Presented on : 04/10/2022
Registered on : 06/10/2022
Decided on : 23/10/2022
Duration : 01Y-0M-17D.

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, YAVATMAL.
AT YAVATMAL.
(Presided over R.S.Salgaonkar, Member, M.A.C.T, Yavatmal)

Exhibit No.42.

M.A.C.P. NO.146/2022.
(CNR No.MHYA010024622022)

1. **Archana Pradip Pendare,**
   Age about 37 years,Occupation :Household,
2. **Ku. Aishwarya Pradip Pendare,**
   Age about 17 years, Occupation:Education,
3. **Ku. Swati Pradip Pendare,**
   Age about 16 years,Occupation :Education
4. **Rutik Pradip Pendare,**
   Age about 10 years,Occupation :Education,
   Applicant Nos. 2 to 4 being minor represented by their natural guardian mother i.e. applicant No.1.
   All applicants No. 1 to 4 are Residing at Parvekar Nagar,Kalamb, Taluka Kalamb, District, Yavatmal. **...Applicants.**

Versus.

1. **Rajkumar Chamma Nareti,**
   Aged about 28 years: Occupation: Driver, Residing of Khamhariya Taluka and District Mandla, State of Madhya Pradesh,
   [Driver of Mahindra XUV Car bearing registration No.MH-29/BP-9110 involved in the accident]
2. **Nayan Chhedilal Jaiswal,**
   Age about 25 years, Occupation:Business, Residing at Vidarbha Housing Society, Yavatmal Taluka and District Yavatmal.

3. **Liberty General Ins. Company Limited.,**
Policy Issuing Office, Gulshan Tower, Shop Nos.35, 2nd Floor, Mofisal Plot Amravati, Tqluka and District Amravati.
Through It's Branch Manager,
Plot No. 1, 2 and 3rd floor, Gupta House Ravindranath Tagore Marg, Civil Lines, Nagpur Taluka and District Nagpur.
[Insurer Mahindra XUV Car bearing registration No.MH-29/BP-9110 involved in the accident)
Policy No.201140030521800001500000
Date 28/09/2021. T. P. Policy, valid from 28/09/2021 to 27/09/2024] **...Non-Applicants.**

Appearance:-
Mr.P.R.Malvi,Learned Advocate for Applicants/Petitioners. Mr.Imran Deshmukh,Learned Advocate for Non-applicants No. 1 and 2. Mr.D.V.Tijare,Learned Advocate for Non-Applicant No.3.

Coram : R.S.Salgaonkar,
Member, Motor Accident Claims, Tribunal, Yavatmal.

Date : 23rd October, 2023.

J U D G M E N T

This claim petition is filed invoking Section 166 of The Motor Vehicles Act, 1988 (Hereinafter will be referred to as "M.V.Act").

2) The case of the petitioners is that, the petitioners are legal representatives and dependent of deceased. Pradeep Narayan Pendare died in an accident arising out of use of motor vehicle. The accident occurred on 15/09/2022 at about 05.30 to 6.00 p.m, near Nayra Petrol Pump, on Ralegaon-Kalamb road, Taluka Kalamb District Yavatmal within territorial limits of Kalamb Police Station.

3) The deceased was driving motor cycle bearing registration No. MH-29/AX-2909. He was dashed by Mahindra XUV Car bearing registration No.MH-29/BP-9110 Non-applicant No.1 is the driver; Non-applicant No.2 is owner of vehicle at relevant time. Non-applicant No. 3 is insurance company of vehicle bearing registration No.MH-29/BP-9110.

4) The petitioners have claimed compensation of Rs.28,00,000/- with further prayer for just compensation.

5) Non-applicants No.1 and 2 appeared. They failed to file their written statement. At belated stage, when the matter was posted for argument, they sought permission to file written statement on 16/10.2023. It was not allowed. Hence, this proceeding is proceeded exparte against them.

6) Non-applicant No.3 insurer filed its written statement at Exhibit-15. Insurance Company has not raised any specific defense except total denial of incident. Genuineness of insurance policy is not in dispute. Insurance company denied all the pleadings specifically and prayed for dismissal of petition. The Insurance Company has raised defence that the driver of vehicle was not having a valid driving permit at the relevant time vehicle was not having a valid driving license amounting to breach of condition. Vehicle was not having fitness certificate and valid permit at the relevant time,amounting to breach of policy condition.

