



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.264 OF 2017

General Manager,
Western Coalfields Limited,
Civil Lines, Nagpur (Original respondent No.3)

... Appellants

-vs-

1. Sau. Anita wd/o Umrao Dupare
Aged about : 46 years,
Occupation : Household
(Original Petitioner No.1)
2. Pritesh s/o Umrao Dupare
Aged about : 26 years,
Occupation : Education
(Original Petitioner No.2)
3. Pallavi d/o Umrao Dupare,
Aged about : 23 years,
Occupation : Student
(Original Petitioner No.3)
Respondent Nos.1 to 3 are R/o Ganesh Nagar
Kanhani, Tq. Parsioni, Distt. Nagpur.
4. Parag Tours and Travels,
Prop. Pramod Dongre
Aged about : Major,
Owner of Vehicle
R/o Plot No.897, Near Bajirao
Sahare's House, Lashkaribagh, Nagpur
5. Divisional Manager,
United India Insurance, DO-1, 5th Floor,
"Lotus Building" Plot No.5,
Gorepeth Layout, West High Court
Road, Dharmapeth, Nagpur-440010

... Respondents

WITH
FIRST APPEAL NO.265 OF 2017

General Manager,
Western Coalfields Limited,
Civil Lines, Nagpur
(Original Resp.No.3)

... Appellants

-vs-

1. Sau. Chhaya wd/o Arun Khobragade
Aged about : 46 years,
Occupation : Household (Ori. P-1)
2. Kum. Swati d/o Arun Khobragade,
Aged about : 26 years,
Occupation : Housewife (Ori. P-2)
3. Abhijit s/o Arun Khobragade,
Aged about : 23 years,
Occupation : Service (Ori. P-3)
4. Ankur s/o Arun Khobragade,
Aged about 21 years.
Occupation : Student (Ori. P-4)

All 4 are r/o Sugat Nagar,
Po. Uppalwadi Dist. Nagpur

5. Parag Tours and Travels,
Prop. Pramod Dongre
Aged about : Major,
Owner of Vehicle
R/o Plot No.181, Near Bajirao
Sahare's House, Lashkaribagh, Nagpur (Ori. R-1)

6. Divisional Manager,
United India Insurance Company Ltd.
Mount Road Extension, Sadar Nagpur (Ori. R-2)

... **Respondents**

Smt. Gauri Venkatraman, Advocate with Shri Yash Venkatraman for appellant in FA/264/2017.

Smt U. A. Patil, Advocate, with Shri Abhinil Kuradkar, Advocate for appellant in FA/265/2027.

Shri S. W. Sambre, Advocate with Shri P. D. Naukarkar, Advocate for respondent Nos. 1 to 3 in FA/264/2017 and for respondent Nos. 1 to 4 in FA/265/2017.

Ms Anita Mategaonkar, Advocate for the respondent-Insurance Company.

CORAM : ABHAY J. MANTRI, J.

DATED : 12-08-2025.

Common Judgment :

Since the facts of both these appeals are identical and similar, which arise out of the same motor vehicle accident, i.e. both

deceased persons were sitting in the same Tata Sumo vehicle, they are being heard and disposed of together by this common judgment.

2. Both appeals arise from judgments dated 29.06.2012, passed by the learned Member, Motor Accident Claim Tribunal-3, Nagpur, (hereinafter referred to as “*the Tribunal*”) in Claim Petitions Nos. 671 and 672 of 2012, respectively, whereby both petitions were allowed, being aggrieved by the same original respondent No.3 WCL, have preferred these appeals.

For the sake of convenience, I would like to refer to the facts of First Appeal No.264/2017 and the parties are referred to as per their status in the claim petitions.

3. The facts of the cases in a nutshell are as under :

On 20/12/2011 at about 11.30 am, deceased Umrao Ganpatrao Dupare and Arun Namdeo Khobragade, along with other team members, were coming from W.C.L. coal mines to Gondegaon by Tata Sumo bearing No.MH-31/CA-3124 (for short, -‘*Tata Sumo*’). When they came near Gondegaon W.C.L. mines, one Dumper bearing No. M.E.M.L-B.H. 50-MI.3424 (hereinafter referred to as “*the Dumper*”) came from the opposite direction and collided with each other. Due to the said accident deceased and others sustained grievous injuries. The deceased, Umrao and Arun, succumbed to the injuries. Accordingly,

the offence was registered against the drivers of the 'Dumper' as well as the 'Tata Sumo' vide Crime No. No.145/2011 at Kanhan Police Station for the offences punishable under Sections 279, 337 and 304-A of the Indian Penal Code. The deceased, Umrao, was 53 years old, and the deceased Arun was 52 years old. They both were in service with the appellant. Both were permanent employees, and their monthly salary was Rs. 27,574/- and Rs. 28,777/-, respectively.

4. The petitioners/claimants were dependent on the deceased, Umrao and Arun. Due to the death of the deceased, they have suffered a loss and therefore they have filed the claim petitions claiming compensation.

5. Respondent No.1-owner of the 'Tata Sumo' vehicle, filed a written statement and contended that the accident took place due to rash and negligent driving of the driver of the Dumper and not of the 'Tata Sumo'. The Tata Sumo was insured with respondent No.2-Insurance Company, and therefore, the respondent No.1 is not liable to pay the compensation.

6. The respondent No.2 contested the petition by filing a written statement and contended that the accident took place due to the rash and negligent driving of the driver of the '*Dumper*'. So, they denied the

responsibility of respondent No.2 and urged for dismissal of the petition.

