IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.3012 OF 2013

United India Insurance Co. Ltd. ... **Appellant**
Through its Divisional Manager,
Ahmednagar Divisional Office,
Kisan Kranti Building, Ahmednagar
Dist. Ahmednagar

VERSUS

1. Dnyaneshwar Deoram More
   Age 61 years, Occu: Nil
   R/o Malinagar (Rahata),
   Taluka Rahata, Dist. Ahmednagar

2. Sau. Tarabai Dnyaneshwar More ... **Respondents**
   Age 56 years, Occu: Nil.
   R/o As above.

3. Thiru V. Nallathambi s/o Veerappa
   Gounder
   Age Major, OccU: Truck owner
   R/o Namakkal,Dist. Namakkal,
   Tamilnadu, Pin 63701

Mr. A. B. Gatne Advocate for appellant.
Mr. A. S. Gandhi, Advocate for respondents 1 and 2

CORAM : A. M. BADAR, J.

DATE : 18th November, 2015

ORAL JUDGMENT :

. As per order of this court dated 13th February, 2015, this Appeal is taken up for final hearing at the stage of admission itself.

2. This appeal by the Insurer challenging the judgment and award passed by the learned Member of the Motor Accident claim Tribunal, Kopargaon on 01.03.2011 in MACP No. 12/2005, filed by the present respondents 1 and 2, thereby granting compensation of Rs.4,29,000/- along-with interest @ Rs.7.5% on account of death of their son Sanjay, occurred in vehicular accident, which took place on 23.09.2004. For the sake of convenience, the parties shall be referred to in their original capacity.

3. Facts in nutshell, giving rise to the present appeal, can be summarized thus:

i. According to claimants, their son Sanjay was proceeding on motorcycle bearing No.MH-16L-715 from Shirdi to Rahata. Truck bearing No. TN 28 K 0532 owned by original respondent no.1 (respondent No.3 herein) came from opposite direction and gave forceful dash to the motorcycle causing instantaneous death of Sanjay. On several counts, claimant prayed for awarding compensation of Rs.3 lakhs.

ii. Respondent No.1, owner of vehicle failed to participate in the proceeding. The present appellant/original respondent no.2 opposed the claim by contending that because of breach of terms and conditions of insurance policy and particularly, as driver of the vehicle was not holding valid driving licence, it is not liable to indemnify the insurer.

iii. In support of their claim, claimants adduced evidence of claimant No.1 Dnyaneshwar More, proprietor of Guruprasad Engineering Works namely Appasaheb Jejurkar was also examined to prove income of the deceased. In rebuttal no evidence was adduced.

iv. After trial, learned Member of the Motor Accident Claim Tribunal, Kopargaon was pleased to allow claim petition by directing respondents to pay compensation of Rs.4.29 lakhs with interest thereon.

4. Mr. Gatne, learned counsel appearing for the appellant Insurance Company argued that multiplier of 13 applied by the learned Tribunal is totally erroneous. In his submission, considering age of mother of deceased, multiplier of 9 at the most could have been adopted by

the tribunal. He further submitted that award of Rs.75,000/- towards conventional compensation is totally illegal. Multiplier method was adopted by the Tribunal for assessing loss of dependency. According to learned counsel, the Tribunal erred in awarding Rs.75,000/- towards loss of future prospect and Rs.15,000/- towards loss of estate. Therefore, according to Shri Gatne, learned counsel for appellant, the award needs to be corrected by granting just compensate and the compensation awarded amounts to bonanza to the claimants.

5. Per contra, Mr. Gandhi, learned counsel for respondents 1 and 2/original claimants submitted that as per judgment of the Hon'ble Apex Court in the case of **Sarla Verma Vs. Delhi Transport Corporation,** reported in **(2009) 6 SCC 121,** multiplier should be as per age of deceased. He relied on the judgment of the Apex Court in the case of **M. Mansur and another Vs. United India Insurance Co. Ltd. and another reported in 2013 AIR (SCW) 6497,** The learned counsel further relied on the decision in the case of **Munna Lal Jain and another Vs. Vipin Kumar Sharma and others, reported in 2015 DGLS(Soft)451** and contended that multiplier to be adopted must be commensurate with the age of the

deceased. According to Shri Gandhi, learned Tribunal has not properly considered the loss of future prospect and as such, this Court should correct the award by granting just and reasonable compensation, by enhancing the compensation so awarded by the learned Tribunal.

