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

FIRST APPEAL NO. 1557 OF 2020

1] Babu s/o Kashinath Shembade,
Age : 33 years, Occu. Agriculture,

2] Ashabai w/o Babu Shemde,
Age : 33 years. Occu. Household,

Both R/o. Bhatewadi, Tq. Patoda, Dist. Beed. ...**Appellants**
[Orig. Claimants]

Versus

1] Ramu s/o Bajirao Kathale,
Age : 49 years, Occu. Service Owner,
R/o. Dongarkinhi, Tq. Patoda,
District Beed.

2] Navnath s/o Pandurang Doke,
Age : 37 years, Occu. Driver,
R/o. Nalwandi, Tq. Patoda,
Dist. Beed.

3] New India Assurance Company Ltd.,
Through its Branch Manager,
Branch Office, Sathe Chowk, Jalna Road,
Beed Tq. & Dist. Beed. ...**Respondents**

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Mr. R. G. Hange – Advocate for the Appellants
Mr. M. M. Ambhore – Advocate for Respondent No. 3

....

CORAM : NEERAJ P. DHOTE, J.

DATE OF RESERVING THE JUDGMENT : 07.04.2025
DATE OF PRONOUNCING THE JUDGMENT : 25.04.2025

JUDGMENT : -

1. This is an Appeal under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to 'M.V. Act'] by the Claimants in Motor

Accident Claim Petition No. 137 of 2018 [for short 'Claim Petition'], decided by the learned Member, Motor Accident Claims Tribunal, Beed [hereinafter referred to as 'Tribunal'], by Judgment and Award dated 02.08.2019, partly allowing the Claim Petition by holding the Appellants entitled to receive compensation of Rs.4,14,100/- from Respondent Nos.1, 2 and 3, who are the Owner, Driver and Insurance Company of the offending vehicle.

2. The facts giving rise to the present Appeal are as under : -

2.1. The Appellants approached the learned Tribunal by way of the above referred Claim Petition contending that they were the parents of Deceased Ashwini d/o Babu Shembade, who was 6 years old school going child. On 17.02.2018, at about 08:30 am, when the Deceased was going to Zilla Parishad School, Bhatewadi, situated at Beed – Ahmednagar road and while crossing the road, the Car of Maruti Suzuki, Baleno make, bearing No. MH-23/AS-1933 came in high speed in rash and negligent manner and gave dash to the Deceased. The Deceased suffered severe injuries and she was taken to Hospital at Beed and later on to the Hospital at Ahmednagar. The Deceased succumbed to the grievous injuries on 20.02.2018. The Deceased was studying in 1st Std., having good health and was a brilliant child. She used to get distinction in her academics and also used to participate in other activities. The Deceased had a good career, had she been alive. They lost their child due to rash and negligent driving of the said Car driver and, therefore, they were entitled to get the compensation of Rs. 7,00,000/- from the Respondents with interest @ 18% p.a.

2.2. Respondent Nos. 1 and 2 i.e. the Driver and the Owner of the said Car did not respond to the Claim Petition and did not file their Written Statement and hence, the learned Tribunal passed the Order below Exh. 1 to proceed against them without Written Statement.

2.3. Respondent No. 3 - Insurance Company contested the Claim Petition by filing Written Statement at Exh.16. It has denied the contents of the Claimants. The Claimants are bound to prove their contentions and the compensation claim was excessive. There was delay of six days in lodging the report with the concerned Police Station in respect of the accident. They prayed to dismiss the Claim Petition.

2.4. The Claimants led their evidence by way of Evidence Affidavit of Appellant No. 1, at Exh. 19. He was cross-examined by the learned Advocate appearing for the Respondents. The Claimants brought on record the Police Papers, Death Certificate of their Daughter and Medical Bills. The Appellants/Claimants examined the eye-witness to the incident below Exh.32 and he was also cross-examined by the Respondents.

2.5. The Respondents did not lead any evidence. The learned Tribunal considered the submissions of both sides and the evidence available on record, and passed the aforesaid Judgment and Award.

3. Heard learned Advocate for the Appellants and the learned Advocate for the Respondent / Insurance Company. There is no dispute that on 15.11.2021, this Court issued notice for final disposal to Respondent Nos. 1 to 3. The office endorsement shows that the Respondents are served. None for Respondent Nos. 1 and 2.

4. Learned Advocate for the Appellant tendered across the bar a copy of the Judgment in *Kurvan Ansari Alias Kurvan Ali and Another Versus Shyam Kishore Murmu and Another, (2022) 1 SCC 317 and Kishan Gopal and another Versus Lala and others, (2014) 1 SCC 244.* It is submitted by the learned Advocate for the Appellants that the impugned Judgment and Award is not challenged by any of the Respondents. He submits that, the Deceased was a minor child and the Appeal can be considered and decided in the light of the aforementioned judgments and Compensation be enhanced.