7. The respondent No.3/appellant filed their written statement and raised the preliminary objection that the petition is not maintainable against them as the Dumper is not covered under the definition of Motor Vehicle or Vehicle as defined under Section 2(28) of the Motor Vehicles Act 1988 (hereinafter referred to as the “**M.V. Act**”). A dumper is a special type of vehicle, or rather its machinery, adapted for use only in a specified area, like mines. The said Dumper comes under the definition of the heavy Earth Moving Machine and is not used on the road, and therefore, the petition against respondent No.3 is not maintainable.

a) It is further averred that it has deposited compensation of Rs. 6,12,360/- on 06/01/2012 before the Commissioner for Workmen's Compensation/Labour Court, Nagpur, towards the workmen's compensation in respect of the deceased on account of an accident under the Workmen's Compensation Act. The petitioners have withdrawn the said amount. Thus, respondent No.3 has fulfilled its liability to pay compensation in respect of the accidental death of the deceased employee. As such, as per Section 167 of the MV Act, the petitioners are not entitled to claim compensation under both the Acts, and hence, the petition is not maintainable. The petitioners are not

approaching the Court with clean hands, and they have suppressed the material facts from the Court and therefore, on that ground also, the petition is liable to be dismissed.

b) It is further denied the contents of the petition in toto. It is categorically denied that the accident occurred due to the rash and negligent driving of the driver of the Dumper. The Dumper moves very slowly and in a particular place inside the mines. On the contrary, it is contended that the driver of the Tata Sumo gave a dash to the Dumper, and the accident took place due to the rash and negligent driving of the driver of the Tata Sumo. It denied the age of the deceased and the loss of dependency.

c) Lastly, it is averred that the son of the deceased employee was given an appointment on compassionate grounds, and he is working in the Gondegaon mines sub area of the WCL, and thereby the respondents have completely fulfilled their liability towards the deceased in the alleged accident. Eventually, it is submitted that if the Court comes to the conclusion that respondent No.3 is liable to pay the compensation, then the owner of the vehicle in question, i.e. Tata Sumo, also has to be held liable to pay the compensation and urged for dismissal of the claim petitions.

8. After considering the submissions of all the parties, the learned Tribunal has framed the issues. Pursuant to the issues, the

petitioners have adduced the evidence and produced and proved documents. The petitioners examined PW-1 Anita and one Abdul Bri Mohd. Yakub as PW-2 and proved the documents. *As against this, none of the respondents had entered into the witness box nor led any evidence in support of their defence.*

9. Upon deliberating the evidence on record, the learned Tribunal held that drivers of both the vehicles, i.e. Dumper and Tata Sumo, were equally responsible for the accident and held respondent Nos.1 and 2 jointly and severally liable to the extent of 50% and respondent No.3-WCL liable to the extent of 50% compensation and directed to pay compensation accordingly.

10. It is pertinent to note that, except for respondent No.3/appellant-WCL, none of the parties, i.e. the petitioners or respondent Nos. 1 and 2, has preferred any appeal against the impugned judgment and award. The appellant, i.e. respondent No.3, being aggrieved by the impugned judgment, has preferred these appeals. Accordingly, both appeals were **Admitted** on 30 and 31 March 2017, respectively.

11. Heard the learned Advocates for the parties at length. Perused the appeal memos, impugned judgment, record and proceedings and the judgments relied upon by the parties. The following points arise for determination :

- (i) *Whether respondent No.3/appellant has proved that the petitions are not maintainable against it?*
- (ii) *Whether the respondent No.3/appellant has proved that they are not responsible for paying 50% compensation?*
- (iii) *Whether any interference is required in the impugned judgment?*
- (iv) *What order?*

Point No. (i).

12. The crux of the argument of learned Advocate Smt. Venkatraman for the appellant-WCL is that the Dumper is not a motor vehicle or vehicle as defined under Section 2(28) of the Motor Vehicles Act, and therefore, the petition is not maintainable against it. She further canvassed that after the enactment of the Motor Vehicles Act, the Government of India issued a communication dated 13/07/2020 and thereby clarified that the Dumper does not come within the ambit of a Motor Vehicle, but it is a '*Heavy Earth Moving Machinery*' and therefore also the petition is not maintainable against the appellant. During the arguments, she has taken me through the definition of Motor Vehicle under Section 2(28) and the communication dated 13/07/2020 and urged that in view of the above, the Dumper cannot be termed as a Motor Vehicle. Hence, she urged setting aside the finding of the Tribunal in that regard.

13) *Per Contra*, Shri. Sambre S. W., learned Advocate for the petitioners-claimants, strenuously argued that this Court, as well as the Hon'ble Apex Court in ***Western Coalfields Ltd. vs. State of Maharashtra and anr. (2016) 11 SCC 613*** has categorically held that a Dumper comes under the definition of motor vehicles under Section 2(28) of the M.V. Act. Therefore, the issue raised by the appellant is covered by the mandate in the above judgment, and hence it cannot be said that a Dumper does not come within the purview of a motor vehicle.

14. He further propounded that the communication dated 13/07/2020 is neither a notification nor has statutory effect, but it is only a communication issued by the Government of India. Additionally, the communication indicates that it was issued solely for the purpose of registration/driving licence, and not in respect of the motor vehicle; therefore, it does not imply that a Dumper is not a motor vehicle. Furthermore, the said communication was not approved by the Government, and thus, it is not helpful to the appellant in support of their contention. On the contrary, the mandate in ***Western Coalfields Ltd.*** (supra) is applicable in the case at hand. Hence, he argued that as the Dumper comes within the definition of motor vehicle under Section 2(28), the petition is maintainable against the appellant.

15. Having heard the learned Advocates for the parties, I would like to reproduce the definition of Motor Vehicle, which reads thus :

“Section 2(28) “motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimeters.”

