Presented on : 25/09/2006
Registered on: 26/09/2006
Decided on : 23/09/2013
Duration : 06 Y.,11M.,28D.

EXHIBIT No. : _____

BEFORE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL - 4, NAGPUR

(Presided by : Dr. N.M. Sakarkar)

Claim Petition No. : 1018/2006

1) Narayan s/o Namdeo Yelmule,
Aged about 60 years, Occ. Cultivator,

2) Shravan s/o Narayan Yelmule,
Aged about 40 years, Occ. Cultivator,

R/o At Malegaon (Joga),
Post-Nandagomukh. Th. Saoner,
District Nagpur. ... **CLAIMANTS.**

VERSUS

1) Chandrashekhar s/o Narayan Kamdi,
aged about Major, Occ. Owner,
R/o Mohagaon Bhadade,
Th. Saoner, Distt. Nagpur,

2) The Divisional Manager,
The Oriental Insurance Co. Ltd.,
Ramdaspeth, Lokmat Chowk,
Wardha Road, Nagpur. ... **RESPONDENTS**

PETITION UNDER SECTION 166 OF MOTOR VEHICLES ACT, 1988

Advocate for the claimants :- Shri P.S. Mirache,
Advocate for respondent no. 1 :- Shri Manoj Sable,
Advocate for respondent no. 2 :- Shri Karade.

JUDGMENT

(Delivered on this the 23rd day of September, 2013)

The claimants' case, in brief, can be stated as follows :

2. Claimant no. 1 is the husband and claimant no. 2 is the son of the deceased. The wife of claimant no. 1 Indubai, died in the motor vehicular accident on 29/8/2006. They further contend that on the fateful day, the deceased was an occupant along with other persons in the motor vehicle Trax No. MH31-BB-2554. They were returning after taking a bath in the river *Narmada* in Madhya Pradesh. They are resident of Malegaon, Post-Nandagomukh, Tah. Saoner, District Nagpur. The vehicle in which the deceased was an occupant was driven rashly and negligently. When it reached in front of Rajana Power House, on National Highway No. 69, Tahsil Pandhurna, District Chhindwara, at about 2.30 hours, it dashed to a road side tree. In the said accident, Indubai, has sustained severe injuries to the vital organs of the body and died. The police have registered an offence vide Cr. No. 355/2006, u/ss 279, 337, 304 (A) of I.P.C. against the driver of the offending vehicle at police station Pandhurna (Madhya Pradesh).

The claimants further contend that the deceased was 55 years old at the time of accident. She was a cultivator. She was getting Rs. 2,000/- per month income from her agriculture profession. If she would not have met with the accident then she would have survive more and may assist financially to the claimants. Due to untimely death of the deceased the claimants have sustained financial loss. Hence, they claim compensation under various head as under :

i)	Loss of future earning	...	Rs.	1,76,000/-
ii)	Funeral expenses	...	Rs.	5,000/-
iii)	Loss of estate and consortium	....	Rs.	25,000/-
		Total....	Rs.	2,06,000/-

But restricted the claim to the tune of Rs. 2 lacs.

The claimants further contend that respondent no. 1 was the registered owner of the offending vehicle and it was duly insured with respondent no. 2. The insurance policy of the said vehicle was valid for the period 17/3/2006 to 16/3/2007. The vehicle was driven by the driver under the authority of respondent no. 1, therefore, both the respondents jointly and severally liable to pay compensation to them with interest @ 12% per annum from the date of accident till its full realization. Lastly, they contend that the petition be allowed with costs.

3. Respondent no. 1 has filed written statement vide (Exh. 16) and resisted the claim on various grounds. He admits that the offending vehicle No. MH31-BB-2554 has been involved in the accident on 29/8/2006 but denied that the vehicle was driven rashly and negligently at the time of accident. He admits that the offending vehicle was duly insured with respondent no. 2 and its insurance policy was valid and effective on the date of accident. He further admits that offending vehicle was driven by the driver under his authority.