7) **Evidence of petitioner:-**

Exhibit No.27	:	Copy of FIR.
Exhibit No.28	:	Spot Panchnama.
Exhibit No.29	:	Form AA.

Exhibit No.30	:	Inquest Panchnama.
Exhibit No.31	:	Insurance Policy.
Exhibit No.32	:	Registration Certificate.
Exhibit No.33	:	Copy of Driving License of N.A.No.1.
Exhibit No.34	:	Copy of Aadhar Card of N.A.No.1.
Exhibit No.35	:	Copy of Chargesheet.
Exhibit No.36	:	Copy of P.M.Report.
Exhibit No.37	:	Adhar Card of deceased.
Exhibit No.38	:	Pan Card of deceased.
Exhibit No.39	:	Pan Card of Applicant No.1.
Exhibit No.40	:	Adhar Card of applicant No.2.
Exhibit No.41	:	Adhar Card of applicant No.3.
Exhibit No.42	:	Adhar Card of applicant No.4.

8) Non-applicants have not filed any evidence.

9) Following points arise for consideration and my findings on them are as follows for the reasons below:-

S.N.	ISSUES	FINDINGS
1.	Whether the petitioners are dependents of deceased ?	Yes.
2.	Whether the death occurred in the use of motor vehicle ?	Yes.
3.	What is the age of deceased at the time of motor accident ?	51 years 8 months.
4.	What is the monthly income of deceased at the time of motor accident?	Rs.10,000/-
5.	Whether the petitioners are entitled to future prospects benefits ?	Yes.
6.	Whether the accident occurred due to rash and negligent act of driver of vehicle i.e. Mahindra	

	XUV Car No.MJ-29/BP-9110?	Yes.
7.	Whether the deceased was contributory negligent for this accident ?	No.
8.	Whether the owner of vehicle (Non-applicant No.2) is vicariously liable to pay the compensation due to accident caused by vehicle owned by him ?	Yes.
9.	Whether the Insurance Company is liable to indemnify the vehicle owner (Non-applicant No.2) under contract or insurance?	Yes.
10.	What is the amount of just compensation?	Rs.14,96271/-
11.	What is the apportionment of compensation between the petitioners Nos. 1 to 4 ?	As per final order.
12.	What order and Award?	Petition is allowed.

<u>**R E A S O N S**</u>

<u>AS TO ISSUE No.1</u> :-

10) This issue is apparently insignificant, but it is distinctly framed to ensure that the petitioners are legal representatives of deceased and all the legal representatives are impleaded.

11) Section. 166 (c) of M.V.Act, 1988 speaks of legal representatives, therefore, parents of deceased are also entitled to share in compensation amount and in many of the cases, due to unitary structure of family, parents of deceased, even after being alive, is not brought to notice of court. This proceeding therefore, proceeds with assumption that the petitioners are the only legal representative to deceased, and the amount of claim awarded in favour of petitioners included the share of all the leal representatives if any left out of petition. There is no contest on the part of Non-

applicant on issue No.1. For this reason **Issue No. 1 is answered in the affirmative.**

AS TO ISSUES No.2,6 and 7 :-

12) The accident in question resulted due to collision of two vehicles. It is not in dispute that the deceased died in this accident, and there is no dispute about maintainability of petition of vis-a-vis forum.

13) The petitioner has also chosen to sue only driver and owner of Mahindra XUV MH-29/BP-9110 with their insurer. He has option in law to choose any of the joint tort-*feasers*. However, for fastening tortious liability, it should be proved that the accident occurred due to rash or negligent act of the respondent No.1. The point of suing only one of joint tort feaser is set at rest by Honourable Supreme Court in case of Khenyei vs. New India Assurance Company Limited [2015 ACJ 1441].

