed MACP No. 225 of 2008 and awarded compensation of Rs.22,11,700/- to dependents of Sunil Pawar, along with simple interest at the rate of 8% p.a. from the date of petition till realization of entire amount of compensation by deducting interest for a period of four years.

4. Claimants have filed appeals for enhanced compensation and Insurance Company has filed appeals challenging the judgments and Awards passed in favour of claimants.

5. Heard learned advocate for the claimants and learned advocate for the Insurance Company. perused the Record and Proceedings and the impugned judgments and awards so also the citations relied on by the learned advocates.

6. Learned advocate for appellants in First Appeal No. 1821 of 2018 submits that the Tribunal has erred in assessing notional

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income of the deceased at Rs.4000/- per month, when deceased
Dilip Pawar, being driver, was a skilled worker and his income at
least should be held to be Rs.9000/- per month. In support of the
said submission, learned advocate relied on judgment of this
Court in First Appeal No. 2866 of 2021. He submits that the
Tribunal has awarded future prospects @ 25 % only, which
considering the age of the deceased ought to have been
awarded at the rate of 40%. He submits that the Tribunal has
wrongly considered age of the deceased between 41 to 45 years,
when in the Postmortem report, age of deceased Dilip Pawar is
stated as 39 years and accordingly multiplier of 15 would apply
in the facts of the present case. He further submits that the
Tribunal is not justified in awarding simple interest only for a
period of 3 years. He submits that the delay in deciding the claim
petition cannot be solely attributed to the claimants and the
claim petition was pending for a period of 10 years. The Tribunal
has granted consortium of Rs.40,000/- only, which should be
Rs.40,000/- to each of the claimant i.e. Rs.2,40,000/- for six
claimants. Amount of Transportation is also not granted by the
Tribunal. He, therefore, seeks enhancement of compensation.

7. In support of First Appeal No. 2094 of 2019, learned
advocate for the appellants submits that in connected matter,
entire negligence of the Truck Driver was held, however, in the

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present matter, 30% contributory negligence of the deceased
Sunil Pawar was held by the Tribunal, which is contrary to the
evidence on record. He submits that there is no pleading on the
part of the insurance company in the written statement that
there was contributory negligence on the part of the deceased, in
spite of that the Tribunal has erroneously proceeded to hold that
there was 30% contributory negligence on the part of the
deceased Sunil Pawar. He submits that the claimants examined
eyewitness to the accident and his evidence is not at all
discussed by the Tribunal. By relying on decision of the Supreme
Court in ***"Jiju Kuruvila and Others V.s Kunjamma Mohan
and Others"* AIR 2023 SC 2293**, he submits that finding of
contributory negligence on the part of the deceased Sunil Pawar,
recorded by the Tribunal is wrong. According to him, the accident
is caused due to the rash and negligent driving of the Truck
Driver. He submits that the Tribunal has awarded loss of
consortium of only Rs.40,000/-. According to him, when there are
3 claimants, amount of Rs.40,000/- to each claimant i.e.
Rs.1,20,000/- ought to have been awarded by the Tribunal for
loss of consortium. He further submits that no transportation
expenses are awarded by the Tribunal and the Tribunal has
wrongly deducted interest for the period of 4 years.

8. Learned advocate for Insurance Company, on the other

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hand, strenuously opposed First Appeals No.1821 of 2018 and
2094 of 2019 stating that the accident is of the year 2008 and
the deceased driver Dilip Pawar cannot be said to be a skilled
worker. He submits that the Insurance Company has examined
witness. The Tribunal has rightly assessed notional income of
deceased Dilip Pawar. He submits that no PAN Card of deceased
Dilip Pawar was placed on record and the alleged eyewitness,
examined by the claimants, cannot be said to be an eyewitness
to the accident. He submits that since the accident has taken
place in the middle of the road, there is clearcut contributory
negligence on the part of deceased Sunil Pawar, rider of the
motorcycle. He submits that for 10 years, the claim petitions
were pending before the Tribunal and the delay is attributable to
the claimants and hence, the Tribunal has awarded interest on
the compensation payable to the claimants in First Appeal No.
1821 of 2018 for the period of 3 years and has rightly deducted
interest on the compensation payable to the claimants in First
Appeal No. 2094 of 2019. According to him, no case is made out
by the claimants to interfere in the award passed by the Tribunal.
He submits that since the accident has taken place in the middle
of the road, in fact, there is 50% contributory negligence on the
part of deceased Sunil. There was breach of terms of the policy.
He further submits that considering the delay on the part of the

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claimants to lead evidence after framing of the issues, the
Tribunal is justified in deducting interest, on the compensation
payable to claimants.

