**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 455 OF 2011

1. Vijay Shankarsing Vishwanathsing,
Age: 62 years, Occ: Retired,
R/o. Ranapratgap Nagar Plot No.116/1,
Kanpur City, Tal. & Dist. Kanpur (U.P.)

2. Heeradevi Vijay Shankarsing,
Age: 52 years, Occ: Household,
R/o. Ranapratgap Nagar Plot No.116/1,
Kanpur City, Tal. & Dist. Kanpur (U.P.) ...Appellants

versus

1. Suresh Ganu Zirpe,
Age: 52 years, Occ: Driver/Owner,
R/o. Khardgaon, Tq. Shevgaon,
Dist. Ahmednagar.

2. The New India Assurance Co. Ltd.,
Ahmednagar Division through
Through it's Regional Office,
Aurangabad, Adalat road,
Taluka & Dist. Aurangabad. ...Respondents

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Mr. G.S. Rane, Advocate for appellants
Mr. N.B. Narwade, Advocate for respondent No.1
Mr. Mohit Deshmukh, Advocate h/f Mr. S.G. Chapalgaonkar, Advocate for respondent No.2

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CORAM : N.W. SAMBRE, J.

DATE : 1st JULY, 2015

ORAL ORDER :

This is an appeal under Section 173 of Motor Vehicles Act, 1988. The applicants are claimants in Motor Accident Claim Petition No. 271 of 2008 preferred under Section 166 of the Motor

Vehicles Act. The son of complainant namely Shesh died on the spot while he was riding motor cycle bearing No. MH-20-AD-6755, which was dashed by offending truck bearing registration No. MH-30-L-1825.

2. In the claim petition, it was claimed by the present appellants that the age of deceased Shesh at the time of his death was 28 years and was working as Business Officer and gross salary drawn by him was Rs.18,500/- per month. It is further claimed that Crime No. 01 of 2008 came to be registered against the driver of offending truck bearing No. MH-30/L-1825 for the offence punishable under Sections 279, 338, 304(A) of Indian Penal Code. It is claimed that post mortem of deceased Shesh was performed in the Government Hospital and compensation of Rs.40,00,000/-, as such, was claimed by the appellants in the claim petition. The tribunal, while considering the claim for grant of compensation has awarded Rs.8,20,000/-, as such, present appeal.

3. Learned Counsel for the appellants has made two-fold submissions; (1) that the compensation awarded is inadequate and award of the tribunal suffers from material illegality as salary that was taken into account by the tribunal is not based on the last pay slip but on the basis of certificate which has hardly any evidentiary value.

(2) Once salary slip at Exhibit-27 for the month of December,2007 was produced, which depicts gross salary of Rs.18,553/- per month and net salary as Rs.16,982/-, same ought to have been considered for the purpose of awarding compensation, as that was last salary drawn in view of the date of accident dated 01/01/2008. According to him, certificate which was taken into account by learned tribunal for inferring monthly salary of Rs.10,001/- i.e. yearly Rs.1,20,006/- is perverse approach. In addition to above, learned Counsel for the appellants would urge that it is settled law that under Section 168 of the Motor Vehicles Act while awarding compensation, multiplier is required to be applied by taking into account the age of deceased and not age of claimants as is done in the present case. He would submit that as age of the deceased was 28 years on the date of his death, proper multiplier would be 18. So as to draw support to the above referred submissions, learned Counsel for the appellants relied upon the judgment of the Apex Court in the matter of ***Amrit Bhanu Shali and others vs. National Insurance Co. Ltd. and others*** reported in ***2012 AIR SCW 3901***. According to him, paragraph-17 of the said judgment is amply clear.

4. Learned Counsel for the respondents would urge that certificate of salary is taken into account is bestowing status on Shesh as a Business Officer and was issued on 01/08/2007.

According to him, as such, the said certificate speaks of salary of Rs.10,001/- per month and in view thereof, for the purpose of calculation of compensation, said salary was rightly taken into account.

5. Having bestowed my though to the submissions made, it is required to be considered here that in support of claim, the claimants have examined one Aroon Mishra, who was working as Area Manager and was knowing deceased Shesh. In his deposition, he has stated that last gross salary drawn by deceased was Rs.18,553/- and net salary was Rs.16,982/-. He has placed on record the salary certificate of deceased Shesh for the month of December, 2007 depicting his last gross salary as is apparent from the salary slip. It is also stated by him that deceased was holding degree of B. Pharmacy and his performance with the company was good. According to him, there was hope of promotion for the deceased Shesh upto the post of Regional Manager with salary tag of Rs.40,000/- per month.

6. In the cross examination, he has in clear terms stated that the employees get fitness allowance towards maintaining fitness as is required in the job of marketing of pharmaceutical product. According to him, actual disbursement of salary slip is placed on

record. He has placed on record at Exhibit-27, salary slip of the deceased.

