# National Insurance Company Ltd. vs Birender on 13 January, 2020

## Equivalent citations: AIR 2020 SUPREME COURT 434, AIRONLINE 2020 SC 21, (2020) 1 ACC 130, (2020) 1 MAD LJ 803, (2020) 1 RECCIVR 694, (2020) 1 TAC 675, (2020) 2 ANDHLD 14, (2020) 2 SCALE 7, 2020 AAC 545 (SC), AIRONLINE 2020 SC 879

## Author: A.M. Khanwilkar

## Bench: Dinesh Maheshwari, A.M. Khanwilkar

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 242-243 OF 2020
(Arising out of SLP (Civil) Nos. 976-977 of 2020)
(Diary No. 47693 OF 2018)

National Insurance Company Limited …Appellant(

Versus

Birender and Ors. …Respondent(s)

WITH

CIVIL APPEAL NO. 244 OF 2020
(Arising out of SLP (Civil) No. 978 of 2020)
(Diary No. 17683 OF 2019)

JUDGMENT

A.M. Khanwilkar, J.

1. Delay condoned.

2. Leave granted.

3. These civil appeals emanate from the common judgment and order dated 8.8.2018 passed by the High Court of Punjab and Haryana at Chandigarh (for short, 'the High Court') in cross appeals Reason:

> being F.A.O. Nos. 1341 of 2016 (O&M) and 4023 of 2016 (O&M), questioning the correctness of the award dated 4.12.2015 passed by the Motor Accidents Claims Tribunal, Jind (for short, 'the Tribunal') in M.A.C.T. Case No. 205 of 2014. The former appeal (arising out of S.L.P.(C) No...../2020 @ Diary No. 47693/2018) has been preferred by the insurance company and the latter appeal (arising out of S.L.P. (C) No...../2020 @ Diary No. 17683/2019) by the claimants□respondent Nos. 1 and 2. The parties are referred to as per their status in the former appeal for the sake of convenience.

4. The claim petition was filed by the respondent Nos. 1 and 2 herein, who are the major sons of Smt. Sunheri Devi (deceased). The deceased was on her way to attend the office of Tehsildar, Uchana (where she was working as a Peon) from Dharoli Khera village on 20.10.2014 at about 9.00 a.m., travelling as a pillion rider on a motorcycle bearing No. HR□32□G□8749. At that time, a dumper/tipper bearing registration No. HR□56□A□3260 coming from the opposite direction, being driven in a rash and negligent manner, collided with the motorcycle, resulting in fatal injuries sustained to the deceased to which she succumbed.

5. The respondent Nos. 1 and 2 claimed an amount of Rs.50,00,000/□(Rupees fifty lakhs only) along with interest at the rate of 12% per annum on the assertion that the deceased was earning Rs.28000/□per month (Rs.21000/□as salary and Rs.7000/□as family pension of her husband), she was hale and healthy and was the only bread earner of her entire family and that they were largely dependant upon her income and have also been deprived of her love and affection. The appellant disputed the claim and pleaded that the accident did not occur with the offending vehicle (the dumper/tipper) or due to fault of its driver, and that the respondent Nos. 1 and 2 were majors and not dependant upon the deceased and as such not entitled for any compensation. Further, the vehicle in question was being plied in contravention of terms and conditions of the insurance policy and the driver was not holding a valid and effective driving licence. Resultantly, the insurance company□appellant was not liable to pay compensation.

6. After analysing the evidence on record, the Tribunal held that the accident of the deceased occurred due to rash and negligent driving of the offending vehicle. The Tribunal further noted that the driver and the owner of offending vehicle have placed on record the driving licence of the driver, valid insurance policy, public carrier permit and the registration certificate of the offending vehicle and the appellant having failed to lead any evidence to prove that the terms and conditions of the insurance policy were violated, cannot be absolved of its liability. The Tribunal also noted that though the respondent Nos. 1 and 2 were major and earning hands, the fact that they were legal heirs of the deceased and have been deprived of the pecuniary benefits through the deceased cannot be denied.

7. Having decided the above issues in favour of the respondent Nos. 1 and 2, the Tribunal while determining the quantum of compensation took note of the gross monthly salary of the deceased as on September, 2014, which according to her service record was Rs.23,123/- and the net take home salary was Rs.16,918/-. The Tribunal did not consider the family pension for computation, as the deceased was getting it in her own right as widow and the same could not be reckoned. Her date of birth was 1.4.1967 and date due for retirement was 31.3.2027, for which multiplier of '13' was applied. The deduction towards personal expenses was kept at 50% as the respondent Nos. 1 and 2 were major and earning hands. Thus, the loss of dependency was determined at Rs. 17,15,532/-. In addition, an amount of Rs.25,000/- was awarded on account of funeral expenses, etc. and the total compensation was computed at Rs.17,40,532/- along with interest at the rate of 9% per annum from the date of institution of petition. The driver, owner and insurer of the offending vehicle were held jointly and severally liable.

