

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 21ST DAY OF AUGUST, 2019

BEFORE

THE HON'BLE MR.JUSTICE K. NATARAJAN

MISCELLANEOUS FIRST APPEAL NO.20655/2011 (MV)

BETWEEN :

THE SENIOR DIVISIONAL MANAGER
THE NATIONAL INSURANCE CO. LTD.
RAMDEV GALLI, BELGAUM,
(INSURER OF HERO HONDA
PLEASURE BEARING NO. KA-22/EB-9566)
REPRESENTED BY
ITS DIVISIONAL MANAGER,
NATIONAL INSURANCE CO. LTD.,
SUJATA COMPLEX,
P.B. ROAD, HUBLI.

... APPELLANT

(BY SRI. S.K.KAYAKAMATH, ADV.)

AND

1. SHRI JYOTIBA APPAJI SHIGATE,
AGE: 55 YEARS, OCC: SERVICE,
R/O KEB QUARTERS,
SHIVABASAVA NAGAR,
BELGAUM.
2. MARQWE JYQNR
A/O JYOTIBA SHIGATE
AGE: 17 YEARS, OCC: STUDENT,
REPRESENTED BY HIS FATHER
SHRI JYOTIBA S/O APPAJI SHIGATE
AGE: 55 YEARS,
OCC: SERVICE,
R/O KEB QUARTERS,

SHIVABASAVA NAGAR,
BELGAUM.

3. SMT. ANJANA
D/O RAMACHANDRA NANDIHALLI
AGE: 42 YEARS,
OCC: GOVERNMENT SERVICE,
R/O BENKANAHALLI VILLAGE,
TQ & DIST: BELGAUM.
(REG: OWNER OF THE HERO
HONDA PLEASURE VEHICLE
BEARING NO. KA-22/EB-9566)

... RESPONDENTS

(BY SRI.K. ANANDKUMAR, ADV. FOR R2)
(R1 & R3 SERVED)

THIS MFA FILED U/S.173(1) OF THE M.V.ACT, 1988,
AGAINST THE JUDGEMENT AND AWARD DATED:04.09.2010,
PASSED IN MVC NO.1850/2009, ON THE FILE OF THE
PRESIDING OFFICER, FAST TRACK COURT-III & ADDITIONAL
MACT, BELGAUM AT BELGAUM, AWARDING THE
COMPENSATION OF RS.12,65,731/- WITH INTEREST AT THE
RATE OF 9% P.A. FROM THE DATE OF PETITION TILL ITS
REALISATION.

RESERVED FOR JUDGMENT ON : 30.07.2019.

JUDGMENT PRONOUNCED ON :21.08.2019.

THIS APPEAL BEING RESERVED FOR JUDGMENT,
COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS
DAY, DELIVERED THE FOLLOWING:-

JUDGMENT

This appeal is filed by the Insurance Company assailing the judgment and award dated 04.09.2010 in MVC No.1850/2009 passed by the Fast Track Court-III and Addl. MACT, Belagavi (for short 'the Tribunal').

2. I have heard the arguments of the learned counsel for the Insurance Company and learned counsel for respondent No.2/claimant.

3. For convenience, the ranks of the parties before the Tribunal are retained.

4. The first claimant is the husband and second claimant is the son of deceased Smt.Mangala, who died in the road traffic accident, have filed claim petition under Section 166 of the Motor Vehicles Act (for short "the Act") before the Tribunal claiming compensation of Rs.30,00,000/- with interest interalia contending that on 29.05.2009 the said Mangala was proceeding as a pillion rider on the motorcycle bearing registration No.KA-

22/EB-9566 driven by respondent No.1-Smt. Anjana and when the said vehicle reached near Bokanur Cross on Belgaum-Belgundi road, the respondent No.1 rode the motorcycle in a rash and negligent manner with high speed due to which the accident was occurred. The said Mangala fell down from the motorcycle and sustained injuries. Later she was shifted to Dr. Prabhakar Kore Hospital, Belgaum and admitted as in-patient for 10 days. During treatment, she succumbed to the injuries. The claimants have spent more than Rs.3,00,000/- towards medical expenses. The deceased was working as headmistress in a Government Primary Marathi School, Belavatti and was earning Rs.30,000/- per month and she was also income tax Assessee. She was maintaining her entire family. Therefore, prayed for awarding the compensation on various grounds.

