
(1993) 04 BOM CK 0010

In the Bombay High Court

Case No : F.A. No's. 164 to 168, 282 and 286 of 1990

New India Assurance Co. Ltd. and Another

APPELLANT

Vs

Kamalabai and Others

RESPONDENT

Date of Decision : 28-04-1993

Acts Referred:

Motor Vehicles Act, 1988 — Section 94, 96

Citation : (1993) 2 ACC 383 : (1994) ACJ 519

Hon'ble Judges : H.D. Patel, J;E.D.D.S. Da" Silva, J

Bench : Division Bench

Advocate : D.N. Kukday, for the Appellant; Anoop Mohta, A.V. Bhide and V.K. Chachara, for the Respondent

Judgement

H.D. Patel, J.—All the aforesaid appeals are being disposed of by this judgment. They arise from the common judgment delivered by the Member, Motor Accidents Claims Tribunal, on 28.12.1989 in Motor Accident Case Nos. 57 of 1982, 58 of 1982, 4 of 1983, 14 of 1983 and 54 of 1986. The claims preferred by the respective claimants arise from one and the same accident, which occurred on 18.6.1982 in which several persons died and some were injured. The facts giving rise to the claim petitions are as follows:

2. On 18.6.1982 at about 8.30 p.m. several persons boarded the Matador van No. MTR 4391 at Akola. The said Matador was on its way to Khamgaon. In between Ridhora and Vyala the truck bearing No. MPT 9315 came from the opposite direction. Both the vehicles were proceeding with immense speed. A head-on collision took place between the Matador and the truck. The Matador was completely smashed. The truck was also damaged inasmuch the bumper was broken. Out of the several passengers who were travelling in Matador, Vilas Nanoti, Bhikulal Kokarde, Kishorekumar Ailani, Asha B. Dhamne and Gulam alias Sheikh Shabbir died having suffered serious injuries. Bhimrao Dhamne and Wasudeo Thotange, the cleaners of the Matador, were injured. The driver of the Matador died instantaneously on the spot. At the time of accident the truck No.

MPT 9315 was being driven by Jitendrasingh Labooram Gautam and its owner was Subhedar Amritsingh. The owner of the Matador was Indumati Vishnupant Jadhav. Either of the vehicles was insured with New India Assurance Co. Ltd.

3. The Motor Accident Case No. 57 of 1982 was filed by the legal heirs and dependants of the deceased Vilas Nanoti. The claimants were the widow Nalinibai, then aged 28 years, son Vaibhav, then aged 2 years, daughter Nayana, then aged 6 months, mother Kusumbai, then aged 57 years and father Vishwambar, then aged 65 years. According to the averments in the claim petition, the deceased was a radio repairer and he also owned one Matador which he used to ply on hire. The deceased Vilas Nanoti was earning Rs. 1,000/- per month and was contributing the entire amount for the maintenance of his family at the young age of 28 years. The petitioner claimed Rs. 1,00,000/- as compensation. The claimants did not receive the claim on account of no fault liability, though ordered to be paid during pendency of the claim petition.

4. The claimants in Motor Accident Case No. 58 of 1982 were the legal heirs (dependants) of deceased Bhikulal Kokarde. They were the widow Kamalabai, then aged 45 years and son Chandrashekhar, aged 28 years. They claimed compensation of Rs. 1,00,000/- contending that the deceased used to earn Rs. 2,000/- per month out of his business of money lending and being a gold and silver merchant. He was also an agriculturist. The deceased was contributing Rs. 1,000/- for maintenance of his family. The age of the deceased Bhikulal was 52 years.