14) It is defence of Insurance Company hat deceased dash Nilgai animal. This accident did involved an animal. But, it is the Non-applicant who dashed Nilgai, and that animal dies on the spot. Nilgai is a huge animal and it will not die due to dash of motorcycle. Here the principle of *Res-ipsa Loquitur* applies to find out negligence. Going a step further the accident was reported was reported to police station. The investigation by police reached to conclusion that this accident is caused due to rash and negligent driving of Non-applicant No.1. Finding of this car (vehicle) on the spot itself proves it's involvement in accident. Police, after due investigation, decided the question of negligence, and have filed a chargesheet against Non applicant No.1 for rash and negligent act (driving). This documentary proof sufficiently discharges initial onus burden of proof that the

accident occurred due to negligence of Non-applicant No.1 driver. Therefore, the defence of insurance Company that the Mahindra xuv is not involved in this accident is not accepted. Likewise, the defence of Insurance Company is of contributory negligence. Burden of proof is on Insurance Company (Non-applicant No.3) to prove it. There is no evidence to prove contributory negligence. For this reason **issues No. 2 and 6 is answered in affirmative and issue No. 7 is answered in the negative.**

AS TO ISSUES No.8 and 9 :-

15) Chapter 12 of M.V.Act,1988 is codified Law of Torts in case of accident claims. Accrual of liability is as per settled legal principles of Law of Torts and Law of Contract.

Liability of driver of vehicle:-

16) The deceased was traveling on a motor vehicle. His death is caused due to rash and negligent act on part of truck driver of vehicle. Therefore, the basic liability to pay the damages and compensation is principally fixed on driver i.e. Non-applicant No.1.

Liability of owner of vehicle:-

17) Non-applicant No.2 is owner of vehicle over which Non-applicant No.1 was employed as driver. Driver met with accident during course of his employment. There exists a master servant relationship. Therefore, master is held vicariously liable for act of his servant. Therefore, it is held that Non-applicant No.2 (owner) is liable equal to that of driver Non-applicant No.1 (driver).

Liability of Insurer: -

18) Insurance policy is contract of indemnity. Owner of vehicle has purchased policy of insurance against any claim arising

out of use of his vehicle. Therefore, it is liability of insurance company to indemnity the owner of vehicle arising out of use of motor vehicle.

<u>Extent of liability of Insurance Company</u> :-

19) As per judgment of Honourable Bombay High Court in the case of **Cholamandalam MS General Insurance Co.Ltd., -Vs- Priyanka K. Mayekar [2023 (1) Bom CR 253]**, scope of third party liability is considered, and applying the said case law, insurance company is liable to 100% of liability within the ambit of third party. There is no defence as to extent of liability under policy.

20) The insurance Company has raised defence of driving license. This defence of breach policy condition is available to Insurance Company only against the owner of vehicle who has insured his vehicle. In this case, it is available against Non-applicant No.2, if he has allowed a person to drive vehicle without valid license. License of Non-applicant No.1 at Exhibit No.33. The deceased is third party to this contract. Whether he had driving license or not is a factor relevant in deciding negligence. But it is not a defence of breach of policy condition. Hence, the defence of breach of policy condition is not a defence where license of Non-applicant No.1 is proved. Therefore, this defence, as raised by Non-applicant No.3.

Hence, this defence is not accepted as valid defence and **Issues No. 8, and 9 are answered in the affirmative.**

<u>AS TO ISSUES No.3,4, 5 and 10</u> :-

21) Issue No.3 is about age of deceased at the time of accident. Issue No.4 is about earning capacity of petitioner. Issue No.5 is about future prospect component. These are fundamental

requirements of calculation of compensation. Issue No.8 is issue of just compensation, which is mainly calculation based on findings of issue No. 3 to 5. Hence, issues No. 3 to and 5 are taken up for discussion jointly with issue No.8 i.e. issue of just compensation.

Calculation of compensation:

22) Following particulars are required for computing compensation:-

(a)	Age at the time of death (years)	51
(b)	Nature of work or employment	Temporary
(c)	Future prospects	10%
(d)	Multiplier	11

The manner of in which the particulars are derived is discussed in following paragraphs.

Age of deceased :-

23) Adhar Card of deceased Exhibit No.37 bearing No.969876326006 shows is date of birth as 24/12/1971. On the date of accident on 15/09/2022 his age is 51 years and 8 odd months. (This is answer to issue No.3).

