Harish

HARISH VITHAL CHAUDHARI

Digitally signed by HARISH VITHAL CHAUDHARI
Date: 2025.12.25 13:14:39 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.188 OF 2021

Future Generali India Insurance Co. Ltd.
Through its Manager,
At 3rd Floor, East Wing, Forbes Building
Charanjeet Ray Marg, Fort Mumbai-400001 ...Appellant

VERSUS

1. Niti Nilesh Dhule
Age: 35 years, Occ: Housewife

2. Kum. Tanvi Nilesh Dhule
Age: 11 years, Occ: Education

3. Prakash Sahadeo Dhule
Age: 59 years, Occ: Nil

4. Jyoti Prakash Dhule
Age: 58 years, Occ: Houswife
All R/o. At & Post Wayangni
Tal. Malvan, Dist. Sindhudurg

5. Keshav Nabaji Khude
Age: 32 years, Occ: Driver
R/o. At & Post Nanadval
Tal. Koregaon, Dist. Satara

6. M/s. Southern India Transport Services
Gala No. 13, B-3, 1st Floor,
Pritesh Compound, Walpada road
Tal. Bhivandi, Dist. Thane

7. The New India Assurance Company
Guru Govind Nivas, Kalayan

Through its Kudal Branch
Tal. Kudal, Dist. Sindhudurg

8. M/s. Maruti Travels
Prop. Subhash J. Sawant 604,
6th Floor, Kokan Vishav Bldg.
Kokan Nagar, Jogeshwari (E),
Mumbai ...Respondents

WITH
FIRST APPEAL NO.776 OF 2024

1) Niti Nilesh Dhule,
Age 35 years, Occ.:- Housewife,

2) Kum. Tanvi Nilesh Dhule,
Age 15 yrs, Occ.:- Education,

3) Mr. Prakash Sahadeo Dhule,
63 Age yrs., Occ.: Nil, and

4) Smt. Jyoti Prakash Dhule,
Age 58 years, Occ. Housewife,
All R/o, At & Post Wayangni,
Tal. Malvan, Dist. Sindhudurg. ...Appellants

Versus

1) Keshav Nabaji Khude.
Age 32 years, Occ.:-Driver,
R/o. At & Poat Nanadval,
Tal. Koregaon, Dist. Satara,

2) M/s. Southern India Transport Service,
Gala No. 13, B-3, 1st Floor,
Pritesh Compound, Walpada road,
Tal. Bhivandi, Dist. Thane

3) The New India Assurance Company
Guru Govind Nivas, Kalyan,

Through its Kudal Branch,
Tal. Kudal, Dist. Sindhudurg.

4) M/s. Maruti Travels,
Prop. Subhash J. Sawant, 604,
6th Floor, Kokan Vishav Bldg,
Kokan Nagar, Jogeshwari (E),
Mumbai

5) M/s. Future Generali India
Ins. Co. Lt.co. IIIrd Floor,
East Wing, Forbes Building
Charanjeet Ray Marg,
Fort Mumbai. ...Respondents

Mr. Hemant Ghadigaonkar for the Appellant in FA/776/2024 and for Respondent Nos. 1 to 4 in FA/188/2021
Mr. Rajesh Kanojia i/b Res. Juris , for the Appellant in FA/188/2021 and for the Respondents in FA/776/2024.
Ms. Karishma Jhaveri , for Respondent No.7.

CORAM : SHIVKUMAR DIGE, J.
DATE : 15th DECEMBER, 2025

JUDGMENT :-

1. This appeal is preferred by the appellant-insurance company against the judgment and order passed by the Motor Accident Claims Tribunal, Sindhudurg, (for short “the Tribunal”). The claimants have also preferred a cross appeal against the said judgment and order. As the appeal and cross appeal are against the same judgment and order, I am deciding it by this common judgment.

2. It is contention of learned counsel for the appellant-

insurance company that while deciding the claim petition, the Tribunal has held 50% contributory negligence of the deceased. The claimants are the legal heirs of the deceased. If the Tribunal has held 50% contributory negligence of the deceased as the deceased being the tortfeasor, the claimants are not entitled for compensation. He relied on ***Ningamma & Anr. vs. United India Insurance Co. Ltd.,[(2009) 8 S.C.R.683]***.

3. It is contention of learned counsel for the respondent–claimants that accident occurred due to sole negligence of the driver of truck, but, the Tribunal has wrongly held negligence of the deceased at 50% which is erroneous. Learned counsel further submitted that the insurance policy of the vehicle in which the claimants and deceased were travelling was comprehensive policy, it includes the insurance of the driver of the vehicle. As it is comprehensive policy, the appellant-insurance company is liable to pay the compensation. Learned counsel further submitted that the Tribunal has considered monthly income of the deceased on lower side. The salary certificate produced on record shows income of the deceased at Rs.23,020/- per month. The Tribunal has not considered the

yearly bonus of Rs. 10,000/-. Learned counsel further submitted that the future prospects awarded by the Tribunal is on lower side and the Tribunal not applied multiplier properly and consortium amount awarded by the Tribunal is on lower side as well. Hence, requested to allow the cross-appeal.

