IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.107 OF 2012.

United India Insurance Co. Ltd.,
Mascarenhas Building, 2nd Floor,
M. G. Road, Panaji-Goa. ....Appellant.

Versus

1. Mr. Saish Shivanand Raikar,
s/o late Shivanand B. Raikar,
aged 30 years, r/o Flat No.MB-10,
Antruj Nagar, Ponda, Goa.

2. Ms. Kavita Shivanand Raikar,
d/o late Shivanand B. Raicar,
aged 21 years, r/o Flat No. MB-10,
Antruj Nagar, Ponda, Goa.

3. Mr. Uday Yeshwant Petkar,
Driver, s/o Yeshwant Petkar,
r/o House No. 1087, Patin,
Carona, Aldona, Bardez-Goa.

4. Jose A. J. Silveira,
Bus owner, s/o Antonio Silveira,
R/o. House No.13/303A/11,
St. Inez, Panaji, Tiswadi-Goa. ....Respondents.

Mr. E. Afonso, Advocate for the appellant.

None for the respondents.

Coram:- K. L. WADANE, J.
Reserved on: 204th March, 2015.
Pronounced on:27th March, 2015.

JUDGMENT

The present appeal is preferred by the appellant ie. United India Insurance Co. Ltd, against the judgment and award dated 7.1.2012 passed by the Presiding Officer, Motor Accident Claims Tribunal-II, Margao ("Presiding Officer" for short) in Claim Petition no.32/2010 whereby the claim petition under Section 166 of Motor Vehicles Act filed by the respondent nos.1 and 2 was partly allowed and the learned Presiding Officer has awarded total compensation of ₹17,16,665/- together with 9% interest from the date of application. Hence, the present appeal.

2. Parties shall hereinafter referred to as per their original status in the claim petition.

3. The brief facts of the case may be stated as follows:-

Claimants have moved the petition under Section 166 of the Motor Vehicles Act claiming total compensation of ₹39,31,000/- due to death of their mother in the motor vehicular accident.

On 20.09.2007 the deceased Nayan, aged about 44 years was pillion rider on the motorcycle bearing registration no.GA-01-K-6989 driven by the claimant no.1 and they were proceeding from Panaji to Ponda. When they reached near spot of the accident at that time a mini bus bearing registration no. GA-01-T-8333 driven by the respondent no.1 in the process of overtaking gave a dash to their motorcycle from a rear side. Due to the dash motorcycle was dragged up to 8.75 metres and the mini bus went further up to 55 metres.

4. In the accident deceased Nayan sustained head injuries and due to which she was unconscious, therefore, she was immediately taken to GMC and thereafter shifted to Vintage hospital for further and better medical treatment. However, during the medical treatment she died on 24.9.2007. At the time of death deceased Nayan, was aged about 44 years.

5. The respondent nos.1 and 3 have filed their respective written statement and they have denied almost all the contents of the petition. The age, occupation and income of the deceased has been specifically denied so also the negligence of the driver of the mini bus i.e. respondent no.1 is specifically denied. On the contrary it was their case that there was negligence on the part of the claimant no.1 who was driving the motorcycle. It is admitted by the respondent no.3 that the mini bus was insured

with it at the time of the accident.

6. Considering the rival contentions of both the sides, learned Presiding Officer had framed three issues and all the issues are decided in favour of the claimants and learned Presiding Officer has awarded the compensation as determined by holding that the income of the deceased was ₹12601/- per month. Hence, the present appeal.

7. I have heard the arguments of Mr. Afonso, learned counsel appearing for the respondent no.3. None appeared on behalf of the claimants. With the help of Mr. Afonso, learned counsel appearing for the respondent no.3, I have gone through the oral evidence and perused the record. During the course of arguments Mr. Afonso, argued the matter broadly on two aspects i.e learned Presiding Officer has not considered the appropriate multiplier to be applied in reference to the age of the deceased and secondly, compensation of ₹2,00,000/- awarded to the claimants on account of pain and suffering is no where contemplated under law and it is unknown to law. He also argued on the other aspects and grounds mentioned in the memo of appeal.

8. Considering the arguments advanced by Mr. Afonso and looking to the rival contentions of both the parties and the evidence on record, following points arise for my determination:-

SR. NO.	POINTS FOR DETERMINATION		FINDINGS.
1)	Whether the learned Presiding Officer has selected the appropriate multiplier considering the age of the deceased on the date of the accident?	….	No.
2)	Whether the claimants are entitled to compensation of Rs.2,00,000/- on account of pain and suffering?	….	No.
3)	What order?	….	Appeal is partly allowed.

