IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2503 OF 2016

NATIONAL INSURANCE CO. LTD.

VERSUS

1. MAHESH S/O MADANLAL SHARMA
2. KAILASH S/O MADANLAL SHARMA
3. SHARDHA D/O MAHESH SHARMA
4. ERBAJI S/O BALIRAM FIRANGWAD

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Advocate for Appellant : Mr. Chapalgaonkar S.P.

Advocate for Respondents : Mr. Pathan Hamzakhan I.

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CORAM : ROHIT W. JOSHI, J.

DATE : 1st OCTOBER 2026

PER COURT :

1. The Appellant/Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988, in order to challenge the judgment and award dated 17.05.2016 passed by the learned Ex-Officio Member, Motor Accident Claims Tribunal, Nanded, in M.A.C.P. No. 36 of 2013. By the said award, the learned Tribunal directed payment of compensation of Rs.11,36,800/-, inclusive of no-fault liability compensation, together with interest at the rate of 7% per annum from the date of filing of the claim petition, i.e. 14.01.2013, till realization. The deceased was a pensioner and was about 72 years of age at the time of his death. Petitioner Nos. 1 and 2 are the sons of the deceased, whereas Petitioner Nos. 3 and 4 are his minor granddaughters and the daughters of Petitioner No. 1. The

accident occurred on 05.08.2012 when the deceased was crossing the road and was hit by the offending vehicle i.e. motorcycle. At the time of the accident, three persons were riding on the motorcycle. The learned Tribunal has recorded a finding that Petitioner No. 2 was physically handicapped and was, therefore, dependent upon his father, the deceased, for his maintenance. Insofar as Petitioner No. 1 is concerned, the learned Tribunal has recorded a finding that he was also dependent upon his father, as he had wound up his business after suffering losses and had no independent source of income. The learned Tribunal made one-fourth deduction towards the personal expenses of the deceased, treating the total number of dependants as four, and computed the compensation by applying multiplier of five.

2. Apart from this, under the non-pecuniary heads, compensation of Rs.50,000/- has been awarded towards loss of love and affection and Rs.25,000/- towards funeral expenses. Since three persons were riding the motorcycle at the time of the accident, the learned Tribunal has permitted the Insurance Company to recover the compensation amount from the owner of the offending vehicle after satisfying the award by making payment to the Petitioners.

3. Mr. Chapalgaonkar, learned Advocate for the Appellant/Insurance Company, contends that the number of dependants should have been considered as two instead of four. According to him, only the sons could have been treated as dependants of the deceased and not his granddaughters. Apart from

this, it is argued that the owner of the offending vehicle and the Insurance Company should have been held jointly and severally liable, and thereafter the principle of "pay and recover" should have been applied. Instead, the learned Tribunal has held the Appellant/Insurance Company solely liable to satisfy the award.

4. Mr. Pathan, the learned Advocate for the Original Petitioners justifies the order pointing out that there is evidence on record to hold that Petitioner No. 1 had no independent source of income and was dependent upon the deceased and consequently, his daughters, namely Petitioner Nos. 3 and 4, were also dependent upon their grandfather, the deceased. The learned Advocate further submits that, in fact, the amount of compensation deserves enhancement, as consortium at the rate of Rs.40,000/- each ought to have been awarded to Petitioner Nos. 1 and 2, instead of awarding a consolidated amount of Rs.50,000/- towards loss of love and affection. Apart from this, he contends that an amount of Rs.30,000/- ought to have been awarded under the heads of funeral expenses and loss of estate, whereas only Rs.20,000/- is awarded towards funeral expenses.

5. Having heard the rival submissions, the following points arise for my consideration:

(i) What should be the amount of compensation payable to the original Petitioners?

(ii) Whether the Appellant/Insurance Company and the

Respondent/owner of the offending vehicle should be held jointly and severally liable?

Point No.1 :

6. At the outset, it must be stated that the liability of the owner of the offending vehicle and the Insurance Company is joint and several. The principle of "pay and recover" is applied by the learned Tribunal in view of the breach of policy conditions by the owner of the offending vehicle. The learned Tribunal ought to have held the owner and the Insurance Company jointly and severally liable and thereafter applied the principle of "pay and recover".

Point No.2 :

7. Although it is vehemently argued that the granddaughters cannot be treated as dependants, having regard to the findings recorded on the basis of the evidence on record that Petitioner No. 1 had no independent source of income, the grand-daughters will also have to be treated as dependants of their deceased grand-father. Therefore, the learned Tribunal has rightly considered the total number of dependants as four. There is no dispute with regard to the amount of pension drawn by the deceased or the multiplier applied by the learned Tribunal. In view of the above, the compensation of Rs.10,66,860/- awarded towards loss of dependency does not warrant any interference. However, the learned Tribunal has erred in not awarding consortium of Rs.40,000/- each to Petitioner Nos. 1 and 2, who are sons of the deceased. The learned Tribunal has also erred in not awarding Rs.30,000/- towards loss of

estate and funeral expenses. It is by now well settled that, even in an appeal preferred by the owner of the offending vehicle or the Insurance Company, the amount of compensation can be enhanced even in the absence of any appeal or cross-objection by the original Petitioners. In view of the above, the amount awarded towards consortium is required to be enhanced by Rs.30,000/- (Rs.80,000 – Rs.50,000/-). Similarly, the compensation awarded under the heads of loss of estate and funeral expenses is required to be enhanced by Rs.10,000/- (Rs.30,000 – Rs.20,000).

8. The appeal is, accordingly, partly allowed in the following terms:

(a) The amount of compensation awarded by the learned Tribunal is further enhanced by Rs.40,000/-. Consequently, it is held that the Appellant/Insurance Company and Respondent No. 5, the owner of the offending vehicle, shall be jointly and severally liable to pay compensation of Rs.11,76,800/- to Respondent Nos. 1 to 4 (original Claimants), inclusive of the amount awarded under the no-fault liability principle. The enhanced amount of compensation of Rs.40,000/- shall not carry any interest.

(b) The Appellant/Insurance Company shall be entitled to recover the amount of compensation from Respondent No. 5, the owner of the offending vehicle, without instituting separate legal proceedings.

(c) The amount deposited by the Appellant/Insurance Company, together with accrued interest, shall be disbursed to Respondent Nos. 1 to 4, the original Claimants.

ROHIT W. JOSHI
JUDGE

NAJEEB..