16. It would be appropriate to mention that in *Western Coalfields Ltd.* (supra), the Division Bench of this Court having considered Section 2(28) of the M.V. Act, along with Rules 2 (ca), 126 and 126B of the Central Rules, 1989 and various decisions of the Hon’ble Apex Court, discussing in detail has categorically held that “Heavy earth moving machinery commonly known as ‘Dumper’ is a motor vehicle within the meaning of Section 2 (28) of the Motor Vehicles Act, 1988”.

17. It is worth noting that Western Coalfields had challenged the said judgment before the Hon’ble Apex Court in Civil Appeal No. 2704/2004, decided on 06.05.2016, wherein Hon’ble Apex Court confirmed the order of this Court holding that “*the Excavator/Dumper (used in mining and extraction of mineral) falls within the meaning of the*

definition of “motor vehicles” contained in Section 2(28) of the MV Act and would therefore be liable for registration, payment of taxes, etc. as envisaged under the provisions of MV Act”.

18. The aforesaid decisions categorically reveal that the question that arises in this case, whether the Dumper/excavator is a motor vehicle within the ambit of Section 2(28) of the Act or not, is already adjudicated by the Hon’ble Apex Court. It is to be noted that the learned Advocate for the appellant does not dispute the above decisions or the aforesaid proposition of the law. Thus, in my opinion, this question is no more *res integra* to reconsider, and the aforesaid observations are squarely applicable to the present case; therefore, I do not find substance in the contention of the learned Advocate for the appellant that Dumper does not come within the meaning of the definition of motor vehicles.

19) The next point argued by the learned Advocate Smt. Venkatraman for the appellant-WCL is that the appellant has deposited the compensation amount before the Commissioner for Workmen’s Compensation/Labour Court, Nagpur, towards workmen’s compensation in respect of the deceased on account of the alleged accident, and the petitioners have withdrawn the said amount. Similarly, the appellant has given an appointment to the son of the

deceased on compassionate grounds, and thus the appellant-WCL has completely fulfilled its liability towards the deceased as alleged and as such, the petitioners are not entitled to seek compensation under Section 167 of the M. V. Act as they have received the compensation under the Workmen's Compensation Act and hence the petitions are not maintainable.

20. Shri. Sambre S.W., learned Advocate for the petitioners-claimants vehemently contended that the petitioners have not made any application under Section 10 of the Employees Compensation Act, 1923 (for short, - '***the Act of 1923***') for getting compensation from the appellant but they have only made an application under Section 8 of the Act of 1923 for distribution of the amount deposited by the appellant before the Labour Court and therefore it cannot be said that the petitioners have invoked the application for getting compensation under the Employees' Compensation Act.

21. To buttress his contentions, he has relied on paragraphs 11 to 14 of the judgment in *Oriental Insurance Co. Ltd. Vs Dyamavva and ors., 2013 (2) T.A.C. 1 (S.C.) and others*, and submitted that no application was ever filed by the respondents-claimants herein under [Section 10](#) of the Act of 1923. In view of the facts, it can be stated that the respondents- claimants, having never exercised their

option to seek compensation under [Section 10](#) of the Workmen's [Compensation Act, 1923](#), could not be deemed to be precluded from seeking compensation under [Section 166](#) of the Motor Vehicles Act, 1988.

22. It is to be noted that the Hon'ble Apex Court, while dealing with a similar controversy, in *Oriental Insurance Co. Ltd. (Supra)*, after considering the provisions of *Sections 8 and 10 of the Act of 1923* in detail, discussed the same and in paragraphs Nos. 11 to 14 have held as under, which read thus :

“11. Having perused the aforesaid provisions and determined their effect, it clearly emerges that the Port Trust had initiated proceedings for paying compensation to the dependants of the deceased Yalgurdappa B. Goudar “suo motu” under [Section 8](#) of the Workmen's [Compensation Act, 1923](#). For the aforesaid purpose, the Port Trust had deposited a sum of Rs. 3,26,140/- with the Workmen's Compensation Commissioner on 4.11.2003. Thereupon, the Workmen's Compensation Commissioner, having issued notice to the claimants (dependants of the deceased Yalgurdappa B. Goudar), fixed 20.4.2004 as the date of hearing. On the aforesaid date, the statement of the widow of Yalgurdappa B. Goudar, namely, Dyamavva Yalgurdappa, was recorded, and thereafter, the Workmen's Compensation Commissioner by an order dated 29.4.2004, directed the release of a sum of Rs. 3,26,140/- to be shared by the widow of the deceased and his daughter in definite proportions.

12. The issue to be determined by us is whether the acceptance of the aforesaid compensation would amount to the claimants having exercised their option to seek compensation under the Workmen's [Compensation Act, 1923](#). The procedure under [Section 8](#) aforesaid (as noticed above) is initiated at the behest of the employer “suo motu”, and as such, in our view, cannot be considered as an exercise of option by the dependants/claimants to seek compensation under the provisions of the Workmen's [Compensation Act, 1923](#). The position would have been otherwise if the dependants had raised a claim for compensation under [Section 10](#) of the Workmen's [Compensation Act, 1923](#). In the said eventuality, certainly compensation would be paid to the dependants at the instance (and option) of the claimants. In other words, if the claimants had moved an application under [Section 10](#) of the Workmen's [Compensation Act, 1923](#), they would have been deemed to have exercised their option to seek compensation under the provisions of the

Workmen's Compensation Act. Suffice it to state that no such application was ever filed by the respondents-claimants herein under [Section 10](#) aforesaid. In the above view of the matter, it can be stated that the respondents- claimants, having never exercised their option to seek compensation under [Section 10](#) of the Workmen's [Compensation Act, 1923](#), could not be deemed to be precluded from seeking compensation under [Section 166](#) of the Motor Vehicles Act, 1988.