In specific pleadings this respondent contends that the offending vehicle collided with the road side tree due to mechanical fault and not due to rash and negligent driving. When the vehicle reached in front of Rajana Power House, on National Highway No. 69, at that time, steering of the vehicle has been got freed and therefore, the driver to save life of the pedestrians he got the vehicle outside the road and while doing so it collided with the road side tree. As the accident took place due to mechanical fault, hence, this respondent is not liable to pay compensation.

He further contends that the occupants travelling in the offending vehicle are his relatives. The police have shown name of more persons in the FIR though they were not occupants in the offending vehicle. Considering all these aspects, he further contends that the accident was not due to rash and negligent driving, but it was due to mechanical defect therefore, this respondent is not liable to pay compensation. If the award is passed in that case respondent no. 2 only be directed to pay compensation of the amount of award. The petition be dismissed against this respondent.

4. Respondent no. 2 has filed written statement vide (Exh. 19) and resisted the claim on various grounds. Its defence is total denial except that the offending vehicle was owned by respondent no. 1 and it was duly insured with it.

In specific pleadings, it contends that in the offending vehicle 16 passengers were travelling by paying fare. In the insurance policy only 9 passengers + 1 driver were allowed to travel in the insured vehicle, therefore, there is a breach of terms and conditions of the insurance policy. The offending vehicle was the private vehicle and no fare paying passengers were allowed to travel in it. Respondent no. 1 has committed breach of terms and conditions of insurance policy. Similarly, it violates the Motor Vehicles Rules, hence, this respondent is not liable to pay compensation.

It further contends that the driver of the offending vehicle was not holding a valid and effective driving licence to drive offending vehicle at the time of accident. Hence, there is a breach of terms and conditions of the insurance policy, therefore, this respondent is not liable to pay compensation. The petition is false, it be dismissed with costs.

5. After considering the rival contentions put forth by the parties, my predecessor has framed various issues at (Exhibit 29). They are as under :

S.No.	I S S U E S	F I N D I N G S
1)	Whether the petitioners prove that on 29/8/2006, vehicular accident occurred involving trax bearing No. MH31-BB-2554and in said accident death of Indubai Narayan Yelmule, was caused ?	Recast
2)	Whether the accident occurred due to negligent driving of trax bearing No. MH31-BB-2554 by its driver ?	Recast
3)	Whether the claimants are entitled to get compensation ? If yes, of what amount ?	Recast

4)	Whether respondent no. 2 proves that at the time of accident trax vehicle was carrying unauthorized passengers including deceased and insured has committed breach of insurance policy ?	Recast
5)	What order and Award ?	As per final order

6. On going through the issues, I think that they need to be recast. Hence, I recast issues as under.

S.No.	**Recast Issues** :	FINDINGS
1)	Whether the claimants prove that on 29/8/2006, at about 2.30 a.m., at National Highway No. 69, Rajana Power House, within jurisdiction of police station Pandhurna, Dist. Chhindwara, due to rash and negligent driving of the driver of Trax bearing registration No. MH31-BB-2554 the vehicular accident occurred and as a consequence thereof, Indubai Narayan Yelmule, died.?	Yes
2)	Does respondent no. 1 prove that the accident took place due to mechanical fault ?	No
3)	Whether the claimants are entitled to get compensation ? If yes, what should be the quantum ?	Yes. As per final order.
4)	Who is liable to pay compensation ?	As per final order.
5)	What order and award ?	As per final order.

The recast issues do not require additional evidence, hence, no prejudice would be caused to either party. Similarly, evidence on these issues already has been led.

7. My findings on above issues are shown there to for the reasons stated herein below :

8. Claimants examined claimant no. 1, Narayan, as (PW 1) at (Exh. 30) by filing affidavit of evidence. Respondent no. 1 examined Chandrashekhar as witness no. 1 for himself in his defence at (Exh. 38) by filing affidavit of evidence. Respondent no. 2 examined Sapandas as witness no. 1 in its defence at (Exh. 40). The claimants have filed on record various documents such as a copy of FIR (Exh. 31), a copy of morgue intimation (Exh. 32), a copy of spot panchnama (Exh. 33), Form Comp. AA (Exh. 34), a copy of post-mortem report (Exh. 35), and a copy of deposition of Mahadeo, recorded by JMFC Pandhurna, in criminal case (Exh. 49). Respondent no. 2 has filed on record a certified copy of insurance policy of the offending vehicle at (Exh. 41). The counsel for the claimants has filed written notes of argument vide (Exh. 49-A). I have gone through it. Heard counsel for respective parties.