5. The Motor Accident Case No. 4 of 1983 is filed by the legal heirs (dependants) of the deceased Kishorekumar Ailani. The claimants were the widow Ashadevi, then aged 22 years, daughter Neelam, then aged 1 1/2 years, son Nileshkumar, aged 9 months, mother Kamalabai aged 50 years and father Bhagchand, aged 55 years. The claimants claimed compensation of Rs. 1,50,000/-contending that the deceased Kishorekumar, who died at a young age of 24 years, was flour miller and was contributing Rs. 1,500/-to Rs. 2,000/- per month. The figure of compensation was sought to be increased to Rs. 3,20,000/-, but for reasons recorded by the learned Member of the Motor Accidents Claims Tribunal the application for amendment came to be rejected.

6. The claimants in Motor Accident Case No. 14 of 1983 were the legal heirs (dependants) of the deceased Asha B. Dhamne who was 30 years old when she died. She was a nurse in the Health Department of Zilla Parishad. At the relevant time she was drawing Rs. 792/- p.m. The compensation claimed was Rs. 80,000/-. The claimants were her husband Bhimrao, aged 33 years, who survived the accident, daughters Harsha, aged 7 years and Rashmi, aged 5 years. The claim was amended by filing a separate application. The enhancement sought was up to Rs. 2,20,000/-. No orders are passed on that application.

7. Bhimrao also claimed damages to the tune of Rs. 15,000/- for the injuries sustained in the accident. The claimant received Rs. 15,000/- towards no fault

liability.

8. The claimants in Motor Accident Case No. 54 of 1986 were the heirs of deceased Gulam alias Sheikh Shabbir, son of Sheikh Ahmed. They were Hasinabi, the widow, Ashyabi, aged 8 years and Iliyas, aged 4 years, the two daughters and Riaz aged 6 years and Iaz, aged 2 years, the two sons. They claimed that the deceased was 33 years old and was earning Rs. 30/- to Rs. 40/- from his business. He contributed the entire earnings for maintenance of his family. Compensation claimed was Rs. 1,10,000/-.

9. Indumati Jadhav, the owner of the Matador, resisted the claim of all the petitioners. She admitted that the Matador No. MTR 4391 was owned by her and the vehicle met with an accident on the fateful day by colliding with truck No. MPT 9315. She denied knowledge of the passengers travelling in the Matador on payment of fare. She contended that the driver was specifically instructed not to carry passengers. If at all the driver has carried passengers with or without money, it was contrary to her instructions. She is not liable for the action of the driver. The driver had no business to carry passengers beyond the seating capacity which was eight besides the driver. She denied having knowledge that five persons travelling in the Matador died in the accident. The injuries suffered by some including Bhimrao were also denied. According to Indumati, the accident occurred because of the rash and negligent driving of the truck which came at a high speed fully loaded and dashed against the Matador which was going at a normal speed. The impact was so great that the Matador was damaged beyond repairs. The driver of the Matador died on the spot. Soon after the accident, the driver and the cleaner of the truck ran away. This fact by itself supports her contention that the accident occurred due to rash and negligent driving of the truck in question. She denied the claim for compensation made by the respective claimants in their petitions as well as the basis of the compensation claimed. She stated that she was not liable. The vehicle was insured with New India Assurance Co. Ltd. under a comprehensive policy. It covers the risk of driver and the passengers, if any. It is the insurance company which should pay the compensation in case it is found that the respective claimants are entitled to the amounts claimed.

10. The truck owner, Subhedar Amrit-singh, came forward to resist the claims made in respective petitions by filing separate written statements. The Matador driver carried passengers in the Matador contravening all the rules and against the conditions of the permits. He denied that the driver of the truck drove the vehicle rashly and negligently. The truck was driven at a normal speed and the driver was cautious in driving the vehicle. It was the Matador " which dashed against the truck. The accident occurred due to rash and negligent driving of the Matador. The claim as preferred in various claim petitions and particularly the quantum was denied. The truck was insured with the New India Assurance Co. Ltd. under a comprehensive policy covering the period from 31.5.1982 to 30.5.1983. The insurance company had reimbursed the damage caused to the

truck by paying Rs. 8,288/-. The amount would not have been paid if /the truck driver was rash and negligent. He denied his liability to pay any compensation.