5. In pursuance to the notice, respondent No.1 appeared through counsel and filed objections by

denying the averments made in the claim petition as false. However, admitted that she is the owner of Hero Honda Pleasure motorcycle bearing registration No.KA-22/EB-9566. The vehicle was duly insured with respondent No.2. The policy was valid from 24.01.2009 to 23.01.2010. She is having valid driving licence and not violated any of the terms and conditions of the policy. If this Court comes to the conclusion for whatsoever justifiable reasons to grant the compensation, then the same may be fastened on respondent No.2-Insurance Company. Hence, prayed for dismissal of the claim petition against her.

6. The respondent No.2-Insurer also appeared and filed statement of objections by denying the averments made in the claim petition as frivolous and baseless and contended that respondent No.1 in collusion with the police filed a delayed complaint in order to grab illegal compensation from respondent No.2

and further taken the contention that though the deceased having sustained some accidental injuries otherwise than the involvement of the motorcycle bearing registration No.KA-22/EB-9566, but the petitioners have falsely implicated the said vehicle in this case and lodged the complaint. The rider of the motorcycle was not having any licence to ride the motorcycle. Therefore, the insurer is not liable to pay any compensation. However, it has taken the contention that the quantum of compensation claimed by the petitioners is imaginary, exorbitant and unreasonable. Hence, prayed for dismissal of the claim petition.

7. Based on the rival pleadings, the Tribunal framed the following issues;

1. *Whether the petitioners prove that the deceased Smt. Mangala died in Motor Vehicle accident due to rash and negligent act of rider of vehicle bearing Reg.No.KA-22/EB-9566 as alleged in the petition?*

2. *Whether the petitioners are entitled for compensation? If so how much and from whom?*

3. *What order or award?*

8. To substantiate the case of the claimants/petitioners, petitioner No.1 himself got examined as P.W.1 and got marked 15 documents as per Exs.P1 to P15. On behalf of respondent-Insurer one Anilkumar Kulkarni, examined as RW.1 and got marked the insurance policy as Ex.R1. On considering the evidence available on record, the Tribunal answered the issue No.1 in the affirmative and allowed the petition and awarded the compensation of Rs.12,65,731/- on the following heads;

Loss of dependency	Rs.11,16,981/-
Loss of consortium	Rs. 15,000/-
Loss of love and affection of petitioner No.2	Rs. 15,000/-
Medical expenses of the deceased during life time	Rs. 83,750/-

Loss of estate	Rs. 20,000/-
Transportation of dead body and funeral expenses	Rs. 15,000/-
Total	Rs.12,65,731/-

9. Assailing the judgment and award passed by the Tribunal, the Insurance Company filed this appeal challenging the liability fastened as well as for reduction of quantum of compensation.

10. Learned counsel appearing for the appellant/Insurer has vehemently contended that at the time of accident in question, the rider of the motorcycle i.e. respondent No.1 had no valid licence to drive the motorcycle and she was holding only learner's licence. As per the provisions of Motor Vehicles Act, 1988 (for short 'the Act') a person who holds the learner's licence should take instructor along with her. However, here in this case the deceased was pillion rider on the motorcycle which was rode by respondent No.1, who was not having driving licence instead she had only the learner's licence. She

was supposed to learn the driving or riding motorcycle with the instructor. As per the provisions of Sub-Rule (1) of Rule 3 of the Central Motor Vehicle Rules, 1989, (for short “the Rules”), she has to mention the English letter ‘L’ on the motorcycle and without instructor riding of the motorcycle by a learner would amount to violation of conditions of the insurance policy and there is a fundamental breach in the terms and conditions of the policy. But, the Tribunal committed an error in fastening the liability on the respondent-Insurer and the liability ought to have been fastened on the owner of the motorcycle but the same was not fastened by the Tribunal and wrongly held that this insurer is also liable to pay the compensation.