5. The learned Advocate for the Insurance Company does not dispute the aforesaid contentions of the learned Advocate for the

Appellants. He submits that the Appeal can be disposed off in the light of the above referred Judgments.

6. In the above referred Judgment in *Kishan Gopal* (*supra*), it was the Appeal under the M.V. Act. The deceased, who was the son of the Claimants therein, was aged 10 years. According to the Claimants therein, the Deceased son would have earned Rs. 2,000/- per month after attaining the age of 18 years and he would have lived upto 70 years, and prayed that multiplying by 52, the compensation be worked out at Rs.12,48,000/-. By considering the judgment of the Hon'ble Supreme Court in *Lata Wadhwa and others v. State of Bihar, (2001) 8 SCC 197*, it was observed that "*it would be just and reasonable for us to take his notional income at Rs.30,000/- per annum and further taking the young age of the parents, namely, the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121, the multiplier of 15 can be applied to the multiplicand and determined Rs.4,50,000/- and Rs. 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rights etc. The compensation was determined at Rs. 5,00,000/-.*

7. In *Kurvan Ansari* (supra), which was the Appeal from the decision rendered in the Claim Petition filed by the Claimants therein under Section 163-A of the M.V. Act, the notional income of deceased child aged 7 years was considered Rs.25,000/- per annum and by applying multiplier of 15 as prescribed under Schedule II for the claimants under Section 163-A of the M.V. Act, the compensation was determined at Rs. 3,75,000/- and Rs. 80,000/- towards filial consortium for the two claimants and Rs. 15,000/- towards funeral expenses were added and the total compensation was determined at Rs. 4,70,000/-.

8. Admittedly, in the case at hand, the Deceased was a girl child aged 6 years of age at the time of accidental death. It would not be out of place to refer to the observations of the Hon'ble Supreme Court of India in *New India Assurance Co. Ltd. Versus Satender and others, (2006) 13 SCC 60*, and in *Kaushlya Devi Versus Karan Arora and others, (2007) 11 SCC 120*, which were the Appeals under the M.V. Act where the deceased were the minor and the issue was in respect of the determination of compensation. The judgment in the case of *Lata Wadhwa* (supra), and other Judgments have been considered in these two Judgments. It is observed therein that, *"there are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendour of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a* *non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents."* It is further observed that, *"in cases of young children of tender age, in view of uncertainties about, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation."* It is further observed that, "*this Court in Lata Wadhwa while computing compensation made distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years*".

9. As seen from the papers, the Claimants are the parents of the deceased child. The claimants were working as the Sugarcane Cutters and at the time of incident, were working at the Sugarcane

Factory at different place. The deceased child was studying in the 1st std., in the Zilla Parishad Primary School. There is nothing to show as to whether the Deceased child was the only child of the Claimants. According to the Claimants, Deceased child was clever and used to participate in the activities of the School and stand first in the same. She was the support for them in their old age. Considering the background of the Claimants, there is every possibility that after becoming major, the Deceased girl child would have worked and rendered financial support to the Claimants till her marriage. Considering Rs.30,000/- per year income of the Deceased child in the village and having background as that of the Claimants, the marriages of daughters are performed soon after attaining the majority and latest by the age of 25 years. By considering 25 years as the age when the deceased would have got married after attaining the majority, she would have been contributing financially to the Claimants for a period of eight [8] years [Between 18 years and 25 years of Age]. By taking into consideration the notional income of Rs.30,000/- per year as considered in the above referred Judgment in *Kishan Gopal* (supra), for eight [8] years the income of Deceased would come to Rs.2,40,000/-. As regards the loss of estate, loss of consortium and funeral expenses, as per Judgment of the Hon'ble Supreme Court of India in *National Insurance Company Limited v. Pranay Sethi & Ors., (2017) 16 SCC 680* and *Magma General Insurance Co. Limited v. Nanu Ram alias Chuhru Ram, 2019 (4) Mh.L.J. 1*, it will have to be included in the compensation as Rs. 15,000/-, Rs. 80,000/- [Rs.40,000 x 2] and Rs.15,000/-, respectively. The medical bills (round figure which is considered by the learned Tribunal as Rs.1,12,809/-) is not in dispute. The total compensation comes to Rs.4,62,809/-. As there is no challenge by any of the sides on any other aspect, the impugned Judgment and Award stands modified only to the extent of total compensation amount worked out as above.

10. The Appeal stands disposed off accordingly.

[NEERAJ P. DHOTE]
JUDGE