9. Accident and death of Dilip Pawar and Sunil Pawar in the same is not in dispute. Admittedly, in the Postmortem report of deceased Dilip Pawar, his age is shown as 39 years. The Tribunal has observed that the claimants did not produce any document to prove the age of deceased Dilip Pawar. Then, merely because the Insurance Company has challenged the age of deceased Dilip, the Tribunal proceeded to hold that, *"In the facts, I believe the age of deceased in the age group of 41-45. Thus, the multiplier in this case would be of "14"*. Obviously, the said observation of the Tribunal is based on surmises and conjectures and the same is contrary to the record. Without assigning justifiable reason, the Tribunal has proceeded, on its own belief, to hold that age of the deceased Dilip Pawar was in the age group of 41-45 years. The said finding, since is contrary to the record, cannot be sustained. In view of the Postmortem report, age of deceased Dilip Pawar needs to be held as 39 years and, therefore, multiplier applicable in the case of deceased Dilip Pawar will be of "15", in view of the ratio laid down by the Apex Court in ***"Sarla Verma (Smt) and Others V/s Delhi Transport Corporation and Another" (2009) 6 SCC 131.***

10. It is a matter of record that claimants examined Bhaskar Karbhari Yelmame (PW-4), for proving negligence of the driver of the offending truck. PW-4 has deposed that on the fateful day, at 7.30 p.m. he, along with his friend was going to Sudhir Dhaba for dinner. They were riding on a motorcycle on Shrirampur-Nashik road. That time Truck bearing No. KA-02-D-7567 overtook their motorcycle in high speed and while doing so, it went to wrong side of the road and dashed the motorcycle of the deceased. He has admitted in his cross-examination that width of the road is 35 to 40 feet. Ignoring his evidence, the Tribunal, in MACP No. 225 of 2008 proceeded to rely upon the spot Panchanama, observing that, *"The spot panchnama is always a substantial document to assess the negligence in case of vehicular accident."* Then by discussing the narratives in the spot panchanama, particularly the fact that, *"The blood stains were found 4 feet away from the white strip in the middle of the road towards eastern side"*, the Tribunal proceeded to hold that the motorcycle was plying almost leaving 16 feet road on its left side. It is further observed, *"If the two wheelers run in such a fashion then how can the heavy vehicles move on the road. It can give anxious moments to all. It is also noted that the deceased was not wearing helmet and he sustained injuries to his head. For want of specific evidence to prove the*

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*exclusive negligence on the part of truck driver, I am of the view
that it is case of contributory negligence of the truck driver as
well as deceased both. I apportion it in the ratio of 70:30
between the two respectively."*

11. While making the above observations, the Tribunal has ignored the substantive evidence of PW-4, the eyewitness to the accident, who has described the manner in which the accident has taken place and he was present there, who had taken the deceased to hospital. Nothing is brought on record by the Insurance Company in his cross-examination to disbelieve him and the fact that he was not the eyewitness to the accident. Fact remains that no plea of contributory negligence is raised by the Insurance Company in their Written Statement.

12. It is well settled that claimants have to prove their case on the touchstone of preponderance of probabilities and standard of proof, expected from them is not beyond reasonable doubt. The claimants have discharged their burden of proving the fact that the accident has taken place due to the rash and negligent driving of the driver of the offending truck, by examining PW-4 eyewitness to the accident. Without discussing his evidence, the Tribunal has erroneously proceeded to hold that there was contributory negligence on the part of deceased Sunil Pawar in

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the accident. The said finding being contrary to the evidence on record and settled position of law, is unsustainable. There is no merit in the submission of learned advocate for the Insurance Company that there was contributory negligence on the part of deceased Sunil Pawar and there was also breach of terms and conditions of the insurance policy, due to which the Insurance Company is not liable to pay compensation to the claimants.