11. The learned counsel for the appellant-Insurer alternatively contended that if this Court is going to held that there is a violation of terms and conditions of Insurance policy, then the liberty may be granted to the

insurer to pay the compensation to the claimants in the first instance and liberty to recover the same from the owner of the vehicle. Hence, prayed for allowing the appeal.

12. In support of his arguments, the learned counsel for the insurer relied upon the judgments of various High Courts as well as Hon'ble Supreme Court. Alternatively, the learned counsel also contended that the first claimant who is a Government Official working in KEB, earning handful income. Though the tribunal considered the income of the deceased based on the salary certificate but the tribunal ought to have deducted 75% of the income towards the personal expenditure as the first claimant being the husband is earning member, he cannot be considered as dependant on his wife even though wife is working. Further, it is contended that the second claimant alone to be considered as dependant that too not sole dependant on the deceased mother, and

the son i.e. second claimant also dependant on his father, the first claimant. Therefore, 50% of the income shall be deducted towards personal expenditure of the deceased and another 25% shall be considered towards the dependency on the father, the first claimant. Therefore, only 25% of the income shall be considered for computing compensation towards loss of dependency for the second claimant and it is also argued that the split multiplier shall be applied in this case, as deceased was permanent employee, a teacher, will retire from her service within five years and the entire salary cannot be considered as loss of dependency after the retirement. The counsel also contended that the interest at 9% awarded by the tribunal is also on the higher side. Hence, prayed for reduction of interest to 6% p.a. by allowing the appeal.

13. Per contra, learned counsel appearing for the respondent No.2 countered to the arguments of the

learned counsel for the appellant supported the judgment and award passed by the Tribunal and contended that in catena of decisions the Hon'ble Supreme Court has held that the learner's licence is also a valid licence and it cannot be considered as no licence. Further, the deceased, who was headmistress, was also holding a permanent driving licence and she accompanied as a pillion rider. Hence, there is no pleadings and defence setup by the Insurance Company before the tribunal in respect of validity of the learner's licence. Further, it is argued that there is no instructor required for two wheeler motorcycle and instructor is required only for learning of four wheeler. The claimants themselves have produced both the licence at Exs.P14 and 15, which clearly goes to show that respondent No.1 had a valid driving licence to ride the motorcycle. There is no defence setup by the Insurance Company in respect of fixing the letter 'L' board on the motorcycle and there is no photograph of the scooter produced before the Court to

show that letter 'L' was not mentioned on the scooter. The respondent-Insurance Company got admission from the evidence of P.W.1 that the deceased was also holding driving licence to drive motorcycle. When such being the case, it cannot be held that respondent No.1 did not have valid driving licence as contended by the insurer. Therefore, the learned counsel contended that the tribunal after considering the evidence on record has rightly fastened the liability on the Insurance Company and it does not call for any interference by this Court. He also relied upon by the judgment of the Hon'ble Supreme Court and other High Courts.

14. Learned counsel also contended in respect of quantum of compensation and submits though the deceased was headmistress and since she was earning member, it cannot be considered that the first claimant was not at all dependant on his wife merely because he is also employee and earning. The second claimant is a son

of the deceased, he shall be considered as dependant and it cannot be deducted 50% towards personal expenses of the deceased and further 25% cannot be deducted as second claimant was dependant on the first claimant. He further contended that the Tribunal has rightly deducted 1/3rd of the income by relying upon the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma and Others v. Delhi Transport Corporation and Another**, reported in **2009 (6) SCC 121**, and contended that the Tribunal calculated 50% of the future prospects and awarded just compensation. The Tribunal also relied upon the judgment of the Hon'ble Supreme Court and awarded interest at the rate of 9% p.a. Therefore, it need not require for reduction in the rate of interest also and further argued that when there is no violation of conditions of the policy, the principles of pay and recover does not arise. The appeal is devoid of merits. Hence, prayed for dismissal of the appeal.