13. Even though the aforesaid determination concludes the issue in hand, ambiguity, if at all, can also be resolved in the present case, on the basis of the admitted factual position. The first act at the behest of the respondents-claimants for seeking compensation on account of the death of Yalgurdappa B. Goudar was by way of filing a claim petition under [Section 166](#) of the Motor Vehicles Act, 1988, on 30.05.2003. The aforesaid claim petition was the first claim for compensation raised at the hands of the respondents-claimants. If the question raised by the appellant has to be determined with reference to [Section 167](#) of the Motor Vehicles Act, 1988, the same is liable to be determined on the basis of the aforesaid claim application filed by the respondents-claimants on 30.05.2003. The compensation deposited by the Port Trust with the Workmen's Compensation Commissioner for payment to the respondents-claimants was much later, on 4.11.2003. The aforesaid deposit, as already noticed above, was not at the behest of the respondents-claimants, but was based on a unilateral "suo motu" determination of the employer (the Port Trust) under [Section 8](#) of the Workmen's [Compensation Act, 1923](#). The first participation of Dayamavva Yalgurdappa, in the proceedings initiated by the Port Trust under the Workmen's [Compensation Act, 1923](#), was on 20.4.2004. Having been summoned by the Workmen's Commissioner, she got her statement recorded before the Commissioner on 20.4.2004. But well before that date, she (as well as the other claimants) had already filed a claim petition under [Section 166](#) of the Motor Vehicles Act, 1988, on 30.5.2003. **Filing of the aforesaid claim application under [Section 166](#) aforesaid, in our view, constitutes her (as well as that of the other dependants of the deceased) option to seek compensation under the [Motor Vehicles Act, 1988](#). The instant conclusion would yet again answer the question raised by the appellant herein, under [Section 167](#) of the Motor Vehicles Act, 1988, in the same manner as has already been determined above.**

14. In the aforesaid view of the matter, we hereby affirm the determination rendered by the Motor Accidents Claims Tribunal, Bagalkot, and the High Court in awarding compensation quantified at Rs. 11,44,440/- to the claimant. The Motor Accidents Claims Tribunal, Bagalkot, as also the High Court, ordered a deduction therefrom of a sum of Rs. 3,26,140/- (paid to the claimants under the Workmen's [Compensation Act, 1923](#)). The said deduction gives full effect to [Section 167](#) of the Motor Vehicles Act, 1988, inasmuch as it awards compensation to the respondents-claimants under the enactment based on the option first exercised, and also ensures that the respondents-claimants are not allowed dual benefit under the two enactments.

23. A bare perusal of the above judgment, it is, thus apparent that if procedure under Section 8 was initiated at the behest of the employer/appellant suo-motu, in such circumstances it cannot be considered as an exercise of option by the dependents/petitioners to seek compensation under the provisions of the Workmen's [Compensation Act, 1923](#). The position would have been otherwise if the petitioners/dependents had raised a claim for compensation under [Section 10](#) of the Employees'/Workmen's [Compensation Act, 1923](#). However, no such application was ever filed by the petitioners/respondents Nos. 1 to 3 herein under [Section 10](#) aforesaid. In the above view of the matter, it can be stated that the respondents- petitioners, having never exercised their option to seek compensation under [Section 10](#) of the [Act of 1923](#), could not be deemed to be precluded from seeking compensation under [Section 166](#) of the Motor Vehicles Act, 1988. Therefore, the Hon'ble Apex Court confirmed the view taken by the learned Tribunal and the High Court of Karnataka, and consequently, the law laid down in the said decision is squarely applicable to the case at hand.

24. Apart from this, the communication dated 13/07/2020 on which the appellant is relying has no statutory effect. The same was not approved by the Government nor notified in the official gazette, and therefore, it has no statutory effect. For the sake of argument,

even if it is assumed that the Government has issued the said communication for the claims made under the Motor Vehicles Act, in that case also the said communication/Circular cannot override statutory rules or would not prevail over the Rules or statute. Besides, said communication cannot be made or given effect in violation of what is mandated by the rules, and therefore, it would not help the appellant. Said communication appears to be issued in violation of the mandate laid down in *Western Coalfields Ltd.* (supra) and therefore also I do not find substance in the contention of the learned Advocate for the appellant that Dumper is not covered under the definition of 'motor vehicle' or 'vehicle' as defined under Section 2(28) of the Motor Vehicles Act. On the contrary, in view of the mandate laid down in *Western Coalfields Ltd.* (supra), I have no hesitation to hold that a Dumper falls within the meaning of the definition of motor vehicle and the petition is maintainable against the WCL. Hence, I answer *point No. (i) in the negative.*

Point No. (ii).

25. The next ground raised by the learned Advocate for the appellant is that the claimants/petitioners failed to adduce evidence to prove that the driver of the Dumper was rash and negligent in driving the vehicle. She has drawn my attention to paragraph 13.4 of the judgment in *Reshmakumari and others vs. Mdan Mohan and anr., (2013) 9*

SCC 65 and urged that *‘it is for the claimants to prove negligence on the part of the driver or owner of the vehicle’*. Similarly, he has pointed out paragraph No. 13 of the judgment in ***Shriram Insurance Co. Ltd. Vs. Vanita and others, 2019 SCC OnLine Bom 2058***, and canvassed that *“The initial burden is always on the claimants to prove the fact of accident”* however, they failed to prove the accident, He further placed reliance on paragraph 22 of the judgment in ***Sangita Prakash Pawar and ors. vs. Mohadeorao R. Mahadik and ors. 2017 SCC OnLine Bom 8608*** and argued that *‘negligence is a question of fact. There is a species of negligence where the nature of the act is such that the fact proves itself. Negligence must usually be proved. There may be evidence as to the speed of the vehicle, or whether it was travelling on the wrong side of the road, in an uneven manner or was attempting while mobile something especially hazardous’*. So, she canvassed that it has to be demonstrated that the driver of the ‘Dumper’ was rash and negligent to cause the accident.