Notional income of the petitioner :-

24) There is no formula to calculate notional income of a non salaried person. On point of income, victims of accident can be broadly compartmentalized in four major categories. First category is non-earning students (including minors) law is settled by various judicial precedents on point of their (students) notional income. Second category is notional income of housewife, and there is judgment of Honourable Delhi high court in the case of **Orient Insurance Co. Ltd. vs Sh. Mukesh Kumar and others [MAC appeal No. 712/2013 decided on 21/1/2015],** wherein their notional income is

treated at par with their male counterparts with similar educational qualification fetching salary. Even Schedule II of M.V.Act,1988 to consider her income equal to one third of income of her husband. Third category is the victim of accident who is earning, and one who gets salary slip or salary proof in documentary form. Forth category is those individuals, who earn substantially, but who are self-employed or employed but unable to get salary poof in documentary form. They are mostly person not filing income tax returns. Payment of income tax is not the parameter, because actual income is considered as basis for claim petitions, whereas income-tax is payable only if the taxable income exceeds permissible income tax slab. Taxable income and earning capacity are different concepts in Law.

25) Therefore, deciding notional income is case to case task left to the judicial desertion of tribunal, and there cannot be a fixed formula. Tribunal is, therefore required to consider factors like modes of earning, qualification, skills of deceased in determining notional income.

26) This case falls in above stated forth category, where the petitioner is grown up, maintains descent standard of living for his family. Therefore, this court is trying to determine the quantum of notional with the help of existing principle laid dawn in different judicial precedents. In the case of **S. Vasanthi and Another vs. Ms. Adhi parasakti Engineering College [Civil Appeal No.7180 of 2022** arising out of SLP (c) No.10206 of 2020 decided by Honourable Supreme Court of India on 11/11/2022], Honourable Supreme Court has upheld correctness of notional monthly income of Rs10,000/- of 23 years college student who died in motor accident on 22/5/2010. This court is treating this as base and determines the growth in money wages over period of

time. It will give picture as to value of Rs.10,000/- of the year 2010, when it is calculated on the date of accident. This court is treating the similar circumstance to compare income of student with income of person who has completed education, moved forward, got married, had family and maintains them with actual earning.

27) The case in hand is a grown up man, who runs his family of five (including himself), paying education expenses of four children who has financial capacity to purchase a vehicle. He was doing tailoring work. He stands on much higher footing than college going 23 years student, at least on point of actual earning. That cited case is accident of the year 2010. this is accident of the year 2020. So, there is no hesitation to consider the income of petitioner to be Rs.10,000/- as minimum. If notional income of student is treated as Rs.10,000/-, notional income of a person as like this can be assumed to be Rs.10,000/- in the year 2010. But value of money in year 2010 is not equal to value in year 2020. It should also be notionally enhanced in order to do justice with the victims of accident. In ten years since 2010, there is growth in notional G.D.P., there is inflation and purchase value of money has diminished, and wages in money has increased. There is need of a formula to consider periodical increase in variable components like money decelerated in earlier judicial precedents. That happens only then the Law can be said to be fluid and dynamic phenomenon to take care of ever-changing economic developments. In the case of **Pranay Sethi (Supra)** Honourable Supreme Court has laid formula of 10% increase for set of every 3 years for increase in fixed quantum of consortium amount. The precedent can be applied to any case to calculate the changed value of money due to inflation. Applying this formula to calculate growth in notional income, if a person was notionally held fetching 10,000/- in a year 2010, then

there should be assumed growth in earning capacity by 10 percent in money value in succeeding every set of 3 years. in the year 2020, there should be at least 10% X 3(set of three years) which is equal to 30% increase to this 10,000/- of year 2010. Therefore, this court determines notional income of deceased. What is Rs. 10,000/- in the year 2010 is to be 13,000/- per month in the year 2020. Real value of wages remains the same, its money value increase by inflation.

28) The formula as abovestated is merely combination of guidelines to meet the ends of justice. But tribunal has to treat every care on its own merits instead of governing every case with abstract formula. Every case is different. It is laid dawn by Honourable Supreme Court in the case of **National Insurance Company Ltd. vs. Kusuma and Anr. [(2011) 13 SCC 306]** That *"...... the word "just" connotes something which is equitable, fair and reasonable, conforming to rectitude and justice and not arbitrary. It may be true that Section 168 of the Act confers a wide discretion on the Tribunal to determine the amount of compensation but this discretion is also coupled with a duty to see that this exercise is carried out rationally and judiciously by accepted legal standards and not whimsically and arbitrarily, a concept unknown to public law. The amount of compensation awarded is not expected to be a windfall or bonanza for the victim or his dependent, as the case may be, but at the same time it should not be niggardly or a pittance. Thus, determination of "just" amount of compensation is beset with difficulties..."* There is always an element of guesswork to reach near the figure of actual earning, at the same time ensuring that it should not be exorbitant, at the same time keeping in mind that adequate damages are paid to a disabled person, who is supposed to live for his life in pain, and on financial support of this amount awarded. Here the role of Tribunal is wider,