15. Upon hearing the arguments of both the learned counsel for the parties, the point that arises for my consideration are as under:-

- 1. Whether the tribunal is justified in passing the judgment and award by fastening the liability on the Insurance Company which call for interference?*
- 2. Whether the award of compensation of Rs.12,65,731/- is excessive and exorbitant and requires reduction?*
- 3. Whether the award of interest @ 9% p.a. requires reduction?*
- 4. What order?*

16. The claimants have established the factum of accident that had occurred on 29.05.2009, when the deceased Mangala was proceeding as a pillion rider on the motorcycle bearing registration No.KA-22/EB-9566 driven by respondent No.1/Smt. Anjana and due to the rash and negligent riding of the said motorcycle by

respondent No.1, Mangala sustained grievous injuries and succumbed to the injuries while taking treatment in the hospital. The accident in question and the rash and negligent act of riding of the motorcycle and involvement of the motorcycle in the accident was not seriously disputed by the respondents, but the contention of the respondent/insurance company is that respondent No.1 did not have any valid licence to ride a motorcycle on the road, she was holding only a learner's licence, which is required to take an instructor along with her and she alone cannot ride the motorcycle on a road and thereby the insured/respondent No.1 has violated the terms and conditions of the insurance policy. Hence the liability cannot be fastened on the respondent/insurer.

17. In support of his arguments, the learned counsel for appellant/insurer has relied upon the decision of the Hon'ble Apex Court in the case of ***Pappu and others v. Vinod Kumar Lamba and others,***

reported in **(2018) ACC 319 (SC)** and another decision in the case of **National Insurance Company vs. Challa Bharatamma and others**, reported in **2004 ACJ 2094**.

18. Per contra, the learned counsel for claimant has contended that respondent No.1 was holding a learner's licence at the time of accident and the learner's licence is also a valid licence to drive the vehicles or motorcycle. It is argued that the instructor is required only in case of four wheeler vehicle but not to two wheeler motorcycle. In support of his arguments, the learned counsel has relied upon the judgments of the Hon'ble Apex Court as well as other Hon'ble High Courts, in following cases:-

- 1) In the case of **New India Assurance Company Limited v. Mandar Madhav Tambe**, reported in **LAWS (SC) 1995 12 37**,

- 2) In the case of ***Mahamooda v. United India Insurance Co. Ltd***, reported in ***LAWS (SC) 2004 9 57***,
- 3) In the case of ***Reliance General Insurance Company Limited v. Sheela Devi and others***, reported in ***(2018) Acci.C.R. 249 (P & H)***,
- 4) In the case of ***Shivpal Singh v. Lal Chand and others***, reported in ***2010 ACJ 1120***.

19. Let me take the first contention of the appellant/insurer regarding the licence which was held by respondent No.1 at the time of accident. Admittedly, as on the date of accident, respondent No.1/Smt.Anjana had a learner's licence. The same is marked as Ex.P14 and subsequently she obtained Ex.P15, the permanent driving licence.

20. As per Section 2(10) of the Act, it is defined that "driving licence" means the licence issued by a competent authority under Chapter II authorizing the

person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

21. Section 3 under Chapter II of the Act provides necessity of driving licence to drive the vehicle on the road. Rule 3 of Chapter II of the Central Motor Vehicle Rules provides the instructions, which reads as under:-

“3. General.- *the provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as -*

(a) such person is the holder of an effective learner’s licence issued to him in Form 3 to drive the vehicle;

(b) such person is accompanied by an instructor holding an effective driving licence to drive the vehicle and such

instructor is sitting in such a position to control or stop the vehicle; and

(c) there is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter “L” in red on a white background as under:



Note.- The painting on the vehicle or on the plate or card shall not be less than 18 centimetres and the letter “L” shall not be less than 10 centimetres high, 2 centimetres wide at the bottom:

Provided that a person, while receiving instructions or gaining experience in driving a motorcycle (with or without a side-car attached), shall not carry any other person on the motorcycle except for the purpose and in the manner referred to in clause (b)”

22. The proviso of the Rule defines that a person, while receiving instructions or gaining experience in

driving a motorcycle (with or without a side-car attached), shall not carry any other person on the motorcycle except for the purpose and in the manner referred to in clause (b) wherein as per 3(b) of the Rules says the instructor is required to sit in a position to control or stop the vehicle, which means a person who is holding learner's licence and learning driving of four wheeler vehicle shall always accompany an instructor.

23. As per Rule 24 of the Rules, it defines about the establishment of driving schools and the qualification of the instructor. Rule 24(3) (v) of the Rules defines as follows:-

(v) the vehicles are available exclusively for purposes of imparting instruction and all such vehicles, except motorcycles, are fitted with dual control facility to enable the instructor to control or stop the vehicle.

(underlined by me)

24. On bare reading of Rule 24 (3) (v) of the Rules clearly provides that the instructor shall accompany with the learner while driving the motor vehicles having dual control facility to enable the instructor to control or stop the vehicle, whereas the motorcycle was excluded or exempted and it does not require the instructor to be accompanied. However, Section 3 of the Act defines necessity of driving licence. Proviso to Rule 3 enables the rider of the motorcycle shall not carry any other person on the motorcycle as pillion rider except for the purpose and in the manner referred to in clause (b), which shows the person holding driving licence shall be accompanied with a person who holds a learner's licence for the motor vehicle but not motorcycle.

25. In this case, admittedly, respondent No.1 was holding learner's licence as per Ex.P14 and the deceased was holding a driving licence as on the date of the accident. The same was elucidated by the respondent's

counsel in the cross-examination of P.W.1. In his evidence, P.W.1 has clearly stated that the deceased was headmistress, who was also having motorcycle and she had a driving licence to ride the motorcycle. On the date of accident, the deceased was traveling with respondent No.1 as a pillion rider, who was holding a driving licence. There is no pleading or defence set up by the respondent/insurer before the Tribunal by taking contention that the deceased was not holding a driving licence and she traveled only as a pillion rider. When there is no pleading or defence setup before the Tribunal, the insurer has no right to take such a plea for the first time before this Court in the appeal. That apart, the Hon'ble Apex Court, in catena of decisions has held that the learner's licence is also a valid driving licence.

26. The Hon'ble Supreme Court in the case of ***New India Assurance Company Limited v. Mandar Madhav Tambe***, reported in ***LAWS (SC) 1995 12 37***

has held that the learner's licence is also a valid licence. In another decision in the case of ***Mahamooda v. United India Insurance Co. Ltd.***, reported in ***LAWS (SC) 2004 9 57***, the Hon'ble Supreme Court has held that if a person drives a vehicle by holding a learner's licence, the insurers liability exists. The learned counsel has also relied upon the decision rendered by the Hon'ble Punjab and Haryana High Court, in the case of ***Reliance General Insurance Company Limited v. Sheela Devi and others***, reported in ***(2018) Acci.C.R. 249 (P & H)***, in which even the Hon'ble Punjab and Haryana High Court has also taken a similar view that the learner's licence is also a valid licence. Even in the case of ***Shivpal Singh v. Lal Chand and others***, reported in ***2010 ACJ 1120***, the Hon'ble Rajasthan High Court, Jaipur Bench, has taken a similar view that the learner's licence is also a valid licence.