26. She has taken me through paragraph 13 of the judgment in ***Smt Usha Kiran Shridhar Shinde and ors. vs. Arunkumar Kisanlal Kalal and ors. 2001(4) ALL MR 21*** and submitted that merely proving the panchanama in evidence is not a substitute for proving the contents of the panchanama, and therefore, she argued that the said panchanama and FIR or police papers are not helpful to the petitioners in support of their claim.

27. Likewise, she has taken me to paragraph 10 of the impugned judgment, paragraph 6 of the written statement and the evidence of PW-1 and submitted that an eye-witness or panch failed to prove the contents of the panchnama and other documents on record, and therefore those documents are not helpful for the petitioners in support of their case. The petitioners failed to examine the eyewitness to that extent. Non-examination of the eye-witness leads to drawing an adverse inference regarding the proof of the panchanama. In fact, it was the best available evidence to support their case; however, the petitioners failed to prove that the driver of the Dumper was negligent. She has pointed out the testimony of PW-1. During her cross-examination, it is clear that she does not know who was at fault in the accident. She took me through paragraph 18 of the judgment and canvassed that the finding recorded by the learned Tribunal is contrary to the evidence on record. The Tribunal has erred in holding that the appellant is liable to pay 50% compensation, and therefore she submitted that the finding recorded by the learned Tribunal to hold the respondent No.3, i.e. the appellant, is contrary to the facts and evidence on record, as such is liable to be set aside.

28. On the other hand, learned Advocate Ms. Mategoankar for the respondent- Insurance Company argued that a compassionate appointment given to the son of the deceased does not bar to granting

of compensation under the MV Act. She further submitted that the finding recorded by the learned Tribunal fastening liability on respondent Nos. 1 and 2 jointly 50% and on respondent No.3 to the tune of 50% respectively is just and proper. Thus, the Insurance Company has complied with the said order and, as such, she supported the impugned judgment and order and urged for dismissal of the appeals. To buttress her argument, she has placed reliance on the judgment in *National Insurance Company Ltd. vs. Rekhaben And ors. (2017) 13 SCC 547* and took me through paragraphs 18 and 19 of the said judgment wherein the Hon'ble Apex Court held that "*the amount earned by the claimants from compassionate appointments cannot be deducted from the quantum of compensation receivable by them under the Act. The source from which compensation on account of the accident is claimed and the source from which the compassionate employment is offered are completely separate, and there is no correlation between these two sources.*"

29. As against, learned Advocate Shri. Sambre advanced submissions that the finding recorded by the learned Tribunal in respect of the negligence of both drivers is just and proper. He has also pointed out paragraph 10 of the written statement and submitted that the averments in the said written statement itself indicate that the appellants are accepting their liability, and in addition to their liability,

the liability of the driver of the Tata Sumo. He further propounded that the appellants failed to enter into the witness box, nor did they adduce any evidence in support of their contention that the driver of the Dumper was not rash and negligent or not responsible for the accident. The respondent No.1 could have examined the driver of the Dumper in support of their defence. Non-examination of the driver of the Dumper led to draw an adverse inference. The driver of the Dumper was the best available witness to examine him in support of their defence.

He further contended that the petitioner No.1 in her examination-in-chief categorically deposed that the accident occurred due to the rash and negligent driving of the driver of the Tata Sumo and Dumper. However, no counter evidence was adduced by the appellant to rebut the evidence of petitioner No.1, who in her testimony categorically deposed that both drivers were responsible, but non adducing the counter evidence by the appellant leads to an adverse inference. Similarly, the petitioner No.1 in her examination-in-chief produced and proved the police papers. No suggestion was put to her that the contents of said police papers were incorrect, nor challenged the said contents during her cross-examination, and therefore there is no reason to discard the testimony of the petitioner No.1 in that regard. He further pointed out to the FIR and submitted that an offence was registered against the drivers of both the vehicles, but none of the drivers has challenged the said FIR. There is no reason

to discard the FIR and police papers when they are not challenged before the competent Court, as they are part of the investigation. Lastly, he put forth that the appellant in paragraph 6 of the written statement averred that the Dumper moves very slowly and in a particular place inside the mine, and the driver of the Tata Sumo gave a dash to the Dumper. However, no evidence is adduced to prove the said averment and therefore, in the absence of evidence, mere averment is not helpful to support their contention. As such, he argued that the impugned finding recorded by the learned Tribunal is just and proper.

30. On perusal of the record, it appears that after the occurrence of the accident, the FIR was registered against the drivers of the Dumper and Tata Sumo vide Crime No.145/2011. Accordingly, on the same day spot panchnama was carried out. It further reveals that the petitioners have proved documents, i.e. FIR Exhibit-32, spot panchnama Exhibit-34 and other documents by adducing evidence in that regard. During cross-examination of the petitioner No.1, neither suggestion was put to her that the contents of the said documents are incorrect, nor were those documents challenged. Therefore, there is no reason to disbelieve the police papers, which were produced and proved by the petitioner during her examination-in-chief. All those documents were exhibited, and therefore, there is no reason to discard

them. On the contrary, it is pertinent to note that the exhibited documents can be read in evidence in the absence challenge to the same; therefore, I do not find substance in the contention of the learned Advocate for the appellant that the contents of those documents are not proved by the petitioner.