8. Against the award passed by the Tribunal, cross appeals were preferred being F.A.O. No. 1341 of 2016 (O&M) filed by the appellant and F.A.O. No. 4023 of 2016 (O&M) filed by the respondent Nos. 1 and 2. The appellant (insurance company) primarily contended that the respondent Nos. 1 and 2 are not entitled to compensation for loss of dependency as they are major and earning and also because the family of the deceased was entitled to receive financial assistance under the Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 (in short, 'the 2006 Rules'). The respondent Nos. 1 and 2 contended that being major and also earning by itself cannot be regarded as ineligibility to claim compensation. Further, the Tribunal has wrongly assessed loss of dependency on take-home salary instead of the drawing salary and without considering the family pension received by the deceased had she been alive. They further claimed that the deduction of personal expenses should be one-third (1/3rd) instead of 50%.

9. The High Court by considering the monthly salary for computing compensation as Rs.23,123/-, benefits of future prospects at 30%, applying a multiplier of '13' and deduction for personal expenses at 50% held that the respondent Nos. 1 and 2 were entitled to loss of dependency qua loss of income at Rs.23,44,672/-. The High Court, in addition, while considering the loss of dependency qua loss of pension by taking monthly pension at Rs.7,000/-, applying a multiplier of '13' and deduction for personal expenses at 50%, held that Rs.5,46,000/- would be payable towards this head. The compensation under conventional heads was also increased from Rs.25,000/- to Rs.30,000/-. Therefore, the total compensation payable was determined as Rs.29,20,672/-. The High Court further noted that financial assistance available to the family of the deceased, under the 2006 Rules would be Rs.33,29,712/- and deducted 50% of the said amount from compensation whilst relying upon a judgment of the same High Court in New India Assurance Co. Ltd. v. Ajmero and others1. The High Court then deducted that amount of Rs.16,64,856/- from the compensation amount of Rs.29,20,672/- determined by it. Resultantly, the High Court reduced the compensation awarded by the Tribunal to the extent of Rs.4,84,716/- and gave liberty to the appellant to recover the excess amount, if already paid.

10. The former appeal is preferred by the appellant on the ground that the High Court ought to have deducted the entire amount of financial assistance under the 2006 Rules, instead of deducting only 1 F.A.O. No. 2648 of 2016, decided on 31.07.2017 50% thereof. Reliance was placed on the judgment

of this Court in Reliance General Insurance Co. Ltd. v. Shashi Sharma and Ors.2. It is urged that claim for loss of dependency is unavailable to the respondent Nos. 1 and 2 in the facts of the present case, they being major sons of the deceased who were married and also gainfully employed. Reliance is placed on Manjuri Bera (Smt) v. Oriental Insurance Co. Ltd. & Anr.3. It is urged that the respondent Nos. 1 & 2 may be entitled only to compensation under conventional heads as held in National Insurance Company Limited v. Pranay Sethi & Ors.4.

11. The latter appeal has been preferred by the respondent Nos. 1 and 2, primarily on the ground that the High Court erred in deducting 50% of the amount from compensation instead of one□third (1/3 rd). Further, deduction of 50% amount of the financial assistance receivable under the 2006 Rules on the assumption that the respondent Nos. 1 and 2 are eligible therefor is a manifest error. Reliance is also placed on the decision of the High Court in Ajmero (supra). It is urged that the High Court ought to have considered that the respondent Nos. 1 and 2 were dependant on the deceased and 2 (2016) 9 SCC 627 3 (2007) 10 SCC 643 4 (2017) 16 SCC 680 that they have been deprived of her love and affection and income and thus entitled to compensation as claimed in the original application in that regard.

12. We have heard Mr. Amit Kumar Singh, learned counsel for the insurance company (appellant) and Ms. Abha R. Sharma, learned counsel for the respondent Nos. 1 and 2. The principal issues which arise for our consideration are as follows: □

(i) Whether the major sons of the deceased who are married and gainfully employed or earning, can claim compensation under the Motor Vehicles Act, 1988 (for short, 'the Act')?