9. The learned counsel for the claimants argued that the FIR, spot panchnama and Form Comp. AA proved that the offending vehicle has been involved in the motor vehicular accident in a public place as it collided with the road side tree, in which the death of Indubai (deceased) has been caused. When the vehicle collided with the road side tree it shows that it was driven rashly and negligently.

He further argued that respondent no. 1 took a defence of mechanical fault for the accident, but it has not been proved. Hence, the claimants have proved that the accident took place due to rash and negligent driving of the offending vehicle. Thus, the claimants have proved their case, therefore, the petition is liable to be allowed with costs and interest.

10. The learned counsel for respondent no. 1 argued that it is not disputed that the accident took place in front of Rajana Power House. The ownership and insurance of the vehicle are not disputed. (PW 1) Chandrashekhar, specifically stated that as steering rod of the offending vehicle has been got freed, therefore, to save the life of pedestrians the driver took the vehicle by one side and while doing so the accident took place. He attracts my attention to a copy of deposition of witness, who has been examined in the criminal case. This witness is a driver, who stated that due to breaking of the steering rod the accident has been took place and, therefore, the accident took place due to mechanical fault and not by rash and negligent driving of the vehicle.

He further argued that only 7 to 8 passengers were travelling in the vehicle at the time of accident, but some others names are included in FIR falsely to get the compensation. In the insurance policy, the risk of the passengers are covered, therefore, if the award is passed in such case respondent no. 2 be directed to pay the compensation.

11. The learned counsel for respondent no. 2 argued that the insurance policy has been issued by respondent no. 2 in favour of

respondent no. 1. The carrying capacity of the offending vehicle was 9 passengers + 1 driver, but Form Comp. AA and FIR reveal that near about 14 passengers were travelling in the offending vehicle at the time of accident. The claimant in sister petition in cross-examination admitted that occupants in the vehicle paid fare. This shows that respondent no. 1 used the vehicle for hire/reward. There is a clear breach of terms and conditions of insurance policy. Similarly, respondent no. 1 or the claimants has not proved that the driver of the offending vehicle was having a valid and effective driving licence at the time of accident. Hence, this respondent is not liable to pay compensation. The petition be dismissed against this respondent.

R E A S O N S

12. **As to Issue no. 1 and 2** : On perusal of evidence of (PW 1) Narayan, he states that on 29/8/2006, his wife was an occupant in the trax No. MH31-BB-2554. The vehicle was driven rashly and negligently and thereby it collided with the road side tree in which death of his wife has been caused. In cross-examination, (PW 1) Narayan, states that he has not seen the accident, therefore, his evidence is not useful to ascertain the rash and negligent driving of the offending vehicle. Therefore, I have to determine the act of rash and negligent driving of the offending vehicle considering the police papers i. e. FIR (Exh. 31), spot panchnama (Exh. 33), Form Comp. AA (Exh. 34) and evidence of (RW 1) Chandrashekhar (Exh. 38).

The FIR was lodged by the person who was an occupant in the other vehicle which was ahead of the offending vehicle No. MH31-BB-2554. The accident took place at about 02.30 hours.

When the offending vehicle reached in front of Rajana Power House, at that time, the informant heard a loud noise and, therefore, the vehicle has been got stop in which he was the occupant. He came back and saw that offending vehicle was collided with the road side tree. In the accident occupants in the vehicle Indubai and Vasanta, had sustained serious injuries. The informant is the eyewitness to the incident, therefore, I have no reason to disbelieve his statement.

13. On perusal of spot panchnama (Exh. 33) it reveals that the spot of incident is situated opposite Rajana Power House on Chhindwara road. The trax vehicle No. MH31-BB-2554 collided with the road side tree. The spot panchnama corroborates the (FIR Exh. 31) about rash and negligent driving of the offending vehicle.