11. The driver of the truck, Jitendrasingh L. Gautam, filed his written statement answering all the petitions except in Motor Accident Case No. 570 of 1982. He mostly adopted the defence raised by the truck owner. The pertinent defence taken was that he never drove the truck in a rash and negligent manner.

12. The insurance company also defended the claims by filing separate written statements raising different defences in all these cases. In most of the cases the insurance company admitted that the two vehicles were insured with it. The Matador was registered with the R.T.O. as a private car.. It does not have a permit to carry passengers for hire or reward. The insurance policy specifically excluded any liability of passengers carried therein for hire or reward. Another defence of the insurance company was that the Matador was used for carrying 18 passengers contravening the permit issued under which only eight passengers and a driver can travel and that too without any charge. There was thus a specific breach of the conditions of the insurance policy. For these reasons, the insurance company is not liable for payment of compensation. In the alternative, the claims were defended by the insurance company by contending that its liability could not exceed beyond Rs. 50,000/-.

13. Regarding the truck, the insurance company admitted that the vehicle was insured with it at the material time. The accident occurred because of the rash and negligent driving of the Matador. The claims as preferred in the claim petitions were denied. If at all the truck driver is also held responsible for accident due to rash and negligent driving, the liability be appropriately apportioned.

14. It may be relevant to observe here that the insurance company denied having issued any policy of having insured the Matador No. MTR 4391 in para 10 of the written statement filed on behalf of the respondent No. 2, the insurance company, in Motor Accident Case No. 14 of 1983. The relevant passage reads as follows:

It is submitted that the vehicle, as is alleged in the applications, is not insured or was not insured with this non-applicant. The applicants have unnecessarily made party to the non-applicant. Hence the application against this non-applicant is not tenable in law. The application be dismissed with costs....

In the same case, the very same insurance company also filed written statement on behalf of respondent No. 5, who was joined as an insurer of truck No. MPR 9315. Here the defence was as under:

Without prejudice to the submissions and contentions raised hereinbefore the non-applicant submits that the Matador No. MTR 4391, admittedly owned by non-applicant No. 1, was run by her and her driver on the relevant date in breach of permit given and further the accident is reported to have taken place because of

the rashness and negligence of the driver of Matador No. MTR 4391, no liability can be fastened on this non-applicant for loss of life of the deceased and for injuries of applicant No. 1 in respect of whose death and injuries the claimants have filed this petition and are seeking to claim compensation under the provisions of Motor Vehicles Act on account of use of the vehicle in question....

The aforesaid paras are extracted in order to show the difference in pleadings in Motor Accident Case No. 14 of 1983 and also other cases.

15. With these pleadings the learned Member of the Claims Tribunal clinched the relevant issues and answered them on the basis of evidence recorded. The conclusions were as follows:

(1) That the accident between the Matador and the truck occurred due to rash and negligent driving of both the vehicles. In other words, it is a case of composite negligence on the part of the drivers driving the respective vehicles.

(2) The claimants in each case were entitled to compensation.

The compensation awarded is as given below:

(1) In Motor Accident Case No. 57 of 1982, the claimants were held entitled to Rs. 1,00,000/- by way of compensation with proportionate costs which the insurance company was directed to pay with 6 per cent interest per annum from the date of petition till realisation of the said amount.

(2) In Motor Accident Case No. 58 of 1982, the claimants were held entitled to Rs. 50,400/- along with proportionate costs and interest at the same rate as above which the insurance company was directed to pay.

(3) In Motor Accident Case No. 4 of 1983, the claimants were directed to be paid by the insurance company a sum of Rs. 1,50,000/- with proportionate costs and interest at the same rate.