7. It is required to be noted here that learned tribunal, in my opinion, has committed an error apparent on the face of record in drawing conclusion that deceased Shesh was getting salary of Rs.10,001/- per month as Business Officer, particularly in the background of the fact that he was holding degree of B. Pharmacy. There is enough material on record vide Exhibit-27 which depicts about his gross and net salary. Reliance placed by learned tribunal on the certificate so as to infer that monthly salary of deceased was Rs.10,001/-, in my opinion, is without any basis, as what is required to be taken into account is last pay drawn, for which Exhibits-26 and 27 salary slip of December 2007 speak voluminous about last salary paid to the deceased. In that view of the matter, in my opinion, the last salary drawn by deceased Shesh should have been taken into account by learned tribunal to the tune of Rs.16982/-. Exhibit-28, certificate of monthly salary depicting payment of Rs.8777/- to deceased Shesh ought to have been discarded, as the said certificate has hardly any evidentiary value and other evidence Exhibits-26 and 27 were rightly proved by witness Aroon Mishra.

8. The next submission that required to be considered is

which will be the correct multiplier in the facts and circumstances of the case in hand to be applied while awarding compensation.

9. It is brought on record that, the age of the deceased at the time of his death was 28 years. Though, as far as Schedule II under Motor Vehicle Act framed under Section 163-A, the multiplier provided is of 18, however, this Court is required to be alive of the law laid down by the Apex Court in the matter of ***Amrit Bhanu Shali*** *(supra)* and in another judgment in the matter of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another** reported in **(AIR 2009 SC 3104).** It is required to be noted that in the said judgment, it has been held by the Apex Court that, in the eventuality of death of a person at the age of 28 i.e. in between 25-30 years, the correct multiplier would be 17. The multiplier is required to be applied taking into the account the age of the deceased and not the age of the claimants. The above observations i.e. applicability of proper multiplier and the deductions and additions as are admissible, it is worth to re-produce Paragraph Nos. 16, 17 and 18 of the judgment in the ***Amrit Bhanu Shali*** (supra), which read thus:

> "16. Admittedly both the parents, Ist appellant- Amrit Bhanu Shali (father) and 2nd appellant- Smt. Sarlaben (mother) have been held to be dependents of deceased- Ritesh Bhanu Shali and, therefore, the Tribunal held that the Ist

appellant and 2nd appellant have the right to get the compensation. On the date of the accident the 3rd appellant-Mamta was not married but by the time the case was heard by the Tribunal the 3rd appellant-Mamta had already been married. In these circumstances, she is not found to be dependent upon the deceased. Thus, both the parents being dependents, i.e., father and the mother, the Tribunal rightly restricted the 'personal and living expenses' of the deceased to 50% and contribution to the family was required to be taken as 50% as per the decision of this Court in the case of Sarla Verma (supra).

17. The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation.

18. In the case of Sarla Verma (supra) this Court held that the multiplier to be used should be as mentioned in Column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and bringing it down to the multiplier of 13."

10. It is required to be noted herein that, gross salary of the deceased in the present case was more than Rs. 18,000/- p.m., whereas the net salary was Rs. 16,982/-, which includes fitness amount given to the deceased, as he was in marketing job. If the said amount is rounded to Rs. 17,000/- p.m. for the purpose of calculating the annual income of the deceased, in the present case, annual income could be worked out at Rs. 2,04,000/-. Out of Rs. 2,04,000/-, the future prospects that is required to be added is 50% of annual income, which comes to Rs. 1,02,000/-. In view thereof, after adding future prospects, annual income of the deceased could have been worked out at Rs. 3,06,000/-. Out of annual income of Rs. 3,06,000/-, as per judgment cited supra, deceased would have spent being bachelor 50% amount on him and as such, balance amount of Rs. 1,53,000/- would have been spent by the deceased on the claimants. As already observed by applying multiplier 17, the claim amount has to be calculated to which the appellants will be entitled for Rs. 26,01,000/- which is rounded to 26,00,000/- only. The appellants will be entitled for funeral expenses of Rs. 25,000/- and also loss of love and affection to the extent of Rs. 50,000/-, as such, in my opinion, total claim to which the appellants will be entitled for Rs. 26,75,000/- only. In view of provisions of Motor Vehicle Act, the appellants will be entitled for interest from the date

of filing of the claim petition and in the present case, it will be appropriate, in my opinion, to award interest @ 6% p.a. from the date of filing of the claim petition. The appellants herein, of the total claim, will be duty bound to deposit amount of Rs. 5,00,000/- each, in the fixed deposit in the Nationalized Bank at their place of residence and interest at quarterly rests will be entitled to be withdrawn by the appellants. The said deposit will be for period of three years.

11. The balance amount be paid to the appellants after adjusting the amount which is already paid. The appellants shall deposit deficit court fees.

12. With above observations, present First Appeal stands allowed in above terms.

[**N.W. SAMBRE, J.**]

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