
(2025) 04 BOM CK 0305

In the Bombay High Court, Aurangabad Bench

Case No : First Appeal No. 3325 Of 2017 With Civil Application No. 4492 Of 2018

Reliance General Insurance Company Ltd., Thr Its Branch
Manager, Aurangabad

APPELLANT

Vs

Tejas Ravikiran Zol And Ors

RESPONDENT

Date of Decision : 28-04-2025

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2025) 04 BOM CK 0305

Hon'ble Judges : Sandipkumar C. More, J

Bench : Single Bench

Advocate : A.S. Usmanpurkar, P.C. Mayure

Final Decision : BOM

Judgement

Sandipkumar C. More, J

1. The appellant Insurance Company, who is original respondent No.3 in Motor Accident Claim Petition No.232/2012, has challenged the judgment and award dated 07.04.2017 passed in the aforesaid claim petition by learned Motor Accident Claims Tribunal, Dhule (hereinafter referred to as "the learned Tribunal"), on the only ground that whether major son and daughter, who are not dependent on the income of deceased, can claim compensation on the ground of loss of dependency.

2. It is not disputed that one Sharubala Ravikiran Zol died in an accident which took place on 09.02.2012 when she was going from Dondaicha by-pass road alongwith her husband. It is also not in dispute that initially the motor accident claim petition in respect of deceased Sharubala was filed by her husband Ravikiran and son Tejas. However, during pendency of the claim petition, the husband of deceased died, and therefore, the claim petition was prosecuted by Tejas and Urjja, who are respectively son and daughter of the deceased. It is to be noted here that the learned tribunal awarded total amount of compensation of

Rs.42,27,824/- inclusive of the award under Section 140 of the Motor Vehicles Act on the principle of "no fault liability", alongwith interest at the rate of Rs. 8% per annum from the date of petition till its realization. The learned tribunal computed the amount of compensation as per the direction of the Hon'ble Apex Court in the case of Sarla Verma. There is no dispute about the income of deceased at the time of accident being of Rs. 46,623/- after deduction of income tax and professional tax. The only point raised by the appellant Insurance Company is, as to whether the major son and daughter who are not depending upon the income of deceased, can claim loss of dependency or can file a petition for claiming compensation under Section 166 of the Motor Vehicles Act.

3. Learned Counsel for the appellant Insurance Company vehemently argued that the learned tribunal has definitely erred in granting compensation to the respondents/ claimants who were in fact not dependent on the income of deceased as they were residing separately from the deceased at the time of accident and earning their own income. For that purpose learned Counsel for the appellant Insurance Company heavily relied on the following judgments.

(i) Judgment of Hon'ble Apex Court dated 04.12.2023 in the case of The New India Assurance Co. Ltd vs Anand Pal & ors in SLP (Civil) No. 7805 of 2022

(ii) New India Assurance Co. Ltd. Vs Jaibai & ors MANU/MH/4417/2022

(iii) National Insurance Co. Ltd. Vs Pranay Sethi & ors (2017) 16 SCC 680

(iv) Sarla Verma and ors vs Delhi Transport Corporation and another, (2009) 6 SCC 121

(v) Farzana Abbas Bhai & anr vs Maharashtra State Road Transport Corporation, 2017 (1) TAC 288 (Bom.)

4. On the contrary, learned Counsel for respondent Nos.1 and 2/claimants strongly opposed the submissions made on behalf of the appellant Insurance Company. He pointed out that the judgment of the Hon'ble Apex Court in the case of New India Assurance Co. vs Anand Pal (supra) is not at all applicable in the instant case, since it did not refer the earlier judgment of Hon'ble Apex Court in the case of National Insurance Company Ltd vs Birender & ors. reported in (2020) AIR (SC) 434. According to him, the view taken by the Hon'ble Apex Court in the case of National Insurance Co. Ltd. Vs Birender dated 13.01.2020 has now been reiterated in the recent judgment of the Hon'ble Apex Court in the case of Seema Rani & ors vs The Oriental Insurance Company Ltd & ors dated 11.02.2025 in Civil Appeal No.2323 of 2025. He also submitted that the Hon'ble Apex Court in case of Seema Rani (supra) has, not only held that major sons and daughters of the deceased, irrespective of their dependency status, can apply for getting compensation, but the quantum of compensation can also be recalculated if certain heads are left out by the learned tribunal/Court. As such, he urged for recalculating the compensation amount.

5. The only question which is to be decided in this appeal is as under :

"Whether major married and earning children of the deceased being legal representatives, have right to apply for compensation irrespective of their dependency status on the deceased?"

On going through the judgments relied by the learned Counsel for the appellant Insurance Company, sum and substance thereof is that, in the absence of evidence to the contrary, the siblings of the deceased being independent and earning or married, will not be considered as dependents of the deceased. The Hon'ble Apex Court in case of *New India Assurance Co. vs Anand Pal* (supra) has made the following observations.

"4. In support of his contention, Mr. Kumar relies on *Sarla "Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.* reported in (2009) 6 SCC 121 wherein this Court held as under:

"31. Where the deceased was a bachelor and the different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father."

5. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents as because they will either be independent and earning, or married, or be dependent on the father.

6. On the above, Mr. Ashok Kumar Sharma, learned senior counsel refers to the evidence to point out that although deceased was having separate residence, he used to frequently visit his siblings and also have meals together with the brothers. Accordingly, it is argued that the brothers cannot be said to be separate from the victim.

7. On the above, it is necessary for us to be conscious that there are two family registers. This would indicate that the victim resided separately as was noted by the Motor Accident Claims Tribunal. The siblings of the victim were older and were married with their own respective families. In these circumstances, they being dependent on the victim's earnings is unlikely particularly when the victim resided separately.