(4) In Motor Accident Case No. 14 of 1983, the compensation awarded for death of Asha was Rs. 80,000/- and for injuries to Bhimrao the compensation awarded was Rs. 7,500/- only. The insurance company was directed to pay the amount with proportionate costs and interest at the same rate. The claimants received Rs. 15,000/- towards claim in respect of no fault liability.

(5) In Motor Accident Case No. 54 of 1986, the claimants were held entitled to Rs. 1,00,000/- which the insurance company was directed to pay along with costs and interest at the above-stated rate.

16. The New India Assurance Co. Ltd. felt aggrieved by the judgment and hence it filed First Appeal Nos. 164 of 1990, 165 of 1990, 166 of 1990, 167 of 1990 and 168 of 1990 against the award of compensation in Motor Accident Case Nos. 57 of 1982, 58 of 1982, 4 of 1983, 14 of 1983 and 54 of 1986 respectively. First Appeal Nos. 286 of 1990 and 282 of 1990 were filed by the claimants not satisfied with the compensation awarded in Motor Accident Case Nos. 4 of 1983

and 14 of 1983 respectively. All the appeals were heard together and are being disposed of by this judgment.

17. The learned counsel for the appellant Indumati Jadhav wanted at the outset to challenge the finding of composite negligence in this appeal without filing the cross-objection. Though he pursued with the point, we may observe that it was not open for him to do so in view of the decision of a Division Bench of this court in the case of Padmadevi Shankarrao Jadhav and Others Vs. Kabalsing Garmilsing Sardarji and Others, . It was held in that case that the explanation to Order 41, Rule 22 of the CPC clearly provides that the respondent aggrieved by a finding of the judgment on which the decree appealed is based can file cross-objection in respect of the decree insofar as it is based on that finding, notwithstanding that by reason of the decision of the court on any other finding which is sufficient for decision of the suit, the decree is wholly or in part in favour of the respondent. The award of compensation is made on the basis of the finding on the issue of negligence. The finding on the issue of negligence was the foundation for awarding compensation. Hence cross-objection could have been filed and unless such a cross-objection was filed, it would not be open for opponents to challenge the finding in that behalf. In view of this ruling, we also come to the conclusion that the owner of the Matador cannot challenge the finding of composite negligence without filing a cross-objection.

18. Even otherwise there is no substance in the submissions canvassed. It is the case of the claimants that the accident occurred due to rash and negligent driving of both the vehicles. The owners of vehicles, on the other hand, blamed each other for rash and negligent driving of the vehicles. Of the several witnesses examined only Bhimrao Dhamne, the injured, who claimed compensation, was relevant since he is an eyewitness. The driver of the truck did not enter the witness-box. This court will have to rely on the available evidence of Bhimrao coupled with the spot panchnama, Exh. 48. According to Bhimrao, several persons boarded the Matador, may be about 18 in number, at Akola. Up to Ridhora the said Matador was going at a normal speed, but thereafter it stalled running at a high speed. He was sitting just behind the driver facing the road. One truck came from the opposite direction and bumped into the Matador. The truck was also at a high speed. Due to impact the Matador was pushed behind 30 to 40 metres. The Matador turned around and faced towards the road going to Akola. The place of accident was the centre of the road. In cross-examination the witness disclosed that the speed of the truck was about 70 kilometres per hour. The Matador was in the centre of the road. It was 3 to 4 feet away from the right side end of the road. The driver of the Matador had no time to swerve the vehicle to the left side when the truck was about to collide. The speed was not reduced by the driver of the Matador.

19. The spot panchnama shows that the width of the road at the spot of accident was 24 feet. The road at the spot was east-west. The Matador was proceeding from east to west. The truck was going from west to east. The

panchanama also reveals the positions of the two vehicles as found at that time. The Matador which was facing west turned round to face east. The vehicle was totally damaged. Though the width of the road was enough for two vehicles to pass, the accident still occurred. The spot of the accident being the centre of the road, the only conclusion possible was that there was a head-on collision in between the two vehicles, which indicates that the accident occurred due to rash and negligent driving of each of the two vehicles. The composite negligence of the drivers of the truck as well as the Matador was the cause of the accident. The learned Member was right in holding that the accident occurred due to rash and negligent driving of either of the two vehicles. In other words, both the drivers are equally responsible for the accident. Merely because the lighter vehicle, that is, Matador, was dragged for a long distance is no reason to blame the truck driver alone.