14. Respondent no. 1 took a specific defence that the accident was not result of rash and negligent driving, but it took place due to mechanical fault. He contends that steering of the vehicle No. MH31-BB-2554 got freed, therefore, the driver could not control over the vehicle and for saving life of the pedestrians, he got the vehicle outside the road. To support this pleadings, respondent no. 1 examined himself. In examination-in-chief he supports this contention, but in cross-examination his testimony has been shaken. In cross-examination, he admitted that he has not got examined the vehicle through the vehicle inspector of R.T.O. He further admitted that the vehicle was seized by the police and he has got it released on supratnama. If the cross-examination of (RW 1) Chandrashekhar, is considered, his version is not digestible to me as a man of ordinary prudence. The first reason is that he is not eyewitness to the incident

and another is that he has not examined a person who had repaired the offending vehicle. The accident took place at about 2.30 a.m., when it is very difficult to find pedestrians on the road outside the village/town.

The another important thing is that when the steering of the offending vehicle has been got freed, then it could not be taken to any direction either left or right by the driver of the vehicle. If the steering of the offending vehicle has been got locked in such case there might be possibility of going the vehicle in one side for which the driver cannot do anything except to stop the vehicle immediately.

15. Further if the vehicle was driven at a moderate speed and if the driver of the vehicle came to know that the steering of the vehicle has been got freed, he could immediately stop the vehicle by changing gear and by applying brakes. The informant stated before the police that the offending vehicle trax No. MH31-BB-2554 was driven rashly and negligently and thereby the driver could not control it and it dashed to the road side tree. I have to state that respondent no. 1 has filed in this case a copy of deposition of (Mahadeo P.W. 8) which was recorded in criminal case by J.M.F.C. Pandhurna. On going through deposition of (Mahadeo), it reveals that the witness is a mechanic. He stated that as asked by the police, he had inspected damaged Max jeep No. MH31-BB-2554. He found that the steering rod has been broken. He stated that due to breaking of steering rod accident might have taken place. This witness has not been examined in this case to prove that the accident was the result of mechanical defect/fault. The evidence of Mahadeo, in criminal

case cannot be considered in this case as claimants and respondent no. 2 have not got opportunity to cross-examine him. If Mahadeo, the mechanic would have examined in this case on behalf of respondent no. 1 and if his evidence is found trustworthy then the matter would have been different. Another important fact is that the driver of offending vehicle is not examined by respondent no. 1. He is the best witness to tell how accident took place. But he kept away from the Tribunal. Hence, I draw an adverse inference against respondent no. 1 u/s 144(g) of Indian Evidence Act.

It is for the respondent no. 1 to get examine the vehicle through vehicle inspector of the R.T.O. to prove that the accident took place due to mechanical fault only. If for a moment, I accept the defence then also if the steering of the vehicle got freed and if the vehicle was driven at a moderate speed then the driver could stop it immediately by changing gears and by applying brake. But spot panchnama (Exh. 33) does not disclose about skid mark of tyres on the road of sudden application of brake. Thus, respondent no. 1 has failed to prove that the accident took place due to mechanical fault. Hence, after considering entire evidence before me, I came to the conclusion that the accident took place due to rash and negligent driving of the offending vehicle. Hence, the claimants have proved issue no. 1, therefore, I answer it in the affirmative. Similarly, respondent no. 1 has failed to prove issue no. 2 , hence, I answer it in the negative.

16. **<u>As to Issue No. 3</u>** : In view of the findings given to issue no. 1 and 2 in the affirmative, death of Indubai, has been caused due to rash and negligent driving of the offending vehicle trax in a public

place. Therefore, the claimants being the legal representatives of the deceased are entitled to get the compensation. Now the question arises before me how much compensation they are entitled ?