4. I have heard both the learned counsel, perused impugned judgment and order passed by the Tribunal.

5. It is claimant's case that the deceased along with his family was travelling in their Toyota Car. While travelling, their car was dashed by the offending truck coming from opposite direction. The offence was registered against the deceased. To prove the negligence of driver of truck, the claimant no. 1 examined herself. To prove the defence, the driver of offending truck stepped into witness box. Considering evidence produced on record, the Tribunal has considered 50% contributory negligence of the deceased and 50% contributory negligence of the driver of truck. The appellant-insurance company is the insurer of car which the deceased was driving. The Tribunal has directed the appellant-insurance company to pay 50% compensation to the claimants. It is contention of learned

counsel for the appellant-insurance company that the offence was registered against the deceased himself. He is tortfeasor. The claimants are the legal heirs of the deceased. Hence, the appellant-insurance company is not liable to pay compensation to the claimants. Whereas it is contention of learned counsel for the claimants that insurance policy of the offending car is comprehensive policy and Rs.50/- was paid as extra premium. In my view, policy of car is comprehensive, which covers the insurance of occupants of the said car. The extra premium of Rs. 50/- was paid. Moreover, the Tribunal has not held that accident occurred due to sole negligence of the deceased. Hence, the appellant-insurance company is liable to pay compensation. I have gone through the case law cited by the learned counsel for the appellant-insurance company. The facts of cited case and the present case are different. Hence, not applicable.

6. To prove the income of the deceased, the claimants have examined PW2- Vaidanathan Ayyar, accountant in Guardian Business Management Pvt. Ltd. Co. He has stated that the deceased was working in their company as driver. He was

permanent employee and earning salary of Rs.23,020/-. The salary certificate is at Exhibit 67. He has also stated that every year, their company used to pay Rs. 10,000/- to each employee as ex-gratia. It is contention of learned counsel for the appellant-claimants that this ex-gratia amount be considered as income of the deceased. The Tribunal while deciding the income of the deceased has considered monthly income of the deceased at Rs.15,000/-. I am unable to understand observations of the Tribunal as the deceased was permanent employee and he was getting salary of Rs. 23,020/- per month by deducting Rs.200/- as professional tax, it comes to Rs. 21,020/-. I am considering this amount as monthly income of the deceased. I am not considering ex-gratia amount as income of the deceased.

7. While awarding the compensation, the Tribunal has considered future prospects on lower side. As per the view of Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi 2017 ACJ 2700 (SC)***, the claimants are entitled for 50% future prospects. 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 Company***

Limited Vs. Nanu Ram 2018 ACJ2782 (SC), each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- funeral expenses and Rs.18,000/- for loss of estate.

8. It is contention of learned counsel for appellant-insurance company that the deceased was not maintaining his family. Hence, deduction of personal expenses should be 1/2 and not 1/3. In my view, the deceased was married person hence, I am considering deduction for personal expenses as 1/3. Learned counsel for the insurance company further submitted that interest rate awarded by the Tribunal is on higher side, it should be on lower side. I find merit in it. The Tribunal has awarded 9% per annum interest rate, I am considering it at 7.5% per annum.

9. Considering above calculations, the claimants are entitled for following compensation.

Monthly Salary Income	Rs.23,020/-
Add: 50% future prospects (Being permanent employee)	Rs.11,510/-
Total Annual Income	Rs.34,530/-
Less 1/2 deduction towards personal expenditure	Rs.8,630/-
Total Monthly Income	Rs.25,900/-
Total Annual Income (Rs.25,900/-X12)	Rs.3,10,800/-
Multiplier 15 (Rs.3,10,800/- X 15)	Rs.46,62,000/-
Loss of consortium Rs.48,000/- X 4	Rs.1,92,000/-

(4 Claimants)	
Funeral Expenses	Rs.18,000/-
Loss of Estate	Rs. 18,000/-
Total amount of compensation	**Rs.48,90,000/-**
Less awarded by the Tribunal	Rs. 29,25,000/-
Enhanced amount	**Rs.19,65,000/-**

10. In view of above, I pass following order:

ORDER

I. The First Appeal No.188 of 2021 is partly allowed and the First Appeal No.776 of 2024 is allowed.

II. The claimants are entitled @ 7.5% interest on Rs.48,90,000/- on compensation awarded by the Tribunal instead of 9%.

III. The respondent/claimants are entitled to enhanced compensation of **Rs.19,65,000/-** @ 7.5% interest from the date of filing claim petition till realization of the amount. Out of this amount, **Rs.2,28,000/-** is consortium amount, the claimants' are entitled @ 7.5% interest on it from 1st November 2017, till realization of the amount.

IV. The respondent insurance company shall deposit the enhanced compensation amount along with accrued interest thereon, within six weeks after receipt of this order.

V. The respondent insurance company is permitted to withdrawn excess interest amount at the rate of 1.5% per annum.

VI. The respondents/claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

VII. The claimants shall pay the deficit Court fees on enhanced amount, if any, as per Rule.

VIII. Record and Proceedings be sent back to the Tribunal.

11. In view of the above, the appeals are allowed and disposed off.

12. All pending applications, if any, stand disposed off.

[SHIVKUMAR DIGE, J.]