27. Learned counsel for the insurer has relied upon the judgment of the Hon'ble Apex Court in the case of ***Pappu and others (stated supra)*** wherein there was no valid driving licence held by the driver of the offending vehicle and the vehicle was driven by the person who did not have any licence at all. Therefore, the Hon'ble Apex Court held that the insurance company shall pay the compensation and recover it from the owner of the vehicle. The said case is not applicable to the case on hand. In another case, ***National Insurance Co. Ltd., v. Masabi***, reported in ***1991 ACJ 173***, the Division Bench of this Court has held that the person driving the vehicle, holding learner's licence only for receiving instructions and he cannot drive transport vehicle for hire. This case is also not applicable to the case on hand. In another case, in Civil Appeal No.1537/2009 between ***Bhuwan Sing and M/s. Oriental Insurance Company Ltd***, reported in ***2009 ACJ 1426***, the driver had a learner's licence but it was expired as on the date of accident.

Therefore, the said judgment is also not applicable to the case on hand. In another case, ***Electrical Engineering Agencies and another v. New India Assurance Company Ltd and another***, reported in ***2006 ACJ 1957***, the owner has not established that the rider was holding learner's licence and conditions were duly complied while driving the vehicle. In the said case respondent No.1 had a valid learner's licence and the pillion rider, the deceased, was holding driving licence and there was defence setup by the respondent/insurer. Therefore, this case also would not come to the aid of the insurance company's contention. In another unreported judgment in MFA No.3604/2008, between ***Branch Manager ICICI Lombard GIC Ltd. and Hanamantha and another***, the driver was driving four wheeler vehicle and there was violation of Section 3(2) of the Act as well as Rule 3 of the Motor Vehicle Rules and therefore, this judgment is also not applicable to the case on hand. Another case i.e. ***National Insurance Company vs.***

Challa Bharatamma and others (stated supra), pertaining to the permit, is also not applicable to the case on hand.

28. On the other hand, in view of the principles laid down by the Hon'ble Apex Court as well as the Hon'ble High Courts in the case of **Mandar Madhav Tambe, (stated supra)**, **Mahamooda (stated supra)**, **Sheela Devi and others (stated supra)** and **Shivapal Singa (stated supra)** the licence held by respondent No.1, even though it was a learner's licence, but it is a valid licence. Therefore, it cannot be said that there was any violation of terms and conditions of the insurance policy. Even the Central Motor Vehicle Rules strictly contemplates accompanying of an instructor in a motor vehicle, but excludes the motorcycle. Therefore, I hold that a learner's licence is also a valid licence, the rider or the learner need not accompany any instructor for motorcycle, as required in case of four wheeler motor

vehicle, which require instructor. Therefore, the contention taken up by the insurer that the respondent No.1 was not holding a valid driving licence and she was holding only learner's licence to ride a motorcycle on the road, cannot be accepted. The Tribunal after considering the evidence on record has rightly concluded that the learner's licence held by respondent No.1 is a valid licence and has rightly fastened the liability on the insurer. Therefore, the findings of the Tribunal regarding fastening of liability on the insurer does not call for any interference of this Court. Hence, I answer Point No.1 in favour of the claimant and against the insurer.

29. **Point No.2:** The next question to consider is in respect of controversy in quantum of compensation. It is not in dispute that the deceased Mangala was a Headmistress and she was earning monthly salary of Rs.20,903/- and after deducting Rs.200/- towards

professional tax, it comes to Rs.20,703/- as per Ex.P-9/salary certificate.

30. As per the decision of the Hon'ble Apex Court in the case of ***National Insurance Company v. Pranay Sethi and another***, reported in ***AIR 2017 SC 5157***, for the age group above 50 years, 15% of the income has to be added towards future prospectus, which comes to Rs.23,808/-(Rs.3105+Rs.20,703= Rs.23,808/-). Claimant No.1 being the husband and earning member, cannot be considered as a dependant and claimant No.2 being son of the deceased alone is considered to be a dependant. Therefore, 50% of the income has to be deducted towards personal expenses of the deceased, which comes to Rs.11,904/- (Rs.23,808/2 = Rs.11,904).

