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

**FIRST APPEAL NO. 2618 OF 2013
WITH
CIVIL APPLICATION NO. 2814 OF 2015**

United India Insurance Co. Ltd.,
Through it's Divisional Manager and
authorised representative & signatory,
Ahmednagar Divisional Office,
Kisan Kranti Building, Ahmednagar,
Dist. Ahmednagar ...Appellant

versus

1. Smt. Shakuntala Suresh Arne,
Age: 42 years, Occ.: Household,

2. Kum. Manda Suresh Arne,
Age: 20 years, Occ.: Education,

3. Kum. Sonali Suresh Arne,
Age: 19 years, Occ.: Education,

4. Kum. Maya Suresh Arne,
Age: 18 years, Occ.: Education,

5. Ku. Yuvaraj Suresh Arne,
Age: 15 years, Occ.: Education,

6. Kum. Dipali Suresh Arne,
Age: 12 years, Occ.: Education,

7. Kum. Rupali Suresh Arne,
Age: 10 years, Occ.: Education,
Res. No. 6 & 7 minor, thr. Their mother
Res. No. 1, being natural guardian.

8. Mrs. Savita Shiaji Arne,
Age: 72 years, Occ.: Labour,
Res. No. 1 to 8, R/o Korhale,
Tal. Rahata, Dist. Ahmednagar.

9. Mr. Shaikh Khalil Shaikh Hussain,
Age: Major, Occ.: Business,
R/o Yeola Road, Vaijapur,
Tal Vaijapur, Dist. Aurangabad
(Owner of Truck) ...Respondents

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Mr. A. B. Gatne, Advocate for appellant.
Mr. Amol Gandhi, Advocate for respondent Nos. 1, 5 to 8.
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CORAM : N.W. SAMBRE, J.

Reserved on : 10th JULY, 2015
Pronounced on : 14th JULY,2015

ORDER :

The appellant Insurance Company has preferred this appeal questioning the legality and validity of the award delivered in Motor Accident Claim Petition No. 61 of 2007 by the Motor Accident Claims Tribunal, Kopargaon on 04/01/2013.

2. Facts, as are necessary, for deciding the present appeal, are as under :

Respondent No. 9 to the present appeal is original respondent No.1 to the claim petition and owner of the vehicle in question bearing Registration No. MH-06-7907 (truck) which was riding on Vaijapur road.

3. It is claimed by respondent Nos. 1 to 8, who are dependents on the deceased Suresh that Suresh was fruit contractor

and vendor, in sense he used to purchase fruit bearing gardens for each season and then to sell them in the market. According to them, Suresh was earning on an average Rs.8000/- per month. According to them, at the time of death of Suresh, he was of 40 years of age and as such, claimed compensation of Rs. 4,00,000/-.

4. The claim was resisted by vehicle owner, so also by insurance company. The insurance company denied its liability on the ground of breach of policy conditions, so also denied accident in question.

5. The tribunal framed issues at Exhibit-24 as regards involvement of the insured vehicle in the accident and death of Suresh due to injuries caused in the accident and answered the same in favour of the claimants. The tribunal also noticed that insured has not breached any of the policy conditions and as such, relying upon the documentary evidence viz. Spot panchnama at Exhibit-29, complaint at Exhibit-28, inquest panchnama at Exhibit-30, post mortem report at Exhibit-39, insurance cover note at Exhibit-40, Income Tax returns at Exhibit-33, driving licence at Exhibit-41 and allowed the claim ordering the insurance company to pay compensation of Rs.8,99,000/- with interest @6% p.a. from the date of claim petition.

6. Feeling aggrieved thereby, insurance company has preferred present appeal.

7. Mr. Gatne, learned Counsel for the insurance company so as to assail the judgment has raised issue about the income that was claimed by the claimants of the deceased Suresh. According to him, even if the deceased Suresh is treated to be fruit merchant, still his permanent monthly income of Rs.8000/-, is really unbelievable. According to him, even if the income tax returns at Exhibit-33 were filed on record, which was filed prior to date of accident, still no independent evidence was brought on record to establish the income of the deceased. According to him, the age of the deceased was also not established and as such, sought modification of the judgment. According to him, the income could be considered at Rs.6000/- p.m.

8. While countering the above referred contentions, Mr. Gandhi, learned Counsel for the respondents would urge that happening of the accident on Kopargaon-Vaijapur road was very much established by cogent evidence, which was produced in the form of certificates/documents issued by investigating agency. He further urged that the income tax returns at Exhibit-33 submitted to the department on 31/07/2006 depicts gross income of the deceased

Suresh as Rs.91,200/-. According to him, based on said returns, after deducting 1/5th personal expenses, the tribunal has rightly analyzed and allowed the claim petition. In support of his contention, he has relied upon the judgment of the Apex Court in the matters of **Sarla Verma & ors. Vs Delhi Transport Corporation & anr.** reported in **AIR 2009 SC 3104 and Smt. Nita W/o Kallappa Kadolkar & ors. etc vs. The Div. Manager, MSRTC, Kolhapur** in Civil Appeal Nos. 348-349 of 2015 decided on 13/01/2015.

9. I have perused the original record. The observations made by the tribunal if analyzed in the light of evidence that was brought on record, it is required to be noted that the claimants have proved the accident in question, so also insurance of the vehicle with that of the appellant. In the medical document, when Suresh was taken to hospital, his age was mentioned as 40. The document Exhibit-33 i.e. income tax return form, which was filed on 31/07/2006, the gross income of deceased Suresh was shown Rs.91,200/-.

10. It is required to be noted that family of the deceased consists of in all 8 members, out of which claimant No.1 is his wife, and claimant No.8 is his father, whereas claimant Nos. 2 to 7 are his children. In view thereof, based upon the observations made in paragraph-14 of Sarla Verma's judgment cited supra, the tribunal has

rightly deducted 1/5th amount from the income as personal expenses of deceased Suresh.

11. Paragraph-14 of the judgment in the case of Sarla cited supra, reads thus :

> “14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six.”

12. It is required to be now seen as to whether after deducting 1/5th amount of personal expenses of deceased Suresh, tribunal has rightly considered the claim put forth. The tribunal, having regard to the claim, has considered the income of the family to the tune of Rs.72,000/- and deducted 1/5th amount thereof from the said income towards personal expenses of deceased Suresh. Thereafter, tribunal proceeded to apply multiplier of 15 after considering family income of Rs.57,600/- and awarded compensation of Rs.8,99,000/-.

13. In my opinion, the award of compensation, as ordered by the tribunal, is based on legal provisions and cogent evidence.

14. No case for interference is made out. The appeal fails, same stands dismissed.

15. In view of final disposal of the first appeal, civil application stands disposed of.

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

Tupe/13.07.15