31. Similarly, the appellant in paragraph 6 of the written statement averred that the driver of the Tata Sumo gave a dash to Dumper. Appellants' failing to adduce evidence in that regard denotes that both vehicles, i.e. Dumper and Tata Sumo, were involved in the accident. To substantiate their contention, they could have examined the driver of the Dumper who was an eyewitness to the incident, but failing to examine him leads to an adverse inference. Likewise, it is to be noted that it was the best evidence that was available to the appellant to demonstrate that the driver of the Dumper was not rash and negligent to cause the accident. *Apart from this*, the petitioner No.1 in her testimony has categorically deposed that the accident occurred due to rash and negligent driving of the drivers of Dumper and Tata Sumo; however, her testimony neither denied nor challenged, as such, there is no reason to disbelieve her testimony in that regard. Moreover, appellants have not put the suggestion to PW-1 that the driver of the Dumper was not responsible for causing the accident, nor given suggestion that the driver of the Tata Sumo was solely responsible for

the accident and therefore, I do not find any substance in that contention that driver of Tata Sumo was negligent and responsible for the accident.

32. On perusal of the finding recorded by the learned Tribunal, it appears that learned Tribunal has observed that *“the respondents have not examined the drivers of Tata Sumo and Dumper and therefore relying on the police papers which were produced and proved by PW-1 in her testimony came to the conclusion that drivers of both the vehicles were negligent to cause the accident and therefore fastened the liability to the extent of 50% on the respondent Nos.1 and 2 jointly and on respondent No.3 i.e. the appellant to the extent of 50%.”*

33. Having considered the evidence on record as well as the fact that none of the respondents has adduced evidence in support of their defence, on the contrary, the FIR on record categorically indicates that drivers of both the vehicles were responsible for the accident and therefore registered the offence against both of them. Likewise, on perusal of the inquiry report about the accident and spot panchanama categorically denotes that drivers of both the vehicles were rash and negligent while driving the vehicles, and therefore, the accident occurred due to their negligence. Furthermore, it is not in dispute that both vehicles were involved in the accident. None of the parties has

examined the eyewitness to the accident. Thus, having considered the above discussion, I do not find any perversity in the finding recorded by the Tribunal that drivers of both vehicles were responsible for causing the accident, as well as the law laid down/observations made in the judgments relied on by the appellant are hardly of any assistance in support of their submissions. Consequently, ***I answer point No.2 in the negative.***

34. **Point No.3**

The learned Advocate for the appellant further advanced her argument that the appellant has given compassionate appointment to the son of the deceased, i.e. Petitioner/claimant No.2 Pritesh. Therefore, he cannot be said to be a dependent on the deceased while considering the claim of the petitioners. In that regard, she has drawn my attention to paragraph 8 of the written statement as well as the cross-examination of PW-1 Anita, who, in her testimony, admitted that the appellant has given an appointment to her son on compassionate grounds and his salary was around Rs. 25,000/- per month. Pointing out paragraph 22 of the impugned judgment, it was submitted that while considering the fact, the learned Tribunal erred in holding that all the petitioners were dependent on the deceased and therefore the determination of the grant of compensation is incorrect. *However, she does not dispute that the deceased was earning Rs. 3,30,888/- per*

annum and after deduction of income tax and profession tax, thus, the net salary comes to Rs. 3,23,862/- p.a.

35. On the other hand, learned Advocate for the respondent Insurance Company argued that in view of the observations made in paragraphs 18 and 19 of *National Insurance Company Ltd. vs. Rekhaben and ors.* (supra), the amount earned by the claimants from compassionate appointments cannot be deducted from the quantum of compensation receivable by them under the Act, and therefore, she urged that it would not be appropriate to deduct the amount of quantum receivable to petitioner/claimant No.2, Pritish, on account of compassionate appointment.

36. In response to that, learned Advocate for the appellants pointed out paragraph 19 of the very same judgment in *Rekhaben and ors* (supra) and submitted that in the said matter, since the tortfeasor, i.e, insurance Company has not offered the compassionate appointment, therefore it was held that financial benefit of the compassionate employment is not liable to be deducted, however the facts at the case at hand are distinct than the above case, therefore she urged that petitioner/claimant No.2 cannot be considered as dependent on the deceased.

37. Having heard the above arguments, deliberations and legal position, even for the sake of argument if it is assumed that claimant No.2 was not dependent on the deceased, in that eventuality also it would not change the deduction under the head of personal expenses of deceased since as per the settled position of law if two or three dependents are there, then $1/3^{\text{rd}}$ amount of income has to be deducted towards personal expenses of the deceased. Here, three petitioners have filed a claim petition and are claiming compensation. Even if petitioner No. 2 is excluded from the category of dependents, in that case, two petitioners/claimants are also dependent on the deceased. In such an eventuality, $1/3$ of the amount has to be deducted towards the personal expenses of the deceased.

38. Considering the facts above and the position of law, I do not find substance in the contention of the learned Advocate for the appellant that if claimant No.2 is excluded from the category of dependent, it would reduce/change the compensation granted to the claimants.

39. The next point for consideration is that, undisputedly, petitioners/claimants have not preferred any cross-objection or counter appeal against the impugned judgment. However, in view of the mandate laid down in *Surekha w/o Rajendra Nakhate and ors. vs.*

Santosh s/o Namdeo Jadhav and ors. (2021) 16 SCC 467 and ***Sangita Arya and ors. vs. Oriental Insurance Company Ltd. And ors. (2020) SCC 327*** it is well-settled that in the matter of insurance claim compassion in reference to motor accident, the court should not take hyper technical approach and ensure that just compensation is to be awarded to the affected person or the claimants even in absence of filing of the appeal or cross-objection by the claimants and therefore in my view, non-filing of appeal or cross-objection would not affect the right of the claimants of getting *just compensation*.