20. In the appeals preferred by the insurance company, three grounds are raised. According to it, the learned Member was not right in apportioning the liability in the ratio of 75 per cent for the truck and 25 per cent for the Matador, when the negligence on the part of the drivers of the two vehicles is found to be equal. The second contention was that the owner of the Matador had breached the specified condition of the policy by using the private car for plying passengers for hire or reward which is expressly and in clear words prohibited. The Matador also carried passengers beyond the stipulated limit mentioned in the policy and thereby contravened the terms incorporated in the policy. Therefore, the insurance company claims exemption from payment of compensation which may become due under the policy of insurance issued in respect of the Matador. Thirdly, the insurance company contends that the liability under the policy issued in respect of the truck is limited to Rs. 50,000/- only and, therefore, it cannot be held responsible for payment of compensation in excess of that mount. We shall deal with each point one by one.

21. We have already held that both the drivers of the truck as well as the Matador were equally responsible for the accident in the sense that either of them was rash and negligent in driving his respective vehicle. In this set of circumstances, it would be proper to apportion the liability for payment of compensation equally on the respective owners of the vehicles and consequently on the insurance company, if it is also found liable. We do not find any justification in saddling the liability in proportion of 75 per cent in respect of the truck and 25 per cent in respect of the Matador as has been done by the learned Member of the Accidents Claims Tribunal.

22. We shall now consider the second ground raised by the insurance company. According to it, it should not be held responsible for payment of compensation falling to the share of owner of the Matador because of breach of conditions of the policy. Those conditions are: (1) that the Matador was used to ply passengers for hire or reward; and (2) carrying passengers in excess of the permit issued. Initially it would be appropriate to look into policy whether such

conditions are imposed. The policy is at Exh. 113. The carrying capacity is shown to be 8+1, that is, eight passengers and driver. The Matador has to be used as a private car or for professional use only. The policy bears the stamp prohibiting expressly the carrying of passengers for hire or reward. It is thus clear that the Matador is registered as a private carrier and in terms of policy an express bar is also stipulated for carrying the passengers for hire or reward. There is also a limitation on carrying the passengers.

23. In order to find out whether the conditions are breached it is necessary to scrutinise the evidence on record. Reliance is heavily placed on the deposition of Bhimrao, the claimant in Motor Accident Case No. 14 of 1983. He stated that he and his wife were going to Balapur from Akola. Nabikha was the driver of Matador MTR 4391. He paid Rs. 3/- as fare for each of them. During cross-examination on behalf of the owner of the Matador, Indumati, the witness was confronted with averments in the claim petition. He denied as incorrect the averment in his claim petition that due to acquaintance the driver offered him a lift up to Balapur. He even denied the averment as incorrect that he and his wife accepted the lift that was offered. This denial clearly shows that the witness never wanted to stick to the original stand taken in the pleadings. It is difficult for us to rely on a statement made by him in court that Rs. 3/- is paid as a fare for himself and his wife as deposed to by Bhimrao. In any event such a statement cannot be interpreted to mean that even other passengers paid fare for being plied in the Matador from Akola to the place of their respective destinations. There is no other evidence on record to hold that the Matador plied passengers for hire or reward.

