IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 562 OF 1998

The United India Insurance Co. Ltd. Malhar Cinema Bldg., Gokhale Road, Naupada, Thane – 400 002 Policy No. 120801/22/1/00383/89 Valid from 29-09-90 to 28-09-91	Appellant

Versus

1. Amruta Manohar Dhotre Age 28 years 2. Gitesh Manohar Dhotre Age 1 year 3. Babaji Vinayak Dhotre Age 62 years (Father) C/o. Shankar V. Chonkar 28, Gurukripa Co-op. Hsg. Soc., 1st Floor, Rambaug Lane No.4, Kalyan, Dist. Thane	(Org. Applicants)
4. Raghunath Kisan Dahale Lok Manya Nagar, Pada No.3, Vartak College, Thane	Respondents (Org. Opp. No.1)

WITH
FIRST APPEAL NO. 576 OF 1998

The United India Insurance Co. Ltd. Malhar Cinema Bldg., Gokhale Road, Naupada, Thane – 400 002 Policy No. 120801/22/1/00383/89 Valid from 29-09-90 to 28-09-91	Appellant

Versus

1. Anuradha Kotha Age 45 years, Resident of 23, Shantidham, Behind Shanti Ashram, Eksar Road, Borivali (West), Bombay – 400 103. 2. Raghunath Kisan Dahale Lok Manya Nagar, Pada No.3, Vartak College, Thane. (Respondent No.1 – Original Applicant and Respondent No.2 – Original Opponent No.1.)	Respondents

WITH
FIRST APPEAL NO. 578 OF 1998
WITH
CROSS OBJECTION (ST). NO. 32542 OF 1998

The United India Insurance Co. Ltd. Malhar Cinema Bldg., Gokhale Road, Naupada, Thane – 400 002 Policy No. 120801/22/1/00383/89 Valid from 29-09-90 to 28-09-91	Appellant

Versus

1. Sneha Rajendra Dixit, Age 25 yrs. 2. Anisha R. Dixit, Minor daughter – Age – 9 months. R/o. B-2/33, Mahindra Nagar, Hajibapu Raod, Malad (E), Bombay – 97 3. Vasant P. Dixit, Age 60 years, C/o. Girish Deshpande, Uran, Dist. Raigad 4. Raghunath Kisan Dahate Lokmanya Nagar, Pada N.3, Vartak College, Thane	Respondents

WITH
FIRST APPEAL NO. 575 OF 1998

The United India Insurance Co. Ltd. Malhar Cinema Bldg., Gokhale Road, Naupada, Thane – 400 002 Policy No. 120801/22/1/00383/89 Valid from 29-09-90 to 28-09-91	Appellant

Versus

1. Ponnummal Thankam Age 53 years, R/o. Central Railway Colony, RB/II, 50/19, Behind Sion Hospital, Sion, Bombay – 400022. 4. Raghunath Kisan Dahale Lokmanya Nagar, Pada N.3, Vartak College, Thane	Respondents

WITH
FIRST APPEAL NO. 577 OF 1998

The United India Insurance Co. Ltd. Malhar Cinema Bldg., Gokhale Road, Naupada, Thane – 400 002 Policy No. 120801/22/1/00383/89 Valid from 29-09-90 to 28-09-91	Appellant

Versus

1. Vasant Vasudeo Gokhale (deceased) 2. Shobhana Vasant Gokhale Age 68 years, Occupation – Household, Residing at B-1/7, Jayram Jasmat Building, Near Bombay Glass Work, Mahim, Bombay- 400 016 3. Raghunath Kisan Dahale Lokmanyanagar, Pada No.3, Vartak College, Thane	Respondents

WITH
FIRST APPEAL NO. 579 OF 1998

The United India Insurance Co. Ltd., Malhar Cinema Bldg., Gokhale Road, Naupada, Thane – 400 002 Policy No. 120801/22/1/00383/89 Valid from 29-09-90 to 28-09-91	Appellant

Versus

1. Aarti Sanjay Gosavi Age 25 years 2. Madhusudan V. Gosavi Age 60 years 3. Nalini M. Gosavi Age 56 years C/o. Shri. A. N. Khot., Avinash Coop. Hsg. Soc., Vile Parle, Bombay	(Org. Applicants)
4. Raghunath Kisan Dahale Lok Manya Nagar, Pada No.3, Vartak College, Thane	Respondents (Org. Opp. No.1)

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Ms. Poonam Mital, Advocate for the Appellant in all First Appeals and for Respondents in XOB(St) No. 32542/1998.
Ms. Amrin Khan i/b. U. N. Mehta, Advocate for Respondents in all First Appeals and for Appellants in XOB(St) No. 32542/1998.

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CORAM : SHIVKUMAR DIGE, J.
DATE : 10th JANUARY, 2024.

JUDGMENT :

1. The appellant/Insurance Company has preferred appeals against the Judgment and Order passed by the Motor Accident Claims Tribunal, Alibag, Raigad (for short "**the Tribunal**"). The respondent/claimant has filed cross objection for enhancement of amount in First Appeal No. 578 of 1998. The issues involved in all these appeals are same, hence I am deciding it by this common Judgment.