40. Lastly, the learned Advocate for the appellants submitted that, as per paragraph 55 of the judgment in ***National Insurance Co. vs. Pranay Sethi (2017) 16 SCC 680***, the Court must award “*just compensation*” and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard and not as a bonanza. However, she is not disputing the mandate laid down in “*Pranay Sethi’s* case.

41. I have gone through the impugned judgment and award. In paragraphs 20, 21 and 22, the learned Tribunal has considered the age and income of the deceased and, after deduction towards income tax and profession tax and after considering the same, held that the deceased was earning an amount of Rs. 3,23,862/- per annum. Pursuant to the judgment in ***Rajesh and ors. vs. Rajbir Singh and ors.***

2013 (3) T.A.C. 697 (S.C.), the learned Tribunal awarded 15% compensation under the head of future prospects, which was also followed in ***Pranay Sethi's*** case. It awarded Rs. 50,000/- towards the consortium and Rs. 25,000/- each to petitioner Nos. 2 and 3 towards love and affection and Rs. 25,000/- towards funeral expenses. Rs. 25,000/- towards loss of estate.

42. It is pertinent to note that the Constitution Bench of the Hon'ble Apex Court in ***Pranay Sethi*** dealt with the various aspects and heads under which compensation is to be awarded in a death case. It is important to note that the learned Advocate for the appellant does not dispute the mandate laid down in "***Pranay Sethi's*** case. However, the Tribunal has not awarded an amount of compensation as mandated by the judgment of the Constitutional Bench in ***Pranay Sethi's*** case. That being so, in my opinion, the claimants are entitled to get the compensation as per the mandate laid down in ***Pranay Sethi's*** case. Apart from this, it is to be noted that the M.V. Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims.

In First Appeal No.264/2017 :

43. Thus, in view of the settled positions of law laid down in ***Pranay Sethi***, the claimants are entitled to get the compensation as under :

Age	53 years
Dependents	3 or even assuming 2 dependents.
Gross Income	Rs 3,30,888/- p.a.
Income Tax + Professional Tax	Rs 7,020/- p.a.
Net Income	Rs 3,23,862/- p.a.
Income towards Future Prospects	15%
Multiplier	11

Sr. No.	Compensation Heads	Amount Awarded
(i)	Net Income	Rs 3,23,862 /-p.a.
(ii)	After deduction towards personal expenses as 3 dependents (1/3)	Rs 1,07,954/- (Rs 3,23,862- Rs 1,07,954 = Rs 2,15,908/-)
(iii)	Towards Future Prospects, as age is between 50-60 (15%)	Rs 32,386/-
(iv)	Multiplicand	Rs 2,48,294/- (2,15,908+ 32,386)
(v)	Multiplier as age is between 51-55	11
(vi)	Loss of Income of the deceased	Rs 27,31,234/- (2,48,294 x 11)
(vii)	Compensation to be awarded (A)	Rs 27,31,234/-

Sr No.	Conventional Heads	Amount
(i)	Funeral Expense (15,000 with 10% increase every 3 years from 2017)	Rs 18,150/-
(ii)	Loss of Estate (15,000 with a 10% increase every 3 years from 2017)	Rs 18,150/-
(iii)	Loss of Consortium to each of 3 Dependents (40,000 with 10% increase every 3 years from 2017)	Rs 1,45,200/- (48,400 x 3)
(iv)	Compensation under Conventional Head (B)	Rs 1,81,500/-

Total Compensation

Total Compensation to be Awarded (A+B)	Rs 27,31,234 /- + Rs 1,81,500/- = Rs 29,12,734/-
---	---

44. As per the mandate laid down in ***Pranay Sethi's*** case, the claimants are entitled to get compensation of Rs.29,12,734/-. However, the learned Tribunal has awarded the total compensation of Rs. 28,81,000/-. [{i.e. owner and insurer of Tata Sumo are liable to pay 50% amount, (Rs. 14,40,500/-) and respondent No.3, i.e. appellants, are liable to pay 50% amount (Rs. 14,40,500/-) to the claimants.} {The amount of Rs. 6,12,360/- paid by the appellants to the claimants under the Act of 1923 is liable to be deducted from Rs. 14,40,500, then Rs.8,28,140/- (Rs.14,40,500 - Rs.6,12,360/- =Rs.8,28,140/-) is liable to pay by the appellant to the claimants.}] There is a difference of Rs. 31,734/-. The same is rounded to Rs. 32,000/-. It also appears that as per the order of the Tribunal, respondent Nos. 1 and 2, i.e. owner and insurer of Tata Sumo, are liable to pay 50% amount, and respondent No.3, i.e. appellants, are liable to pay 50% amount to the claimants.

In First Appeal No.265/2017 :

45. It is to be noted that in this case, no employment on compassionate grounds was given to the legal representatives of the deceased, so the question of deduction of compensation or consideration of the exclusion of a dependent does not arise at all.