17. (PW 1) Narayan, states that the deceased was an agriculturist. She was getting income Rs. 2,000/- per month from her profession. She was 55 years old at the time of accident. Considering this income Rs. 2,000/- per month and in view of the ratio laid down in the judgment reported in *AIR 2009 Supreme Court 3104, Smt. Sarla Verma and others –Vs-- Delhi Transport Corporation and another,* in para 14, where the deceased was married and number of dependent family members is 2 to 3, 1/3rd amount be deducted from the income of the deceased towards her personal and living expenses. After deducting 1/3rd amount Rs. 667/- towards personal living expenses of the deceased (Rs. 2,000/- — Rs. 667/-) = Rs. 1,333/- per month remains. The yearly loss of income comes to (Rs. 1,333/- x 12) = Rs. 15,996/- in round figure **Rs. 16,000/-**.

18. In post-mortem report, the age of the deceased is shown as 58 years, at the time of accident. In view of ratio laid down in the case of *Sarla Verma* in column (4) of the table given in paragraph 19 of the judgment, if the age of the deceased is 55 to 60 years, then multiplier 9 has to be applied for determination of loss of dependency. On application of multiplier of 9, the total loss of dependency comes to (Rs. 16,000/- x 9) = **Rs. 1,44,000/-.**

19. Similarly, in view of the ratio laid down in paragraph 10 of the judgment of *Sarla Verma,* after determination of loss of

dependency, a conventional amount in the range of Rs. 5000/- to Rs. 10,000/- may be added as loss of estate and Rs. 5,000/- towards funeral expenses. Thus, the claimants are entitled total compensation under various heads as follows :

i)	Loss of dependency	:	Rs. 1,44,000/-
ii)	Loss of estate	:	Rs. 10,000/-
iii)	Funeral expenses	:	Rs. 5,000/-
iv)	Loss of consortium	:	Rs. 10,000/-
	Total	:	**Rs. 1,69,000/-**

Thus, the claimants are entitled to get total compensation **Rs. 1,69,000/- inclusive of the amount of compensation of no fault liability Rs. 50,000/-.** Hence, I answer this issue accordingly as per final order.

20. **As to Issue No. 4** : Once I have held that the claimants are entitled to get the compensation, the another question arises before me who is liable to pay such compensation ?

21. Respondent no. 2 admitted that the offending vehicle was insured with it. The period of insurance policy (Exh. 41) covers the date of accident. But it took a defence that there was a breach of terms and conditions of insurance policy i. e. the offending vehicle was having a permit to carry 10 passengers i. e. 9 passengers + 1 driver. It further took a defence that the offending vehicle was a private car, but it was given for hire for carrying passengers. To prove this contention, respondent no. 2 examined (RW 1) Sapandas, who in cross-examination admitted that the insurance

policy (Exhibit 41) is a package policy (Comprehensive policy). It covers the risk of personal accident of passengers to the extent of Rs. 1 lac. The offending vehicle was not a passengers carrying vehicle. He denied the suggestion that the insurer has taken Rs. 450/- premium in respect of the passengers in the vehicle.

22. On perusal of insurance policy (Exhibit 41), it is a Private Car Package Policy and the seating capacity including driver is 9+1. Rs. 450/- premium has been paid by the owner to the insurer towards personal accident risk of unnamed passengers.

23. The learned counsel for the claimants relied on ***2011 ACJ 917 United India Insurance Co. Ltd. -Vs- K.M. Poonam and others.*** I have gone through the case law. In the case law, the vehicle involved in the accident was a public transport and said vehicle was having permit of carrying 5 passengers but 15 passengers were being carried at the time of accident. In the said case, the counsel for the insurer submitted that third party risk was covered in the accident. The passengers in the offending vehicle were gratuitous and, therefore, their risk has been covered by the policy issued in favour of insured.

In the case in hand, (RW 1) Chandrashekhar, states that the occupants passengers in the vehicle were his relatives. Except this sentence, he has not stated his relationship with the injured or dead persons. Whereas the claimant in M.A.C.P. No.1024/2006 in cross-examination admitted that occupants paid fare for going to pilgrimage from their village. The insurance policy (Exh. 41) reveals that it is a package policy (B). The risk of 9 unnamed passengers is covered. But there are terms and conditions that such vehicle should not be used for hire or reward. Thus, the vehicle was given on hire by respondent no. 1 to the deceased, therefore, there is a breach of condition of insurance policy. Thus, the facts of the case law and case in hand are not similar, therefore, the ratio laid down in the case law is not applicable to the case in hand.