(ii) Whether such legal representatives are entitled only for compensation under the conventional heads?

(iii) Whether the amount receivable by the legal representatives of the deceased under the 2006 Rules is required to be deducted as a whole or only portion thereof?

13. Reverting to the first issue □that needs to be answered on the basis of the scheme of the Act. Section 166 of the Act provides for filing of application for compensation by persons mentioned in clauses (a) to (d) of sub□Section (1) thereof. Section 166 of the Act, as applicable at the relevant time, reads thus: □"Section 166. Application for compensation.□(1) An application for compensation arising out of an accident of the nature specified in sub□section (1) of section 165 may be made□

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

> Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. (2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:
>
> Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant. (3) *** (4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act." (emphasis supplied)

14. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependant on the deceased, would be still covered by the expression "legal representative" of the deceased. This Court in Manjuri Bera (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. Notably, the expression "legal representative" has not been defined in the Act. In Manjuri Bera (supra), the Court observed thus:-"9. In terms of clause (c) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 of the Act.

10. .....The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

11. According to Section 2(11) CPC, "legal representative" means a person who in law represents the estate of a de-ceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representa-tive under the Arbitration and Conciliation Act, 1996 i.e. un-der Section 2(1)(g).

12. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique [1989 Supp (2) SCC 275 the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the prop□erty of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or adminis□trators in possession of the estate of the deceased. All such persons would be covered by the expression "legal represen□tative". As observed in Gujarat SRTC v. Ramanbhai Prabhatb□hai [(1987) 3 SCC 234 a legal representative is one who suf□fers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, par□ent and child." In paragraph 15 of the said decision, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between "right to apply for compensation" and "entitlement to compensation". The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning.

15. 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. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/□and Rs.1,50,000/□per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.

16. The next issue is about the deduction of the amount receivable by the legal representatives of the deceased under the 2006 Rules from the compensation amount determined by the Tribunal in terms of the decision of three□Judge Bench of this Court in Shashi Sharma (supra). This Court, after analysing the relevant rules, opined as follows: □"23. Reverting back to Rule 5, sub□rule (1) provides for the period during which the dependants of the deceased employee may receive financial assistance equivalent to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim. Sub□rule (2) provides that the family shall be eligible to receive family pension as per the normal Rules only after the period during which they would receive the financial assistance in terms of sub□rule (1). Sub□rule (3) guarantees the family of a deceased government employee of a government residence in occupation for a period of one year from the date of death of the employee, upon payment of normal rent/licence fee. By virtue of sub□ rule (4), an ex gratia assistance of Rs 25,000 is provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner. Sub□rule (5) clarifies that house rent

allowance shall not be a part of allowance for the purposes of calculation of assistance.

24. .....As regards the second part, it deals with income from other source which any way is receivable by the dependants of the deceased government employee. That cannot be deducted from the claim amount for determination of a just compensation under the 1988 Act.

25. The claimants are legitimately entitled to claim for the loss of "pay and wages" of the deceased government employee against the tortfeasor or insurance company, as the case may be, covered by the first part of Rule 5 under the 1988 Act. The claimants or dependants of the deceased government employee (employed by the State of Haryana), however, cannot set up a claim for the same subject falling under the first part of Rule 5—"pay and allowances", which are receivable by them from employer (the State) under Rule 5(1) of the 2006 Rules. In that, if the deceased employee was to survive the motor accident injury, he would have remained in employment and earned his regular pay and allowances. Any other interpretation of the said Rules would inevitably result in double payment towards the same head of loss of "pay and wages" of the deceased government employee entailing in grant of bonanza, largesse or source of profit to the dependants/claimants.....