more perceptive in nature and far different than that of a civil court. Though by applying above formula, the notional income comes to Rs.13,000/-, still considering the fact that the petitioner is tailor, not very highly educated, In this background this court ought to have treated his income as Rs.13,000/-. But this court, considering socio-economic factors, education etc and instead of treating notional income as Rs.13,000/- this tribunal treat it as as Rs.10,000/- per month as notional income at the time of accident. **[This is answer to issue No.4].**

<u>Future Prospectus component</u> :-

29) In the light of judgment of Honourable Supreme Court in the case of **Sarla Verma-Vs. Delhi Transport Corporation [AIR 2009 SC 3104]** the subsequent judgment in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi [2017 ACJ 2700],** for consideration of future loss of earning, this court follows the categories recognized and defined by by Honourable Supreme Court of India. It is consolidated in following table.

Future Prospects		
Age	**Self employed**	**Salaried employee**
below 40	40%	50%
40 to 50	25%	30 %
50 to 60	**10%**	**15%**

30) In the case in hand, age of deceased is 45 years, he falls in second category of age between 40 to 50. Therefore, future prospects are added at the rate of 10%. [This is answer to issue No.5]

<u>Selection of suitable multiplier</u> :-

31) On the point of selection of appropriate multiplier to the age of deceased, it is laid down in paragraph No 42 in the Judgment

of Pranay Sethi (supra) that ' *where age of deceased is above 15 years, there is no necessity for claims tribunal to seek guidance or placing reliance on second scheduled in the 1998 Act.*' It is further laid down that, ' *43-4. The claims Tribunals shall follow the steps and guidelines stated in para 19 of the Sarla Verma for determination of compensation in case of death'.* On considering para no.19 of the Judgment in the case of Sarla Verma (supra), this court categories the multiplier in the following tabular form to select appropriate multiplier.

Multiplier as per paragraph No. 21 as laid down in the case of Sarla Verma (supra)

Age in Years	Multiplier
15 to 20	18
21 to 25	18
26 to 30	17
31 to 35	16
36 to 40	15
41 to 45	14
46 to 50	13
51 to 55	**11**
56 to 60	9
61 to 65	7
66 to 70	5

32) In the case in hand, the Comp AA form shows age as 55 years. There is no evidence from petitioners about his income. Therefore, multiplier of 11 is applicable to age category of 55 to 60 years.

Deduction based on dependency: -

33) The deceased, if would have been alive, he would have earned in the future. That is computed under loss of future earnings from point of dependents. However, for his own livelihood, he might have spent some amount out of his income. There is a prescribed formula for that deduction as laid down in the case of Pranay Sethi

(Supra). It is as follows:-

S. N.	**Number of dependents**	**Deduction for self use**	**Entitlement of dependents.**
1	2 to 3	1/3	2/3
2	**4 to 6**	**1/4**	**3/4**
3	Exceeding 6	1/5	4/5

There are four dependents on income of deceased. All of them are applicants. Hence, one fourth amount will be deducted under component of personal use.

34) In the present case, there are four dependents. This case falls in first category as above stated.

Actual calculation by multiplier method:-	
Loss of earnings= Multiplier x (annual income+ future prospects) Minus deduction for self use.(one fourth)	
=	11 X [(10,000 X 12)+10%] - (one fourth)

With this formula, after deducting income for self use, the dependents are entitled to loss of future earnings which comes to **Rs.10,89,000/-.**

<u>Total compensation</u>:-

35) Total amount of compensation includes loss of future earnings, loss of consortium, funeral expenses, pain and agony. Except loss of future earnings, all other heads are abstract. These cannot be quantified in terms of money. Therefore, this court opts to follow the guidelines in the case of **Pranay Sethi** (supra).