2. It is the contention of learned counsel for the appellant that there was breach of terms and conditions of the insurance policy as offending vehicle was taken on hire and reward basis and appellant/Insurance Company has produced evidence in that regard before the Tribunal but the Tribunal has not considered this fact and has fixed liability on the appellant/ Insurance Company which is not proper, hence requested to allow the appeals.

3. It is the contention of learned counsel for the respondents/claimants that no evidence was produced on record to prove that the offending vehicle was taken on hire and reward basis by the appellant. The witness Vasudevan who was travelling in the offending vehicle has stated that the said vehicle was taken by them on petrol basis. The Tribunal has considered all the aspects and has passed Judgment and Order which is legal and valid, no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Tribunal. It is claimant's case that on 24.01.1991, deceased and witness Vasudevan were travelling in the offending vehicle to Mahabaleshwar. On the way, the said vehicle turtled on the road and caught fire. In the said accident, driver and seven other persons travelling in said jeep charred to death, witness Vasudevan was the lone survivor. To prove the defence that the offending vehicle was taken on hire and reward basis, appellant/Insurance Company had examined investigator Rajgopal Nilkantha as witness. He has stated that he recorded the statement of injured witness Vasudevan and he was called for giving evidence on behalf of Insurance Company but he did not appear before them. On the basis of statement of injured Vasudevan, he concluded that the vehicle was taken on hire basis. In cross-examination the statement of Vasudevan at Exhibit-37 was pointed out to this witness and he admitted that in the said statement Vasudevan had stated to this witness that he had paid Rs. 600/- as his contribution as picnic charges to deceased Anant

Kotha and on that basis this witness come to conclusion that vehicle was taken on hire and reward basis.

In support of evidence of this witness, the appellant/Insurance company has examined their Officer - Arvind Vaidya at Exhibit-51. He has stated that the offending vehicle was taken by the deceased on hire and reward basis. In cross examination, he admitted that on the basis of the report of Investigating Officer – Rajgopal Nilkanth he has stated that the vehicle was taken on hire and reward basis on the basis. The owner of the vehicle Raghunath Dahale has been examined as witness. It is at Exhibit-64. He has stated that the offending vehicle was belonging to him and he had given the said vehicle to his friends deceased Anand Kotha to go to Mahabaleshwar with his friend for pleasure treat on diesel basis and remuneration of driver. Nothing elicited in the cross-examination of this witness. From the evidence of owner of the offending vehicle it proves that, the offending vehicle was not given on hire and reward basis. Mere, on the report of the investigator, the appellant/Insurance Company claims that the vehicle was given on hire and reward basis. It appears that to avoid the liability of paying compensation, this stand is taken by the appellant/Insurance Company. There is no evidence on record to substantiate the issue raised by the appellant/Insurance Company. The appeal is devoid of merit.

5. The Cross Objection (St). No. 32542 of 1998 filed in Appeal No. 578 of 1998 for getting future prospects, the Tribunal has not awarded future prospects. It is settled law that the claimants are entitled for future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi***[1] , the claimants are entitled for 50% future prospects as deceased was the permanent employee. In this case, the Tribunal has considered annual income of deceased Rs.34,560/-. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram***[2]*,* each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

6. In view of above calculations, the claimants are entitled for following compensation :

Particulars	Rs.	Entitlement
Monthly Income	Rs.	2,880.00
Annual Income Rs. 2,880 X 12	Rs.	34,560.00
50% Future prospects	Rs.	51,840.00
1/3rd deduction towards personal expenses	Rs.	17,280.00
Total	Rs.	34,560.00
Multiplier Rs. 34,560 X 16	Rs.	5,52,960.00
Consortium (Rs.48,000/- X 3 claimants)	Rs.	1,44,000.00

1 2017 ACJ 2700 (SC)

2 2018 ACJ 2782 (SC),

Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total	Rs.	**7,32,960.00**
Less compensation awarded by the Tribunal	Rs.	3,68,640.00
Enhanced amount	Rs.	**3,64,320.00**

The claimants are entitled for an enhanced amount of Rs. 3,64,320/-.

7. In view of the above, I pass following order:

ORDER

(i) All appeals are dismissed.

(ii) Cross objection in Appeal No. 578 of 1998 is allowed.

(iii) The claimants are entitled for enhanced compensation of Rs.3,64,320/- @7.5% per annum from date of filing of claim petition till realisation. Out of the this amount, the amount of Rs.1,80,000/- is for consortium and loss of estate and funeral expenses, the claimants are entitled for interest @7.5%. per annum on this amount from 1st November, 2017 till realisation.

(iv) The appellant/Insurance Company shall deposit enhanced amount along with interest within six weeks after receipt of the order.

(v) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

(vi) The statutory amount be transmitted to the Tribunal. The parties are at liberty to withdraw it as per rule.

(vii) All pending applications, if any, are also disposed of.

8. All the appeals are disposed of.

(SHIVKUMAR DIGE, J.)