26. Indeed, similar statutory exclusion of claim receivable under the 2006 Rules is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of pay and wages of the deceased has already been or will be compensated by the employer in the form of ex gratia financial assistance on compassionate grounds under Rule 5(1). The Claims Tri□bunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the dependants/claimants towards the head of "pay and allowances" in the form of ex gratia financial assis□tance, therefore, cannot be paid for the second time to the claimants. True it is, that the 2006 Rules would come into play if the government employee dies in harness even due to natural death. At the same time, the 2006 Rules do not ex□pressly enable the dependants of the deceased government employee to claim similar amount from the tortfeasor or in□surance company because of the accidental death of the de□ ceased government employee. The harmonious approach for determining a just compensation payable under the 1988 Act, therefore, is to exclude the amount received or receiv□able by the dependants of the deceased government em□ployee under the 2006 Rules towards the head financial as□sistance equivalent to "pay and other allowances" that was last drawn by the deceased government employee in the nor□mal course. This is not to say that the amount or payment receivable by the dependants of the deceased government employee under Rule 5(1) of the Rules, is the total entitle□ment under the head of "loss of income". So far as the claim towards loss of future escalation of income and other bene□fits is concerned, if the deceased government employee had survived the accident can still be pursued by them in their claim under the 1988 Act. For, it is not covered by the 2006 Rules. Similarly, other benefits extended to the dependants of the deceased government employee in terms of sub□rule (2) to sub□rule (5) of Rule 5 including family pension, life in□surance, provident fund, etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependants of the deceased government em□ployee, applying the principle expounded in Helen C. Re□bello v. Maharashtra SRTC, (1999) 1 SCC 90 and United In□dia Insurance Co. Ltd. v. Patricia Jean Mahajan, (2002) 6 SCC 281 cases.

27. A priori, the appellants must succeed only to the ex□tent of amount receivable by the dependants of the deceased government employee in terms of Rule 5(1) of the 2006 Rules, towards financial assistance equivalent to the loss of pay and wages of the deceased employee for the period speci□fied." (emphasis supplied) The learned Judge of the High Court has, however, after adverting to the decision of the same High Court in Ajmero (supra), went on to observe that 50% of the amount receivable by the legal representatives of the deceased towards financial assistance under the 2006 Rules is required to be deducted from the compensation amount. In the relied upon decision, the same learned Judge had occasion to observe as follows: □"... However, perusal of the judgment would reveal that the Court has not adverted to the issue that had the Rules of 2006 extending assistance to family of a deceased employee been not in existence, family would have been entitled to pension to the extent of 50% of the last drawn pay. As per the settled position in law, the pensionary benefits available to family of a deceased employee are not amenable for deduction for computing loss of dependency. There is nothing on record suggestive of the fact that in addition to compassionate assistance under the Rules, family of the deceased is being paid pension till the age of superannuation. Rather Rule 5(2) of the 2006 Rules specifically denies family pension as per normal rules..." (emphasis supplied)

17. The view so taken by the High Court is not the correct reading of the decision of three□Judge Bench of this Court in Shashi Sharma (supra) for more than one reason. First, this Court was conscious of the fact that under Rule 5(2) of the 2006 Rules, the family pension receivable by the family would be payable, however, only after the period, during which the financial assistance is received, is completed. In that context, in paragraph 24 of the reported decision, the Court clearly noted that the amount towards family pension cannot be deducted from the claim amount for determination of a just compensation under the Act. Further, the High Court has erroneously assumed that the family of the deceased would be entitled for family pension amount immediately after the death of the deceased employee. That is in the teeth of the scheme of the 2006 Rules, in particular Rule 5(2) thereof. The said Rules provide for financial assistance on compassionate grounds, as also, other benefits to the family members of the deceased employee and as a package thereof, Rule 5(2) stipulates that the family pension as per the normal rules would be payable to the family members only after the period of delivery of financial assistance is completed. The validity of this provision is not put in issue. Suffice it to say that the view taken by the High Court in Ajmero (supra) is a departure from the scheme envisaged by the 2006 Rules, in particular, Rule 5(2). That cannot be countenanced.

18. As a matter of fact, in the present case, the High Court committed manifest error in assuming that the respondent Nos. 1 and 2 would be eligible to receive financial assistance under the 2006 Rules. The eligibility to receive such financial assistance has been spelt out in Rule 3 of the 2006 Rules read with the provision of Pension/Family Pension Scheme, 1964. It appears that major sons and married daughters are not included in the definition. However, we need not dilate on that aspect in the present proceedings any further. It has come in the evidence of Gobind Singh, Clerk in SDM Office (PW□1) that the legal representatives of the deceased have not submitted any request for getting financial assistance till he had deposed. Indeed, respondent No. 1, who had entered the witness box, did depose that they had applied for getting salary of their deceased mother. The fact remains that there is no clear evidence on record that respondent Nos. 1 and 2 are held to be eligible

to get financial assistance or in fact, they are getting such financial assistance under the 2006 Rules. The High Court, therefore, instead of providing for deduction of the amount receivable by the legal representatives of the deceased on this count (under the 2006 Rules), from the compensation amount, should have independently determined the compensation amount and ordered payment thereof subject to legal representatives of the deceased filing affidavit/declaration before the executing Court that they have not received nor would they claim any amount towards financial assistance under the 2006 Rules, so as to become entitled to withdraw the entire compensation amount.