The learned counsel relied on ***2011 (2) T.A.C. 265 (Bombay) Oriental Insurance Co. Ltd. --Vs-- Santosh Satish Kumar Garg & Others.*** I have gone through the case law. In the case law, the deceased was an employee of the company M/s Savita Chemicals Ltd. He was working as a Works Manager with the said company. On 14th March, 1992, he was travelling in the jeep No. MGR 7218 owned by the company and accident took place in which his death has been caused. The Hon'ble High Court held that the employer can provide a conveyance to his employees, therefore, the deceased cannot be called as a passenger like any other private vehicle. Though it is a private vehicle, it was used for the purpose of company for to and fro of its employees. In such case, the insurance company cannot escape from the liability to pay the compensation on the ground that the private vehicle used for carrying passengers. In the instant case, the deceased was not an employee of the offending vehicle, therefore, the facts of this case law and case in hand are not similar, hence, ratio laid down in the case law is not applicable to the case in hand.

The learned counsel further relied on ***1998 ACJ 531, Amrit Lal Sood and another -Vs- Kaushalya Devi Thapar and others***. I have gone through the case law. In the case law, a comprehensive policy has been issued in favour of the insured. In the case law the word "*any person*" has been interpreted. Section 95 of the Old Motor Vehicles Act and Sections 147, 149 of the New Motor Vehicles Act, have been compared. The question before the Hon'ble Apex Court was whether insurer is liable to satisfy the claim of compensation made by a person travelling gratuitously in the car. The Hon'ble Apex Court answer this point in the affirmative. The expression *"any person"* would undoubtedly include an occupant of the car who is gratuitously travelling in the car. In the case in hand the claimant in M.A.C.P. No.1024/2006 admitted that she had paid fare to respondent no. 1 owner of the vehicle, therefore, she cannot be said to be a gratuitous passenger. Once, the registered owner of the offending vehicle received fare from the passengers, there is a breach of terms and condition of insurance policy (Exh. 41). Thus, the facts of the case law are not similar to the case in hand, therefore, the ratio laid down in the case law is not applicable to the case in hand.

Thus, after considering the ratio laid down by the Hon'ble Apex Court and Hon'ble High Court, in the above referred case laws, those are not applicable to the case in hand. The vehicle was used for hire or reward, therefore, there is a fundamental breach of terms and condition of the insurance policy. Hence, respondent no. 2, insurer, is not liable to pay compensation to the claimants. Only respondent no. 1 is liable to pay compensation.

24. On perusal of FIR (Exh. 31) the name of the occupants who were travelling in the trax are given in it. They are Anjana, Tulsa, Kunda, Leena, Suman, Meera, Indu, Rohit, Chandrabhaga,

Alka, Chandrakala, Yenu and others. Form Comp. AA (Exh. 34) reveals that in the said accident one Vasant Mowade and Indubai, have been died and 12 passengers have been injured. Means total 14 passengers were travelling in the offending vehicle at the time of accident. There are total 16 motor accident claim petitions out of which the claimants in claim petition admitted that they had been to pilgrimage in the offending vehicle by paying fare. This is a breach of terms and conditions of the insurance policy. Similarly, the seating capacity of the offending vehicle was 9 passengers + 1 driver. But total 14 persons including driver were travelling in the said vehicle at the time of accident. There is a fundamental breach of terms and conditions of the insurance policy, hence, respondent no. 2 insurer, is not liable to pay compensation to the claimants. Only respondent no. 1 is liable to pay compensation. Thus, from the aforesaid discussions, I came to the conclusion that respondent no. 1 is liable to pay compensation to the claimants. Therefore, I answer this issue accordingly.

25. After passing order on application u/s 140 of the Motor Vehicles Act (Exhibit 5), respondent no. 2 had deposited the amount of compensation Rs. 50,000/- with the Tribunal. Payment of compensation u/s 140 of M.V. Act, by insurer is a No Fault Liability. Respondent no. 2 admitted insurance policy of the offending vehicle. The Motor Vehicles Act, does provide recovery of compensation paid by insurer u/s 140 of M.V. Act, from the owner of the vehicle if insurer proved that the owner has committed a breach of terms and conditions of the insurance policy. Hence, it is not necessary to pass order in this regard.