24. A separate and a different written statement is filed by the insurance company in Motor Accident Case No. 14 of 1983, in which Bhimrao is one of the claimants. We have extracted the relevant portions herein-above for proper appreciation. Two separate written statements are on record, one filed as an insurer of Matador in question and the other filed as an insurer of the truck involved in the accident. A bare perusal of the written statement filed as an insurer of Matador will show that such a defence as now raised is not to be found therein. In fact, the defence raised is totally different. It has denied that the Matador is insured with it and the insurance company is wrongly joined as a party to the proceedings. In the written statement filed as an insurer of the truck, altogether a different plea is to be found there in. Here, insurance company indirectly admits that the Matador was insured with it and vague plea appears therein that the Matador was run by the owner in breach of permit given without specifying those conditions specifically. In the absence of the specific plea on the point, we have no option but to reject the contention raised on behalf of the insurance company outright. This will be so even presuming that Bhimrao has paid Rs. 3/- as charges for each of two passengers for plying them from Akola to Balapur.

25. Coming next to other contention that the insurance company is exempt from

payment of compensation because of the breach of permit conditions inasmuch as 18 passengers were carried in place of 8 excluding the driver. In our opinion, the contention appears to be baseless only if the principle enunciated in the case of *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others*, is perused. We are extracting the relevant portion which will be self-explanatory. It is as under:

In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Section 94 requiring insurance by the owner of the motor vehicle using it in a public place has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered from the person held liable who may not have the resources. To overcome this ugly situation the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force. To use the vehicle without the requisite third party insurance being in force is a penal offence. The legislature was also faced with another problem. The insurance policy might provide for liability walled in by conditions which may be specified in the contract of policy. In order to make the protection real, the legislature has also provided that the judgment obtained shall not be defeated by the incorporation of exclusion clauses other than those authorised by Section 96 and by providing that except and save to the extent permitted by Section 96 it will be the obligation of the insurance company to satisfy the judgment obtained against the persons insured against third party risks.

With similar advantage, we may also refer to the decision of Division Bench of this court in the case of *Raghunath Eknath Hivale Vs. Shardabai Karbhari Kale and others*, The ratio as contained in para 9 is sufficient for our purpose. It reads as follows:

(9) The insurer can avoid its liability only if the conditions specified in Section 96(2) are satisfied, and not otherwise. The contract between the insurer and the insured may permit the insurer to avoid its liability under various circumstances. However, if those circumstances do not satisfy the provisions of Section 96(2), the insurer cannot escape its liability for the third party risks. The statute recognises no condition for an insurer to escape its liability except those given in Section 96(2), whatever the terms of the contract between the insurer and the

insured. The terms of the contract between the insurer and the insured determining their rights and liability towards each other are not and should not be confused with the statutory liability of the insurer for the third party risks. If there is a breach of the contract on the part of the insured, the insurer may proceed against the insured. As far as the third party risks are concerned, the liability being statutory, it cannot be overridden by the terms of the contract of insurance between the parties.

We hence conclude that a breach of condition of the permit is not the same thing as breach of purpose for which the permit is issued. The contravention of one or the other condition of the permit is not a contravention of the purpose for which the permit is issued. There is thus no contravention of Section 96(2) of the Motor Vehicles Act. The liability of the insurance company to satisfy the various claims is not in any way affected by carrying excess persons in the Matador.

26. There is, however, some substance in the third contention of the insurance company to pay compensation limited to Rs. 50,000/- only in respect of the policy issued for truck. The policy clearly specifies that the company's liability in respect of any one accident would be such amount as is necessary to meet the requirement of the Motor Vehicles Act, 1939. On the date of the accident, namely, 18.6.1982, the statutory liability was Rs. 50,000/- only. Therefore, the insurance company will be liable to pay compensation only to the extent of Rs. 50,000/- for each accident under policy issued for the truck. This is further clear from the fact that additional premium for third party risk is not paid by the insured.