36) Honourable Supreme Court has laid down a ratio in the case of **Pranay Sethi** (Supra) on point of enhancement of 10% increase in amount of consortium under section 163-A of the Motor Vehicles Act, 1988, Schedule of compensation providing 40,000/- towards loss of consortium was introduced by amendment with effect from

14/11/1994. Every year three there should be 10% increase in it. How it increases by 10% every three years is demonstrated in a charge below: -

Tri-Annual increase is stated as follows: -

Consortium calculation with 10 % increased after every set of 3 years as per guidelines of the Honourable supreme in the case of National Insurance Company Limited Vs. Pranay Sethi (2017 ACJ 2700)			
From date	**Till date**	**Rise by 10 %**	**Enhanced consortium after 10 % increase Rs.**
14/11/1994	13/11/1997	Nil	40,000
14/11/1997	13/11/2000	10%	44000
14/11/2000	13/11/2003	10%	48400
14/11/2003	13/11/2006	10%	53240
14/11/2006	13/11/2009	10%	58564
14/11/2009	13/11/2012	10%	64420.4
14/11/2012	13/11/2015	10%	70862.44
14/11/2015	13/11/2018	10%	77948.684
14/11/2018	13/11/2021	10%	85743.5524
14/11/2021	**13/11/2024**	**10%**	**94317.90764**
14/11/2024	13/11/2027	10%	103749.698404
14/11/2027	13/11/2030	10%	114124.6682444
14/11/2030	13/11/2033	10%	125537.13506884

37) With this calculation, on the date of accident i.e. on 08.02.2017, the original consortium is Rs.40,000/- plus, as per guidelines of Honourable Supreme court in para No.54 of Judgment in the case of Pranay Sethi (Supra), the increase is as stated in above chart. The loss of consortium, as on date of accident is **Rs.94317.90** Each of the petitioner is entitled to individual consortium as laid down in the case of **Pranay Sethi** (Supra).

<u>The total compensation is calculated as follows</u>:-

(a)		Loss of future earnings	Rs.	10,89,000/-
(b)	(i)	Funeral expenses	Rs.	15,000/-
	(ii)	Loss of consortium Rs.94317.90 multiplied by number of dependents (4) = 3,77,271.60		

			Rs.	3,77,271/-
	(iii)	Loss of estate	Rs.	15,000/-
	(iv)	Medical expenses (if any)	Rs.	Nil
		Total	Rs.	**14,96,271/-**

38) Thus, amount of Rs.14,96,271/- is he amount of just compensation. **[This is answer to Issue No.10].**

39) For the abovestated reasons, **Issue No.5 in the Affirmative and Issues No.3,4, and 10 answered accordingly**.

<u>AS TO ISSUES NO. 11 and 12</u> :-

40) In view of discussion as above, the petition is allowed. Points of interest, apportionment and other statutory complies, on the basis of which the award is formulated is discussed below. Hence, issue No.11 is answered ‘ as per final order’

<u>Interest over compensation amount</u>: -

41) M.V.Act, 1988 is silent about rate of interest. It is left to discretion of Tribunal vide Section 171. This Court relies upon judgment of Honourable Supreme Court in the case of **Khusnuma Begum -Vs- New India Assurance Company Ltd.[2001(2) SCC 9]** where Honourable Supreme Court has lowered rate of interest from 12% to 9% per annum. Considering the rate of inflation, GDP rate and diminishing value of currency, 9% per annum is sufficient rate of interest to bring compensation amount at par with its real value as on the date of award.

<u>Future interest</u> :-

42) Section 168(3) of Motor Vehicles Act, 1988 cast an obligation on the person required to pay under award, to pay the

amount within 30 days of pronouncement of award.

43) If the respondents, who are liable to pay under award, fails to pay within 30 days statutory time frame, this Court invokes discretion under Section 171 of Motor Vehicles Act, 1988 to award penal interest at the enhanced rate i.e., at the rate of 12% per annum, simple interest, from the date of award till actual realization of this amount.

<u>Mode of payment</u>: -

44) This Court prescribes deposit in Court as the only mode of satisfaction of award. It shall be paid in Bank account number given in operative part of the award as compliance to guidelines of Honourable Supreme Court in the case of **Shafiq Ahmad vs. ICICI Lomgard General Insurance [SLP (Civil) No.1110 of 2017 decided on 16/12/2021].**

<u>Deduction of no fault payment</u>:-

45) For the above stated reasons, it is held that, the petitioners are entitled to compensation amount with interest as above stated. After adding interest over the amount so awarded, amount paid (if any) towards no fault liability under Section 140 of Motor Vehicles Act, 1988 shall be reduced from it.