6. As this is an appeal by the Insurance Company, would be limited to the extent of quantum of amount of compensation awarded by the learned Member of the Tribunal, we need not traverse to the facts to consider rash and negligent act of the driver of the vehicle or alleged breach of terms and conditions of contract of insurance. It has come in the evidence of claimant Dnyaneshwar that his son Sanjay was working at Trimurti Fabrication and was earning Rs.3 to 4 thousand per month. Mr. Appasaheb Jejurkar, employer of Sanjay has deposed that the deceased Sanjay was earning salary of Rs.4000/- per month. Nothing came in cross examinations of both these witnesses to disbelieve their version about income of deceased Sanjay. In the wake of this evidence, I do not find any error by the Tribunal in estimating the monthly salary of Rs.3000/- of deceased Sanjay.

7. The learned Tribunal estimated the loss of dependency of claimant at Rs.18000/- per annum by

deducting 50% towards personal living expenses of deceased Sanjay who was bachelor at the time of accidental death. Multiplier of 13 was applied and loss of dependency was assessed to Rs.2.34 lakhs. Thereafter the learned tribunal had awarded additional amount of Rs.75,000/- towards loss of future prospects of life.

8. What should be the appropriate multiplier in cases of death of bachelor was considered by the Hon'ble Supreme Court in the case of **Shakti Devi Vs. New India Insurance Co. Ltd. and another reported in 2011 ACJ 15.** In that case deceased was bachelor aged about 22 years. It was held therein that in case where age of the claimant is higher than the age of deceased, the age of the claimant and not the age of deceased, has to be taken into account for the computing loss of dependency. It is further held that this is so because choice of multiplier is determined by the age of deceased or that of claimant, whichever is higher.

9. In **Oriental** Ins Co **-Vs- Syed Ibrahim, reported** in 2007 **ACJ 2816** (SC), the Hon’ble Supreme Court has held that where parents are claimants, relevant factor would be age of parents. In the matter of M. Munnalal(supra), relied by claimant, it is held that multiplier is to be

used with reference to the age of deceased. In the matter of M. Mansur and another (supra), relying on decision in Sarla Varma's case it was held that as the age of deceased at the time of death was 24 years, multiplier would be 18.

10. In the case in hand, considering the fact that the deceased was bachelor and the claim was filed by his dependents parents, no fault can be found in choice of multiplier of 13 by the learned Tribunal, considering the age of claimants No.2 mother to be 50 years. Even in the matter of Sarla Verma (supra), appropriate multiplier for age group of 46 to 50 is 13 years. Hence, it is not possible to accede with the submissions of Mr. Gatne that multiplier of 9 should have been adopted by the learned tribunal.

11. The learned Tribunal has awarded Rs.75,000/ towards conventional compensation and Rs.75,000/- towards loss of future prospect. According to Shri Gatne, awarding of Rs.75,000/- towards conventional compensation also Rs.15,000/–towards loss of estate is erroneous. However, it needs to be mentioned here that learned Tribunal has awarded only Rs.75,000/- towards loss of future prospect in life and career advancement. If

necessary addition was made by the learned Tribunal to the annual income of the deceased on this count, I do not think that the amount of compensation would have been changed by award of Rs.75,000/- towards conventional compensation and Rs.15000/- towards loss of estate. The claimant would have been found to be entitled for similar amount of compensation had the learned tribunal assessed the loss of future prospect in life and career advancement of the deceased.

12. In the result, it needs to be held that the learned Tribunal has awarded just and proper compensation to claimants on account of death of their son Sanjay. As such, the appeal is devoid of merits and hence the same is dismissed with no order as to costs.

13. Needless to mention that the claimants/ respondents 1 and 2 shall be entitled to withdraw the amount of compensation in terms of the order of the learned Tribunal.

(A. M. BADAR, J.)

JPC