IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2471 OF 2019

The New India Assurance Company Ltd.,
D.O. No.1, Adalat Road, Aurangabad,
Through its Authorized Signatory,
Suryakant Sahebrao Makhare,
Age : 56 Years, Occu.: Service,
R/o Aurangabad. ... **Appellant**
(Ori. Res. No.2)

Versus

1. Smt. Arunabai W/o Ashok Gacche,
Age: 50 years, Occ: Household,

2. Rukhaminibai W/o Ramrao Gacche,
Dismissed.

Both R/o. Asegaon,
At present - Sidharthnagar,
Tq. Vasmat, Dist. Hingoli. ... **(Orig. Claimants)**

3. Devendra S/o Kashinath Athwale,
Age: 50 years, Occ: Service,
R/o. Barad, Tq. Mudkhed,
Dist. Nanded,
At present Kailashnagar, Nanded. ... **Respondents**
(Ori. Res. No.1)

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Advocate for Appellant : Mr. Ambhore M. M.
Advocate for Respondent No.1 : Ms. Usha N. Jadhao h/f Ms. Bharad Pratibha Jagdish.

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CORAM : SHAILESH P. BRAHME, J.
DATE : 03.10.2025

ORAL JUDGMENT :-

1. Heard both sides finally with their consent.

2. Insurance company has preferred this appeal challenging judgment and award dated 10.10.2016. Learned counsel Mr. Ambhore submits that the involvement of the vehicle is suspicious and entire claim is false which is liable to be dismissed. It is further submitted that deceased and the driver of the offending vehicle were not having valid driving licence. It is further submitted that multiplier of 11 is wrongly applied considering age of the deceased as 56. Lastly, it is submitted that the quantum is exorbitant and unreasonable.

3. The above submissions are repelled by learned counsel Ms. Usha Jadhao on the ground that the insurance company did not adduce any evidence. The factum of accident and involvement of vehicle is proved by oral evidence of the claimants and the police papers. The deceased was employee of the Malaria Department and multiplier is rightly considered by the Tribunal. It is further submitted that future prospectus was not awarded. The compensation under the conventional heads are inadequate and not in accordance with judgment of Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi and others ; (2017) 16 SCC 680***.

4. I have considered rival submissions of the parties. I have gone through record and proceedings. Respondent No.1 is the widow and respondent No.2 deceased mother of the Ashok Gacche. The accident took place on 07.07.2014. First Information Report was lodged against unknown vehicle bearing Crime No.56 of 2014. In a supplementary statement recorded after 5 days, the registration number of the offending vehicle was disclosed. The claimant examined three witnesses. As against that, no evidence was led by appellant/insurance Company. The owner of the vehicle respondent No.3 did not participate.

5. The insurance company did not lead any evidence. No complaint was ever registered by the insurance company regarding false accident. In view of law laid down by the Supreme Court in the matter of ***Geeta Dubey and others Vs. United India Insurance Company Ltd. and others***, I am not inclined to accept submissions of learned counsel Mr. Ambhore that involvement of the vehicle is suspicious. The claimants have adduced oral evidence of eye witness. The explanation tendered by claimant Arunabai that immediately after the accident she was in trauma and unable to quote the

registration number of the offending vehicle cannot be ruled out.

6. Accident is due to collision between motorcycle driven by the deceased and the offending vehicle. The driver of the offending vehicle is facing criminal action. There is no material on record to show that either the driver of the offending vehicle or the deceased was having valid driving licence. However, considering the overall circumstances, the liability on the insurance company cannot be reduced. No evidence is led by the appellant.

7. Immediately after the accident, offence bearing Crime No.56 of 2014 was registered. The statements were recorded. The relevant documents of the investigation are placed on record. Those are having probative value. The factum of the accident and involvement of the vehicle has been sufficiently established by the preponderance of probabilities.

8. In the claim petition, age of the deceased is stated to be 54 years. It is not disputed that he was in service of Malaria Department. The claimants have proved monthly salary drawn by deceased. The controversy remains that of multiplier of 11 applied by the Tribunal. The claimants should have placed on

record corroborative evidence to show that at the relevant time age of the deceased was 54 years. His service record or birth certificate could have been produced by the claimant. In the absence of such a material, it cannot be countenanced that age of the deceased was 54 at the relevant time. In the inquest panchnama, the age is reported to be 56 years.

9. The Tribunal did not consider the age of the deceased specifically. I find that considering his age to be 56, wrong multiplier is applied. As per the case of ***Sarla Varma and others Vs. Delhi Transport Corporation ; (2009) 6 Supreme Court Cases 121***, the appropriate multiplier should be 9. Applying the same, the loss of dependency comes to Rs.20,70,576/- instead of Rs.25,30,704/-.

10. The Tribunal failed to add future prospectus of 10% as per judgment of *Pranay Sethi* (*supra*). Adding those 10%, the loss of dependency would come to Rs.22,77,633/-. The amounts for the loss of consortium, loss of estate and the funeral expenses need to be increased in view of the judgment of Supreme Court in case of *Pranay Sethi* (*supra*). Loss of consortium – Rs.40,000/-, funeral expenses – Rs.15,000/-, loss towards estate – Rs.15,000/-.

11. In view of above situation, I find that appeal filed by the insurance company needs to be partly allowed. The respondents/claimants are entitled to the following compensation.

(a)	Loss of dependency	–	Rs.	22,77,633/-
(b)	Loss of consortium	–	Rs.	40,000/-
(c)	Funeral expenses	–	Rs.	15,000/-
(d)	Loss towards estate	–	Rs.	15,000/-
	Total	–	Rs.	23,47,633/-

12. Appellant/insurance company has deposited amount of Rs.25,000/- + Rs.31,03,794/- out of that amount of Rs.15,64,397/- was already disbursed to the respondents/ claimants. The respondents are entitled to receive Rs.23,47,633/-.

13. Accordingly, first appeal is allowed partly in following terms :

(i) First appeal is partly allowed.

(ii) Impugned judgment and order is modified to the extent that respondent Nos.1 and 2 shall be jointly and severally pay amount of Rs.23,47,633/- adjusting the already disbursed amount.

(iii) The balance compensation shall be paid to respondent No.1 Arunabai.

(iv) After disbursing the amount as per entitlement to respondent No.1, the balance amount with interest shall be refunded to the appellant/insurance company.

(v) Award be drawn accordingly.

(SHAILESH P. BRAHME, J.)

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vmk/-