13. In **“Jiju Kuruvila”** (*supra*), the Apex Court, in similar facts, has observed :

“24. The mere position of the vehicles after accident, as shown in the Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.”

14. In the light of above, the finding of contributory negligence recorded by the Tribunal can be termed as perverse and the same appears to be based on surmises and conjectures. Since

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the Tribunal has ignored the evidence of the eyewitness (PW-4),
the said finding cannot be sustained.

15. Though photo copy of driving license of deceased is relied upon in the Tribunal, the same cannot be faulted with, as the Insurance Company has failed to examine RTO officer, in support of their claim that deceased Sunil Pawar was not holding valid driving licence at the time of the accident. There is no merit in the submission of the Insurance Company that the Tribunal has erred in relying on the photocopy of the driving license of deceased Sunil Pawar, as the Insurance Company has failed to challenge the same by examining RTO officer.

16. So far as income of deceased Dilip Pawar is concerned, it is the case of the claimants that he was contractor by occupation and was doing work of construction of percolation tanks in water supply scheme in different agencies. Though no licence being a contractor is placed on record, by examining PW-2 Babasaheb Pandit Gosavi, the claimants have proved the occupation of the deceased Dilip. PW-2 Babasaheb has deposed in his evidence that in the year 2008, deceased Dilip received amounts vide Exhibits-50 to 54 for carrying out work of repair of water supply schemes of Ambit and Kumshet Gram Panchayats. The Tribunal has held that it is not sufficient to assess income of the deceased

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Dilip at the time of his death. It is further held that deceased Dilip did not possess licence for working as contractor and any technical education to do the contract work. The Tribunal has however, accepted the fact that deceased Dilip was doing skilled work and, therefore, proceeded to hold his notional income at Rs.4000/- per month, in view of decision in **“National Insurance Co. Ltd V/s Pranay Sethi” 2017 ACJ 2700 (SC)**.

Assessment of notional income of deceased Dilip Pawar by the Tribunal is wrong. In **“Chameli Devi and Others V/s Jivrl Mian and Others” AIR Online 2010 SC 1220**, the accident was of the year 2001 and notional income of the deceased in that case was assessed at Rs.7000/- per month. Deceased was carpenter and no proof was given to show that he was working as a carpenter. The Apex Court held that no such proof can be given when the person is working as a carpenter. Still notional income of the deceased was considered to be Rs.7000/- per month and compensation was accordingly granted.

17. This Court, in First Appeal No. 2866 of 2021, relying on **“Chameli Devi’s”** judgment (supra), in similar facts, wherein deceased was a licensed electrician, held that the deceased being a skilled worker, assessed his notional income at Rs.9000/- per month.

Since in the present case, the Tribunal has held that deceased Diilp Pawar was a skilled worker, his notional income needs to be considered at Rs.9000/- per month.

18. It appears from the record that MACP No. 200 of 2008 was filed on 15th October, 2008, issues were framed on 19th November, 2010. Thereafter, claimants filed evidence affidavit of the witnesses on 20th March, 2014, i.e. after a delay of three years. Claimant Chandrakala was examined on 3rd November, 2014. PW-2 Babasaheb Gosavi was examined on 15th January, 2015 and thereafter, evidence was closed on the same day. Insurance Company examined witness Sunil Bharadwaj from the Income Tax Department on 29th July, 2016 and filed evidence close purshis. Eyewitness Bhaskar Yelmame was examined on 3rd August, 2017 on behalf of the claimants, and he was cross examined on the same day. Thereafter, evidence closer purshis was filed by the claimants on the same day. The claimants have filed written notes of arguments on 20th December, 2016 and the Tribunal has passed the Judgment & Award on 30th January, 2018.