46. Thus, in view of the settled positions of law laid down in ***Pranay Sethi***, the claimants are entitled to get the compensation as under :

Age	52 years
Dependents	4
Gross Income	Rs 3,32,844/- p.a.
Income Tax + Professional Tax	Rs 7,020/- p.a.
Net Income	Rs 3,25,824/- p.a.
Future Prospects	15%
Multiplier	11

Sr. No.	Compensation Heads	Amount Awarded
(i)	Net Income	Rs 3,25,824 /-p.a.
(ii)	After deduction towards personal expenses as 4 dependents (1/4)	Rs 81,456/- (Rs 3,25,824- Rs 81456 = Rs 2,44,368/-)
(iii)	Towards Future Prospects, as age is between 50-60 (15%)	Rs 36,655/-
(iv)	Multiplicand	Rs 2,81,023/- (2,44,368 + 36,655)
(v)	Multiplier as age is between 51-55	11
(vi)	Loss of Income of the deceased	Rs 30,91,253/- (2,81,023 x 11)
(vii)	Compensation to be awarded (A)	Rs 30,91,253/-

Sr No.	Conventional Heads	Amount
(i)	Funeral Expense (15,000 with 10% increase every 3 years from 2017)	Rs 18,150/-
(ii)	Loss of Estate (15,000 with a 10% increase every 3 years from 2017)	Rs 18,150/-
(iii)	Loss of Consortium to each of 4 Dependents (40,000 with 10% increase every 3 years from 2017)	Rs 1,93,600/- (48,400 x 4)
(iv)	Compensation under Conventional Head (B)	Rs 2,29,900/-

Total Compensation

Total Compensation to be Awarded (A+B)	Rs 30,91,253/- + Rs 2,29,900/- = Rs 33,21,153/-
---	--

47. As per the mandate laid down in *Pranay Sethi's* case, the claimants are entitled to get compensation of Rs.33,21,153/-. However, the learned Tribunal has awarded the total compensation of Rs.32,66,000/-. [i.e. owner and insurer of Tata Sumo are liable to pay 50% amount, (Rs.16,33,000/-) and respondent No.3, i.e. appellants, are liable to pay 50% amount (Rs.16,33,000/-) to the claimants.] {The amount of Rs.5,70,700/- paid by the appellants to the claimants under the Act of 1923 is liable to be deducted from Rs.16,33,000/- then Rs.10,62,300/- (Rs.16,33,000 - Rs.5,70,700/=Rs.10,62,300/-) is liable to pay by the appellants to the claimants.}] There is a difference of Rs.55,153/-. The same is rounded to Rs.55,200/-. It also appears that as per the order of the Tribunal, respondent Nos.1 and 2, i.e. owner and insurer of Tata Sumo, are liable to pay 50% amount, and respondent No.3, i.e. appellants, are liable to pay 50% amount to the claimants. Apart from this it appears that the appellants as well as Insurance Company are liable to pay 50% compensation to the claimants, the difference of which comes to Rs.27,600/- each along with interest accrued thereon from the date of petition till deposit of amount by the Insurance Company as well as the appellants in the Court within a period of eight weeks.

48. As per the contention of the learned Advocate for the Insurance Company, the Insurance Company has already deposited the awarded amount along with interest before the Tribunal and complied with the order of the Tribunal. Similarly, the learned Advocate for the appellants submitted that the appellants have also deposited the balance amount of compensation in this Court on 06/05/2017. Apart from this, it appears that the appellants as well as Insurance Company are liable to pay 50% compensation to the claimants, the difference of which comes to Rs.16,000/- and Rs. 27,600/-each along with interest accrued thereon from the date of petition till deposit of amount by the Insurance Company as well as the appellants in the Court within a period of eight weeks, in F.A. Nos. 264 and 265 of 2017, respectively.

49. Having bestowed my anxious consideration on the above deliberation and analysis of the legal provisions, I do not find substance in the contention of the learned Advocate for the appellants that the appellants are not responsible for the payment of the compensation amount or the judgment and award passed by the learned Tribunal suffer from perversity to interfere in the appellate jurisdiction. On the contrary, it appears that the Tribunal has rightly considered each element in detail and held that the appellants, owner, and insurer of Tata Sumo, jointly and severally to pay 50% compensation each. As a result, I do not find any illegality or

perversity in the impugned judgments and Awards. However, at the same time, in view of the dictum in *Pranay Sethi's case*, petitioners/claimants are entitled to get the enhanced compensation, and as per the decisions in *Surekha* and *Sangita* (supra), the claimants are entitled to get the enhanced compensation to the extent of Rs.32,000/- and Rs.55,200/- respectively in total in both appeals. To that extent, the impugned judgment and award are required to be modified. As such, the appeals are dismissed; however, the impugned judgment and award are modified to the extent of enhancement of the compensation to the tune of Rs.32,000/- and Rs.55,200/- respectively. The appellants as well as the respondent - Insurance Company are liable to pay 50% compensation, i.e. Rs.16,000/- and Rs.27,600/- each, respectively, in both the appeals, along with interest thereon from the date of petition till deposit of amount by them in the Court. They are directed to deposit the said amounts in the court within eight weeks. After the deposit of enhanced compensation in the Court, petitioners/claimants are permitted to withdraw the same as apportioned in proportion to the impugned judgment. The rest of the impugned judgment of the Tribunal is intact. Hence, *I answer point No. (iii) and (iv) accordingly*. Consequently, the appeals are dismissed with the modification as mentioned above. No order as to costs.

At this stage, the learned Advocate for the appellants urged to stay the judgment and order till the appeal period is over.

Having considered the facts and circumstances of the case and the above discussion, in my view, it would be appropriate to grant a stay to this judgment and order till the appeal period is over; accordingly, this judgment is stayed till the appeal period is over, subject to the deposit of the enhanced compensation amount along with accrued interest thereon as observed above, by the appellants in the Court within a period of two months from today. On such a deposit, the petitioners/claimants are permitted to withdraw the same as per the award.

(ABHAY J. MANTRI, J.)