8. Looking at the above, the Tribunal and the High Court should not have considered the three older married siblings, to be dependent on the deceased victim. The compensation awarded to the married siblings is therefore found to be unmerited. The appeal is accordingly allowed by setting aside the impugned

award of the Motor Accident Claims Tribunal as upheld by the High Court under the impugned judgment”.

6. This Court in the aforesaid judgments relied upon by the appellant Insurance Company, has also taken similar view. However, a contrary view has been taken by the Hon’ble Apex Court in the case of National Insurance Co. Ltd. Vs Birender (supra) by observing as follows.

“It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only”.

7. Further, the Hon’ble Apex Court in its subsequent judgment in the case of Seema Rani (supra) has observed as follows.

“9. We have heard the learned counsel for the Appellants. We are unable to agree with the view taken by the Tribunal on the dependents of the deceased. This Court in National Insurance Company Limited v. Birender & Ors.1, had expounded that major married and earning sons of the deceased, being legal representatives, have a right to apply for compensation, and the Tribunal must consider the application, irrespective of whether the representatives are fully dependent on the deceased or not. The Court went on to conclude that since the sons, in that case, were earning merely Rs.1,50,000/-per annum, they were largely dependent on the earnings of the deceased and were staying with her.

10. Adverting to the facts at hand, on a perusal of the statement of Shashi Kumar, the son of the deceased (Appellant No.2 herein), annexed as Annexure P6, was working at a petrol pump, while the other son was involved in temporary employment opportunities only. Both of them were residing with the deceased. In such circumstances, it cannot be said that they were self-sufficient or independent of the deceased. Similarly, applying the exposition in Birender (Supra), there is no reason to exclude a married daughter from compensation. Therefore, in view of this, the High Court erred in excluding these dependants.

8. It is extremely important to note that the Hon’ble Apex Court in the case of New India Assurance vs Anand Pal (supra) did not make any reference to its earlier observation in the case of National Insurance Co. Ltd. Vs Birender (supra). It has decided the issue involved in that appeal independently only by referring its earlier judgment in the case of Sarla Verma. However, when the recent judgment of the Hon’ble Court has reiterated the view taken in the case of Natiolan Insurance Co. Ltd. Vs Birender (supra), it has now been settled that even major married and earning children of the deceased in the capacity of legal representatives, have right to apply for compensation even they are earning separately and not depending upon the income of deceased. Therefore, on this

aspect the appeal of the Insurance Company needs to be dismissed.

9. It is now settled that even in absence of appeal by the claimants, it is the duty of the Court to assess just and fair compensation. The learned Counsel for the respondent Nos.1 and 2/claimants pointed out that the learned tribunal, while calculating the compensation amount on all heads, did not consider the head under 'future prospects', and therefore, the compensation in the light of the observation of Hon'ble Apex Court in the case of Seema Rani vs Oriental Insurance Co. Ltd. (supra) needs to be recalculated in the light of the judgments of Hon'ble Apex Court in the cases of National Insurance Co. Ltd. Vs Pranay Sethi (supra) and Magma General Insurance Co. Ltd. Vs Nanu Ram reported in (2018) 18 SCC 130. Admittedly, the learned tribunal has calculated the compensation amount under the guidelines issued by the Hon'ble Apex Court in the case of Sarla Verma (supra), However, those guidelines are subsequently modified in the cases of Pranay Sethi and Magma General Insurance (supra) by introducing new heads, such as, future prospects and types of consortium. Therefore the compensation is recalculated as below.

10. The undisputed income by salary of the deceased Sharubala is Rs. 46,623/- per month after deducting income tax and professional tax. The age of the deceased was admittedly 52 years, and therefore, considering the guidelines in the case of Pranay Sethi (supra), 15% of such income has to be added on the count of future prospects. On such addition, the monthly income of the deceased comes to Rs.53616.45. For the age of deceased the multiplicand of "11" is applicable. Therefore, the amount of loss of dependency comes to Rs. 70,77,371.40. From the said amount one-third amount is to be deducted on the count of personal expenses of the deceased. Thus, on such deduction, the loss of dependency now comes to Rs. 47,18,247.60. In this amount the amount of Rs. 80,000/- towards filial consortium i.e. Rs. 40,000/- each for respondent Nos.1 and 2/claimants is to be added and further on account of loss of estate and funeral expenses, an amount of Rs. 30,000/- is also permissible. Therefore, the final amount of compensation is now determined to Rs. 48,28,247.60 (47,18,247.60 + 80,000 + 30,000) inclusive of the award under "no fault liability".

11. Thus, considering all these aspects, the following order is passed.

ORDER

(i) Appeal is hereby dismissed.

(ii) The appellant Insurance Company and respondent No.4 being the insurer and owner of the offending truck shall jointly and severally pay compensation of Rs. 48,28,247.60 to the respondent Nos.1 and 2/claimants inclusive of the "no fault liability" amount, alongwith interest at the rate of Rs. 8% per annum from the date of petition till its realization. It appears from the record that the appellant Insurance Company has already deposited certain amounts in this Court. The same shall be appropriated in the total amount of compensation granted by this

Court

(iii) After recovery of the aforesaid amount of compensation, the same be equally distributed between respondent Nos.1 and 2/claimants and be paid to them alongwith accrued interest thereon till the relevant date.

(iv) Deficit court fees, if any, be paid within four weeks from the date of computation of the same by the office.

(v) The award be drawn up accordingly.

(vi) The appeal stands disposed of alongwith pending Civil Application 4492 of 2018.