9. From the evidence of AW2-Vinod Desai, a panch of the panchnama of scene of accident coupled with the sketch clearly shows that the spot where the accident took place. From the evidence of AW3-Suresh Kaskar, it appears that he had conducted panchanama and registered the complaint against the respondent no.1 i.e the driver of the mini bus. The negligence of the respondent no.1 has been clearly established by the evidence of AW4-Bhaskar Naik so also monthly earning of the

deceased is properly determined by the learned Presiding Officer considering the evidence of AW5-Shridhar Bhat, Chartered Accountant coupled with the income tax returns for the year 2004-2007collectively exhibited at Exh. 54. Investigating Officer AW6- Sadashiv Hunashikatty, supports the case of the claimants regarding the negligence of the mini bus driver. So there is no material controversy in the evidence on record in reference to the negligence and income of the deceased.

10. Mr. Afonso, learned counsel has pointed out that the age of the deceased Nayan has been mentioned in the medical certificate at Exh. 30 as 47 years, in the inquest panchanama at Exh. 28, it is mentioned as 45 years, in the hurt certificate at Exh. 27, it is mentioned as 48 years and in the postmortem report it is mentioned as 45 years. Therefore, by referring to the age in the above mentioned documents, Mr. Afonso, learned counsel for the respondent no. 3 has argued that the learned Presiding Officer has failed to determine the appropriate multiplier to be adopted in the present matter in reference to the direction given by the Apex Court in the case of ***Sarla Verma(smt) and others Vs. Delhi Transport Corporation and another,*** reported in ***2009(6)SSC 121***. According to Mr. Afonso, considering the age

of the deceased at the time of the accident the appropriate multiplier to be adopted is 14 and not 15 as selected by the learned Presiding Officer. In this behalf on further scrutiny of the record, it is seen that the birth date of the deceased has been mentioned in the income tax returns as 1.3.1963. This date has been consistently appearing in the income tax returns submitted by the deceased and her husband during the period from 2004-2007 wherein pan card number of the deceased is also mentioned. Therefore, obviously, the birth date given by the deceased on the basis of the pan card at the time of filing of the income tax returns appears to be perfect and in my opinion this is concrete evidence of the birth date of the deceased. Age of the deceased as shown in the other documents referred above seems to be written on the basis of guess or told by somebody. The date of birth of the deceased proved to be 1.3.1963, she died on 24.9.2007, so as on the date of the accident the deceased Nayan was aged 44 years, 6 months and 20 days and proper multiplier to be adopted in the case for person died between the age group of 41 years to 45 years is shown to be 14 as per directions in *Sarla Verma case* (supra). So Mr. Afonso was right in submitting that the appropriate multiplier to be adopted is 14 and not 15. Hence point no.1 is answered in the negative.

11. Mr. Afonso, learned counsel appearing for the respondent no. 3 has argued that at the time of accident and on the date of the filing of the petition both the claimants were major and they were not minor to consider the claim of compensation on account of loss of guidance of their parents. Therefore, according to Mr. Afonso, such compensation granted by the learned Presiding Officer is unknown to law, therefore, compensation of ₹2,00,000/- granted to the claimants towards pain and suffering on being orphan is improper. Mr. Afonso learned counsel has therefore rightly argued relying upon the observations in this behalf in the case of ***Sarla Verma*** (supra) which reads thus :-

> Step 3 (Actual calculation) The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the "loss of dependency" to the family.
>
> Thereafter, a conventional amount in the range of Rs. 5,000/- to Rs.10,000/- may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5,000/- to 10,000/- should be added under the head of loss of consortium. **But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased**."

12. In view of the observations in the above cited authority, claimants are not entitled for the compensation of ₹2,00,000/- on account of pain and suffering. Looking to the other reasons recorded by the Presiding Officer, it appears that the other reasons and observations which appears to be correct except the selection of the appropriate multiplier and awarding compensation of ₹2,00,000/- on account of pain and suffering. Therefore, the impugned judgment and award is liable to be modified to that extent only.

13. Looking to the observations of the learned Presiding Officer it appears that the learned Presiding Officer has determined the yearly income of the deceased to the extent of ₹1,51,216/- out of which 1/3rd is to be deducted towards personal expenses i.e.₹50,405/-. Hence, total dependency comes to ₹ 1,00,811/- x 14 comes to ₹14,11,354/-. In addition to that claimants are entitled for a compensation of ₹.2500/- towards loss of estate and ₹2000/- towards funeral expenses as awarded by the learned Presiding Officer. Hence, the claimants are entitled to total compensation of ₹14,15,854/- together with 9% interest from the date of the petition till its realisation. Hence, award be modified accordingly.

14. Appeal stands disposed of accordingly, with no order as to costs.

K.L. WADANE, J.

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