31. Though the counsel for the appellant has contended that the deduction must be 3/4th as the claimant No.2 is also depending on his father, who is the first claimant, the said contention of the learned counsel

for appellant/insurer cannot be acceptable. Even though claimant No.2 only depending on the deceased, 50% of the income has been deducted towards the personal expenses of the deceased. The counsel for the appellant/insurer has also argued that the deceased was working as headmistress in government primary school and it is definite that she would retire from her service at the age of 60 years and hence, the split multiplier has to be considered instead of considering multiplier "11". The arguments advanced by the learned counsel for the appellant/insurer is acceptable one. The deceased would retire from her service on attaining her superannuation at age of 60 years and after superannuation, she would get only pensionary income but not 100% of salary and hence, split multiplier would apply. Therefore, multiplier "11" has to be split into "5" + "6" since the age of the deceased was 55 years at the time of accident. After deducting 50% of the income, the net income of Rs.11,904/- per month is multiplied by 12 months and

multiplier “5”, which comes to Rs.7,14,240/- (Rs.11,904 X 12 months X 5 multiplier = Rs.7,14,240). The deceased would get pension nearly 50% of her salary, which comes to Rs.5952/- per month. After superannuation multiplier “6” would apply and hence, it would come to Rs.4,28,544/- (Rs.5952 x 12 months x ‘6’ multiplier = Rs.4,28,544/-). Therefore, total loss of dependency would be Rs.11,42,640/- (Rs.7,14,240 + Rs.4,28,544 = Rs.11,42,784). Though the Tribunal has considered the split multiplier to award the compensation, but it is less than the amount re-assessed. As per the decision of the Hon’ble Apex Court in the case of ***Magma General Insurance Company Ltd. V. Nanu Ram and others***, reported in ***2018 ACJ 2782***, the claimants are also entitled for Rs.70,000/- (Rs.40,000/- to 1st claimant towards loss of spousal consortium and Rs.30,000/- to 2nd claimant towards loss of parental consortium), Rs.15,000/- towards funeral expenses and transportation expenses and Rs.15,000/- towards loss of

estate, which comes to Rs.1,00,000/-. The Tribunal after considering the medical documents has awarded Rs.83,750/- towards medical expenses and same is retained. Accordingly, the claim is re-assessed, which would be as under:-

Towards loss of dependency	Rs.11,42,784/-
Towards Consortium	Rs. 70,000/-
Towards funeral expenses and transportation of dead body	Rs. 15,000/-
Towards loss of estate	Rs. 15,000/-
Towards medical expenditure	Rs. 83,750/-
Total	Rs.13,26,534/-

32. The claimants actually entitled to reassessed compensation of Rs.13,26,534/- whereas the Tribunal has awarded only Rs.12,65,731/-. In view of non-filing of appeal, the claim is restricted to the amount awarded by the Tribunal. The contention taken by the learned counsel for appellant/insurer that the Tribunal has awarded the exorbitant and excessive compensation

cannot be acceptable and it do not call for any interference of this Court. Accordingly, I answer point No.2 against the insurer and in favour of the claimants.

33. **Point No.3:** Though the counsel for appellant/insurer has contended that the interest at 9% awarded by the Tribunal is also on the higher side and prayed for reduction of interest to 6% p.a. The Tribunal by relying upon the judgment of the Hon'ble Supreme in the case of ***Supedei (Shrimati) and others v. National Insurance Company Ltd., and another***, reported in ***2009(4) SCC page 813*** has awarded interest at the rate of 9% p.a. Same is retained as the re-assessed compensation is more than what was awarded and restricted to Rs. 12,65,731/- from Rs.13,26,534/-. Therefore, the rate of interest need not be reduced as contended by the Insurance Company. Hence, the point No.3 is answered against the insurer and in favour of the claimants.

34. In view of my discussions held above, the appeal filed by the appellant/insurer deserves to be dismissed.

35. Accordingly, the appeal is ***dismissed***.

Sd/-
JUDGE

msr/yan