27. Two sets of claimants have filed appeals seeking enhancements. They are claimants in Motor Accident Case No. 14 of 1983 against which First Appeal No. 282 of 1990 is filed and Motor Accident Case No. 4 of 1983 against which First Appeal No. 286 of 1990 is filed. We will first take up the case of claimants in First Appeal No. 282 of 1990. The claimants Bhimrao and Anr. initially preferred a claim of Rs. 80,000/- against the death of Asha, the wife of Bhimrao and Rs. 15,000/- for injuries sustained by Bhimrao himself. The learned Member allowed compensation of Rs. 80,000/- on account of loss suffered due to death of Asha, though he came to the conclusion that the amount due was Rs. 1,44,000/-. A sum of Rs. 7,500/- is awarded to Bhimrao himself and there is no dispute about this grant. According to the claimants, they were-entitled to Rs. 2,55,000 upon proper computation of the amount and hence they filed an application for amendment claiming that amount. The said application was, however, rejected vide order dated 16.4.1986. Obviously the learned Member fell into an error in passing such an order. The claimants cannot be prevented from claiming enhanced compensation, if it is felt that they are legitimately entitled to. It is alleged that on the date of her death she was earning Rs. 792/- per month which income was to increase as time passed by and, therefore, her contribution would have increased with the passage of time. At the relevant time the deceased Asha was contributing Rs. 600/- per month. We find no evidence on record to show

that she was in a time-scale and her contribution in the family would increase. It would be hence improper to increase the amount of dependency than what has been brought in evidence. There is no doubt that the deceased Asha would have served for

28 years if she had continued in service and in that anticipation the learned Member assumed that the proper multiplier would be 20 within which time minor daughter would also be settled. The compensation due to loss of dependency of the deceased Asha would compute to Rs. 1,44,000/- which the claimants would be entitled to. This amount was, in fact, computed by the learned Member, but he awarded only Rs. 80,000/- as originally claimed. We are inclined to hold that the claimants would be entitled to compensation amount of Rs. 1,44,000/- as calculated above. The application for amendment also stands allowed. This sum is besides the amount of Rs. 7,500/- awarded to Bhimrao for personal injuries suffered by himself in the accident.

28. The other claimants, who desire enhancement, are those in Motor Accident Case No. 4 of 1983. They are the widow Ashadevi, aged 22 years, daughter Neelam, aged 1 1/2 years, son Nileshkumar, aged 9 months at the time the accident occurred and in which Kishorekumar Ailani died. Besides the three, his father and mother aged respectively 55 years and 50 years were also partially depending upon the deceased. The deceased Kishorekumar was 24 years at the time of his death. He was running a flour mill. According to his father, Bhagchand, the deceased was earning about Rs. 500/- per week, which means more than Rs. 2,000/- per month. His monthly expenses include electricity bill of Rs. 500/- per month on an average and salary of two servants which cannot exceed Rs. 500/-. That income would be somewhere up to Rs. 1,000/- per month. The lower court computed the income at Rs. 700/- per month on estimation and surmises. We need not go further deep into that aspect. The fact still remains as to what has happened to the flour mill. Is it still running? There is no cross-examination on the point. Bhagchand himself had to look after his stationery business which was started by taking a loan from the bank. It becomes difficult for the court to assess the dependency in such circumstances. Yet some figure will have to be arrived at. In our opinion, Rs. 700/- per month would be the amount of dependency after allowing some deduction on account of his personal expenses and some return out of the flour mill. The learned Member of the Tribunal has accepted the figure 25 as a multiplier which, in our opinion, is correct. The compensation would accordingly work out to Rs. 2,10,000/- which amount the claimants would be entitled to.

29. What remains is the question of interest. The court has allowed the interest at the rate of 6 per cent per annum to all sets of claimants in all the cases. The Supreme Court in Rukmani Devi and Others Vs. Om Prakash and Others, , allowed interest at 15 per cent per annum from the date of filing of the petition till realisation. There is no reason why interest at similar rate should not be allowed. We hence direct that interest at the rate of 15 per cent per annum

should be paid to all the claimants in the five motor accident cases right from the date the application is filed till realisation. For the purpose of interest we are including even those motor vehicle cases in which appeals have not been filed. For them we have invoked the provisions of Order 41, Rule 33 of the Code of Civil Procedure.