From the above, the delay in decision of the claim petition cannot be solely attributable to the claimants. At the most the claimants in First Appeal No. 1821 of 2018 can be deprived of the

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interest for the period of 3 years between 19th November, 2010
till 24th March, 2014, during which period they failed to lead
evidence. The Tribunal is not justified in denying interest for the
remaining period to the claimants.

19. MACP No. 225 of 2008 was filed 18th November, 2008.
Issues were framed on 19th November, 2010. The claimants led
their evidence on 24th February, 2014 and closed their evidence
on 31st August, 2017. The Tribunal deducted interest for the
period of 4 years, during which period the claimants failed to
lead evidence. No fault can be found with the same, as the said
delay is attributable to the claimants.

20. Learned advocate for the claimants is right in contending
that the Tribunal has failed to grant appropriate future prospects
in case of deceased Dilip Pawar in terms of the ratio of the Apex
Court in ***“National Insurance Company Limited V/s Pranay
Sethi” 2017 SCC Online SC 1270***. So also Rs.40,000/- per
head needs to be granted to the claimants towards consortium
and since there being 6 claimants an amount of Rs.2,40,000/-
needs to be awarded to claimants in FA No. 1821 of 2018 and
Rs.1,20,000/- to the claimants, being three in number, in FA No.
2094 of 2019 towards consortium. The Tribunal has also failed to
award compensation under the head Transportation expenses,

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and hence the claimants are entitled for Rs.15,000/- towards
transportation charges.

21. For the aforestated reasons, the claimants are entitled for
following compensation:

FIRST APPEAL NO. 1821 OF 2018

S.N.	HEADS	AMOUNT
01	Loss of dependency (9000X12X15)	16,20,000/-
02	40% future prospects 16,20,000 X 40%	22,68,000/-
03	Minus 1/4 towards personal expenses (22,68,000/- - 5,67,000/-)	17,01,000/-
04	Loss of Estate	15,000/-
05	Loss of Consortium	2,40,000/-
06	Funeral Expenses	15,000/-
07	Transportation Charges	15,000/-
08	Total Compensation	19,86,000/-
09	Compensation granted by MACT	7,00,000/-
10	Enhanced compensation	12,86,000/-

FIRST APPEAL NO. 2094 OF 2019

S.N.	HEADS	AMOUNT
01	Loss of dependency including 50% future prospects minus 1/3 towards personal expenses	30,89,460/-
02	Loss of Estate	15,000/-
03	Loss of Consortium	1,20,000/-
04	Funeral Expenses	15,000/-
05	Transportation Charges	15,000/-
06	Total Compensation	32,54,460/-
07	Compensation granted by MACT	22,11,700/-
08	Enhanced Compensation	10,42,760/-

22. In the result following order

ORDER

- A. First Appeal No.1821 of 2018 is partly allowed with proportionate costs. Impugned Judgment and Award dated 30th January, 2018 passed in MACP No. 200 of 2008 by Member, Motor Accident Claims Tribunal, Sangamner, is modified to the effect that the claimants are held entitled for enhanced compensation of Rs.12,86,000/- along with interest @ 8% p.a. from the date of filing of the claim petition till realization of the entire compensation amount, excluding the period from 19th November, 2010 to 20th March, 2014.
- B. First Appeal No. 2094 of 2019 is partly allowed with proportionate costs. Impugned Judgment and Award dated 29th March, 2018 passed in MACP No. 225 of 2008 by Member, Motor Accident Claims Tribunal, Sangamner is modified to the effect that the claimants are held entitled for enhanced compensation of Rs.10,42,760/- along with interest @ 8% p.a. from the date of claim petition till realization of the entire compensation amount, less interest for the period of four years.

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- C. Respondent No.2 Insurance Company is directed to deposit the amount of compensation, along with interest in the Tribunal, within 12 weeks from the date of receipt of writ of this judgment in the Tribunal.
- D. First Appeals No. 2093 of 2019 and 3142 of 2019, filed by the Insurance Company are dismissed.
- E. Rest of the Award is maintained.
- F. Claimants to pay court fee on enhanced compensation as per rules.
- G. In view of disposal of the first appeals, pending civil applications are disposed of.

[NITIN B. SURYAWANSHI]
JUDGE

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