26. The claimants claim interest @ 12% per annum from the date of accident till its full realization. Rule no. 275 of Maharashtra Motor Vehicles Rules, provides which provisions of Code of Civil Procedure, are made applicable to the proceedings of Motor Vehicle Claims Tribunal. Section 34 of Code of Civil Procedure, is made applicable.

27. Section 34 of Code of Civil Procedure, provides that in a suit for recovery of amount the court may grant interest on the decreetal amount @ 6% per annum. It further provides that if there is a contract between the parties to pay interest more than this i. e. 6% per annum, in such case the rate of interest can be exceeded 6% per annum. Section 171 of Motor Vehicles Act, provides that when the Claim Tribunal passes an award in that case interest be granted on the amount of compensation from the date of registration of the petition. The Rule 275 only states payment of interest but it is silent about rate of interest. Once, I have held that the claimants are entitled for interest on amount of compensation, now the question arises before me at which rate the claimants are entitled for interest on the amount of compensation. The grant of interest is the discretion of the Tribunal. It is well settled principle of law is that the tribunal has to use its discretion judiciously and not arbitrarily. Similarly it should be based on sound judicious principles of law and equity.

28. The present bank rate i. e. the rate at which the bank gives loan to a common man/borrower. Similarly, the bank gives interest on the fixed deposit or general deposit is from 6% to 12% per

annum. Therefore, in my view, the claimants are entitled interest @ 7.5% per annum.

29. The petition has been registered on 26/9/2006. It was made ready for evidence on 13/7/2011. The claimant has produced the evidence in this case on 19/7/2011. The matter was delayed on behalf of the claimants for near about 2 years. In view of the judgment of Hon'ble Bombay High Court ***1983 ACJ 666 Tehmina P. Jasawalla -Vs- Mahadeo Sitaram Ghadi & others and 2008 (1) Mh.L.J. 957 Shashikant s/o Jaikumar Makhe & another -Vs- Shantabai w/o Ramswarup Sarda & another***, in my view, the claimants are entitled to interest @ 7.5% per annum on the amount of compensation from the date of registration of the petition i. e. from 26/9/2006 till 13/7/2011 and thereafter from the date of order till its full realization.

30. In view of the findings given to issue nos. 1 to 4, I came to conclusion that claimants have succeeded to prove their claim partly. Therefore, petition is liable to be allowed partly with proportionate costs. Hence, I pass the following order.

O R D E R

Petition is allowed partly with proportionate costs in the following terms.

(1) Claimant no. 1 and 2 are entitled to get total compensation **Rs. 1,69,000/-** (Rs. One lac sixty nine thousand only) **inclusive of the amount of compensation of no fault liability Rs. 50,000/-.**

(2) Respondent no. 1 shall pay **Rs. 1,19,000/-** (Rs. One lac nineteen thousand only) **exclusive of the amount of compensation**

of no fault liability Rs. 50,000/-, to claimants, with interest @ 7.5% per annum from the date of registration of the petition i.e. from 26/9/2006 till 13/7/2011 and thereafter from the date of order till the date of payment of the said amount into the Tribunal.

(3) The amount of compensation be apportioned between the claimants as under :

(a) Claimant No 1 : **Rs. 60,000**/- + proportionate costs of the petition + interest.

(b) Claimant No 2 : **Rs. 59,000/-** + proportionate costs of the petition + interest.

4) On depositing of the said amount with the Tribunal, the amount be paid to them by account payee cheques.

(5) Respondent no. 1 shall pay proportionate costs of this petition to the claimants and respondent no. 2 and bears his own costs.

(6) The petition is dismissed against respondent no. 2.

(7) The Claimants shall affix requisite court fee stamps on the valuation of the petition, if not affixed, till then award shall not be prepared.

(8) An award be drawn up accordingly.

(Dr. N.M. Sakarkar)
Member,
Motor Accident Claims Tribunal-4,
Nagpur.

Dated : 23/09/2013