<u>Recovery of Court Fees</u> **:-**

46) The award amount is exceeding the actual claim. However, this is mainly because of guidelines of Honourable Supreme Court as to annual 10% increase in consortium amount. However, this contingency has been taken care of by Honourable Supreme Court in the case of **Nagappa vs. Gurudayal Sing [(2003) 2 SCC 274].** The only point is about recovery of court fees. The petitioners shall pay the deficit court fees as early as directed in final order and in any case

before applying for withdrawal of amount from court. Necessary directions have been issued to ensure recovery of dues to State Exchequer.

Mode of recovery of award: -

47) Statute has provided additional mode of recovery of dues from insurance company under section 174 of M.V.Act, 1988. If the petitioner makes an application a certificate of recovery shall be issued for amount due on the date of application, in the name of Collector, and Collector shall proceed to recover the same manner as on arrears of land revenue. However, this is an additional mode than usual mode of enforcement of an award.

Destruction of record and returning of original documents: -

48) Parties are informed about right to take back the documents. Parties are further informed about forum of appeal and limitation of appeal as compliance to Order-20 Rule-5A of The Code of Civil Procedure, 1908.

Apportionment of 6 ptamount after being deposited in court : -

49) If this amount of compensation is for future of dependents. Therefore, major portion is given to the share of widow of deceased. The amount be disbursed as follow :-

Widow	Applicant No.1	40%
Children Applicants No. 2 to 4		20% each

50) Out of the amount given to share of petitioner No.1 (after adding interest over it). Amount shall be deposited in fixed deposit in such a manner that she can fetch periodical returns.

51) If money is deposited in fixed deposit, it gets locked. It does not help in meting out daily expenses, and if it is paid once, it is spent immediately. Compensation is awarded as mode of living without the help of deceased, who was the bread-earner. Therefore, Tribunal is also cast with responsibility to pay some amount forthwith to keep some amount in fixed deposit for future and to find out balance between needs and ways to meet out the expenses to satisfy those needs. Indian Post is government owned organization. It has acquired status of Bank and it is called as Indian Post Bank. This court has considered all saving options, and has come to conclusion that MIS (Monthly Income Saving) of Indian Post, which has upper ceiling of Rs.9,00,000/- on deposit in this scheme is the best option, which will provide monthly returns to petitioner No.1, and this will be of great help to this lady to meet her daily expenses. Out of compensation amount, an amount of Rs.4,00,000/- be paid to her and remaining amount be kept infixed deposits. The amount of petitioners No.2 and 3 be kept in fixed deposit in similar manner with lock in period of 3 years and amount of petitioner No.4 be kept in fixed deposit till he attains majority. This should be ideally a lifetime arrangement for her. But, this court prescribes at least 5 years lock in period. Amount shall be kept in long term fixed deposit for period of 5 years.

52) Parties are informed about right to appeal, limitation for appeal and procedure as to return and destruction of documents. In the light of discussion, issue No.11 is decided accordingly and **in answer to issue No.12 , following order is passed**.

ORDER

Vide empowerment of Section 168 of the Motor Vehicles Act, 1988 it is awarded as follows :-

1. The Non-applicants No.1 to 3 do pay compensation amount of **Rs.14,96,271/- (Rupees Fourteen Lakhs Ninety six thousand Two hundred Seventy one only)** to the petitioners. The Non-applicant No.3 (Liberty General Ins. Company Limited.,) do indemnify to the Non-applicant No.2 for whole of the amount. Liability of the Non-applicant No. 1 to 3 is joint and several.

2. Applicant No.1 is entitled to 40% of compensation amount and applicants No.2 to 4 are entitled to 20% amount each.

3. The applicants are entitled interest over the compensation amount at the rate of 9% per annum from the date of institution of the petition (06/10/2022) till the date of Award.

4. Amount of Rs.50,000/- awarded as interim compensation as per section 140 of the Motor Vehicles Act,1988 if paid be reduced from the amount awarded as above.