19. Reverting to the determination of compensation amount, it is noticed that the Tribunal proceeded to determine the compensation amount on the basis of net salary drawn by the deceased for the relevant period as Rs.16,918/- per month, while taking note of the fact that her gross salary was Rs.23,123/- per month (presumably below taxable income). Concededly, any deduction from the gross salary other than tax amount cannot be reckoned. In that, the actual salary less tax amount ought to have been taken into consideration by the Tribunal for determining the compensation amount, in light of the dictum of the Constitution Bench of this Court in paragraph 59.3 of Pranay Sethi (supra).

20. Similarly, the High Court despite having taken note of the submission made by the respondent Nos. 1 and 2 that the deduction for personal expenses of the deceased should be reckoned only as one-third (1/3rd) amount for determining loss of dependency, maintained the deduction of 50% towards that head as ordered by the Tribunal. This Court in Pranay Sethi (supra), in paragraph 37, adverted to the dictum of this Court in Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr.5 with approval, wherein it is held that if the dependant family members are 2 to 3, as in this case, the deduction towards personal and living expenses of the deceased should be taken as one-third (1/3rd). In other words, the deduction towards personal expenses to the extent of 50% is excessive and not just and proper considering the fact that the 5 (2009) 6 SCC 121 (para 30) respondent Nos. 1 and 2 alongwith their respective families were staying with the deceased at the relevant time and were largely dependant on her income.

21. Be that as it may, the Tribunal, for excluding the amount received by the deceased as family pension due to demise of her husband, had noted in paragraph 26, as under: -"26. Learned counsel for the claimants further requested that about to family pension being drawn by the deceased also be calculated for the purpose of assessing the compensation. This contention and assertion of learned counsel for the claimants does not carry any conviction with the Tribunal because the deceased was getting family pension in her own right as the widow of the deceased and cannot be termed as her income for the purpose of computing the amount of compensation." The High Court, without reversing the said finding, proceeded to include the amount of Rs.7,000/- per month received by the deceased as pension amount after demise of her husband. We are in agreement with the view taken by the Tribunal and for the same reason, have to reverse the conclusion recorded by the High Court to include the said amount as loss of dependency. That could not have been taken into account, as the same was payable only to the deceased being widow and not her income as such for the purpose of computing the amount of compensation.

22. Considering the above, respondent Nos. 1 and 2 would be entitled for compensation to be reckoned on the basis of loss of dependency, due to loss of gross salary (less tax amount, if any) of the deceased and future prospects and deduction of only one□third (1/3 rd) amount towards personal expenses of the deceased. As regards the multiplier '13' applied by the Tribunal and the High Court, the same needs no interference. As a result, on the facts and in the circumstances of this case, the amount payable towards compensation will have to be recalculated on the following basis: □Loss of dependency due to loss of income calculated at Rs.31,26,229.60/□[(Rs.23,123/□x 12 x 13) + (30% future prospects) – (1/3rd deduction for personal expenses)]. In addition, the claimants would be entitled for a sum of Rs.70,000/□towards conventional heads in terms of dictum in paragraph 59.8 of Pranay Sethi (supra). Thus, a total sum of Rs.31,96,230/□(Rupees thirty□one lakhs ninety□six thousand two hundred thirty only), as rounded off, is payable to the claimants.

However, this amount alongwith interest at the rate of 9% per annum from the date of filing of the claim petition till payment, will be payable subject to the outcome of the application made by the respondent Nos. 1 and 2 to the competent authority for grant of financial assistance under the 2006 Rules. If that application is allowed and the amount becomes payable towards financial assistance under the said Rules to the specified legal representatives of the deceased, commensurate amount will have to be deducted from the compensation amount alongwith interest component thereon. The respondent Nos. 1 and 2, therefore, can be permitted to withdraw the compensation amount only upon filing of an affidavit□cum□declaration before the executing Court that they have not received nor would claim any amount towards financial assistance under the 2006 Rules and if already received or to be received in future on that account, the amount so received will be disclosed to the executing Court, which will have to be deducted from the compensation amount determined in terms of this order. The compensation amount, therefore, be paid to the respondent Nos. 1 and 2 subject to the above and upon giving an undertaking before the executing Court to indemnify the insurance company (appellant) to that extent.

23. The appeals are partly allowed in the aforementioned terms with no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

....., J (A.M. Khanwilkar) ....., J (Dinesh Maheshwari) New Delhi;

January 13, 2020.