30. In the result, all the appeals are partly allowed. The modified decree will be as under:

Motor Accident Case No. 57 of 1982

The respondents will jointly and severally pay Rs. 1,00,000/- by way of compensation with proportionate costs and interest at 15 per cent per annum from the date of filing of the application till realisation of the said amount. The distribution of the amount will be in accordance with the direction given in the judgment of the trial court. The amount on account of interest be paid to Nalinibai, the widow of the deceased Vilas Nanoti.

Motor Accident Case No. 58 of 1982

The respondents shall jointly and severally pay Rs. 50,400/- as compensation along with proportionate costs and interest at the rate of 15 per cent per annum from the date of filing of the application till realisation. The amount including interest has to be distributed amongst the two petitioners equally.

Motor Accident Case No. 4 of 1983

The claimants are to be paid Rs. 2,10,000 by way of compensation with proportionate costs and interest at the rate of 15 per cent per annum from the date of filing of the application till realisation. The liability of insurance company vis-a-vis the owners of the two vehicles will be as under:

(a) Rs. 1,05,000/- shall be paid jointly and severally by the insurance company and the owner of the Matador, Indumati.

(b) Rs. 50,000/- shall be paid jointly and severally by the insurance company and the owner of the truck, Subhedar Amritsingh.

(c) Rs. 55,000/- shall be paid by the owner of the truck, Subhedar Amritsingh.

(d) Proportionate costs and interest at the aforesaid rate shall be paid jointly and severally by the insurance company and the owners of both the vehicles.

The additional amount of compensation, that is, Rs. 60,000/- shall be divided equally between the widow Ashadevi and the parents of the deceased Kishorekumar. The interest amount will, however, be received by the widow Ashadevi only. The order of distribution, as passed by the learned Member, of the sum awarded by him will remain unaltered.

Motor Accident Case No. 14 of 1983

The claimants are to be paid Rs. 1,44,000 with proportionate costs and interest at the rate of 15 per cent per annum from the date of filing of the application till realisation. The liability to pay of the insurance company vis-a-vis the owners of the two vehicles will be as stated hereunder:

(a) Rs. 72,000/- shall be paid jointly and severally by the insurance company and the owner of the Matador, Indumati.

(b) Rs. 50,000/- shall be paid jointly and severally by the insurance company and the owner of the truck, Subhedar Amritsingh.

(c) Rs. 22,000/- shall be paid by the owner of the truck, Subhedar Amritsingh.

(d) Proportionate costs and interest at the rate aforesaid shall be paid jointly and severally by the owners of the two vehicles.

The learned Member has already issued directions for distribution of the amount of compensation amongst the claimants. Those directions shall not be disturbed. The additional amount of compensation shall be distributed in the same manner as directed and the amount falling to the share of minors be kept in fixed deposit in any nationalised bank till the minors become major. The interest amount be paid to the claimant Bhimrao.

Bhimrao has been awarded Rs. 7,500/-for injuries. This amount be paid jointly and severally by the insurance company and the owners of the two vehicles.

Motor Accident Case No. 54 of 1986

The insurance company and the owners of the two vehicles shall jointly and severally pay Rs. 1,10,000/- to the claimants with proportionate costs and interest at the rate of 15 per cent per annum from the date the application is filed till its realisation. The amount shall be distributed equally amongst the claimants and the amount falling to the share of four minor children is directed to be kept in fixed deposit in any nationalised bank till the minors become major. The amount on account of interest be paid to the claimant, Hasinabi, only.

A general direction in all cases also needs to be issued. The respondents shall deduct the amount so far paid to the claimants. Only the balance amount due be paid.

In the circumstances of the case, the respective parties in each case are directed to bear their own costs.