5. Compensation amount so awarded be paid by way of depositing in court within period of prescribed 30 days period (excluding time between date of pronouncement of judgment and date of signing of award) vide section 168 (3) from the date of Award vide Section 1658 (3) of The Motor Vehicles Act,1988, failing which the petitioners shall be entitled to interest over the decretal amount from the date of Award till it's realisation at the rate of 12% per annum from the date of Award till the entire realisation of amount. Amount be paid in Bank Account number of Motor Accident Claims Tribunal, Yavatmal having Account No.40214590500 (IFSC No.SBIN0000506).

6. The Non-applicants do pay costs of the petitioners and shall bear their own.

8. Compensation amount, when deposited be disbursed as follows :-

a) The amount to the share of Petitioner No.1 shall be partly paid to her forthwith and partly be kept in fixed deposits

as follows:-
(i) An amount of Rs.4,00,000/- be disbursed to the petitioner No.1 forthwith.
(ii) After deduction as directed as above, remaining amount be deposited in Monthly Returns Scheme (MIS) of Indian Post with Lock-in period of 5 years with auto renewal facility till withdrawal of this amount after expiry of lock-in period. After expiry of Lock-in period, Indian Post shall allow the Petitioner No.1 to withdraw this amount voluntarily, without insisting for further order from the Court.

b) The amount to the share of Petitioners No.2 and 3 shall be in fixed deposit for a period of three years and amount to share of Non-applicant No.4 be kept in fixed deposit till he completes age of 18 years. This amount be kept for fixed deposit of 5 years with auto renewal facility. Their amount be deposited in fixed deposit in Monthly Returns Scheme (MIS) of Indian Post. The applicant No.1 who is natural guardian of applicants No.2 to 4 shall be allowed to open an operate bank account and received monthly returns for her minor children (Applicants No.2 to 4.) Once the petitioners No.2 to 4 attains 18 years of age, Indian Post shall allow the Petitioner No.1 to withdraw this amount voluntarily, without insisting for further order from the Court.

9. The petitioners shall pay the difference of court fees between amount awarded and the amount over which court fee is paid. Deficit court fees be paid within 30 days from the date of award, and payment shall be endorsed on Exhibit No.1 of this petition as mark of its payment, and shall be included in bill of costs. No execution petition or application for recovery certificate under Section 174 of the Motor Vehicles Act, 1988 shall be entertained, and no amount of compensation (if) deposited in court shall be disbursed to the petitioners unless these dues of State Exchequer in the nature of deficit court fees are cleared. If the amount of deficit court fee are deposited prior to preparation of award, it shall be included in bill of costs.

10. The amount due from insurance company (Respondent No.3) shall be recovered as per section 174 of M.V.Act, 1988 as on application as if arrears of land revenue; as an additional mode of recovery.

11. Parties are hereby informed as per mandate of Order 20 Rule 5-A that this order is appealable and appeal lies before Honourable Bombay High Court. The limitation for preferring an appeal is 90 days as per section 173(1) of The Motor Vehicles Act, 1988.

12. The parties to the petition are hereby informed that they shall take back the original documents as per the procedure laid down in Paragraph No. 524 to 528 of the Bombay High Court Civil Manual, failing which, those may be destroyed on expiry of time frame as to destruction of documents as laid down in Paragraph No. 524 of the Bombay High Court Civil Manual.

13 This judgment will be uploaded to Courts Website in CIS system within 3 working days from date of signing of judgment; the parties to proceeding can avail copies of Judgment from website, and it shall be treated as compliance of Section 168(2) of M.V.Act, 1988 as to making its copies available. As per judgment of Honourable Bombay High Court (Aurangabad Bench)in the case of Shital Krushna Dhake vs. Krushna Dagadu Dhake [Misc. Civil Application No. 244 of 2017 decided on 6/10/2018] the copy obtained from CIS system are having status at par with certified copies for purpose of appeal, parties to take note of this legal position for computing appeal period.

Date : 23/10/2023.
Place: Yavatmal

(**R. S. SALGAONKAR**)
Member, Motor Accident
Claims Tribunal, District
Yavatmal.

Office endorsement	Date
Judgment pronounced on	23/10/2023
Transcript signed on	09/11/2023
Uploaded to website on	09/11/2023
Note: Details of this case can be accessed by logging into the official website of Honorable Bombay High Court for Yavatmal District Court by scanning the QR Code given as above.	