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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 91 OF 2015**

United India Insurance Company Ltd.,
Motor Third Party HUB RO-2,
5th Floor, Union Cooperative Insurance Building,
Sir P.M. Road, Fort, Mumbai – 400 001
(Original Opposite Party No.2)

...Appellant

Versus

1. Manjari Dilip Chuneekar,
Age – 42 years
(Original Applicant No. 1)

2. Kshitija Dilip Chuneekar,
Age : 20 years
(Original Applicant No. 2)

Both R/at Hemashree Apartment
Charai, Thane

3. Sushila Madhukar Chuneekar,
Age : 70 years,
R/at 1994, Sadashivpeth,
Modiwale Colony,
Pune – 411 030
(Original Applicant No. 3)

4. Shahaji Hindurao Malik,
269, Mangalwarpeth, Karad
(Owner of MTL 5919)
(Original Opposite Party No.1)

...Respondents

Mr. Rahul Mehta I/b KMC Legal Venture for the Appellant in FA/91/2015
and for Applicant in CAF/1753/2014

Mr. Sunil S. Bhide for the Respondent Nos. 1 to 3

CORAM : A. S. OKA &
REVATI MOHITE DERE, JJ.
RESERVED ON : 24th JUNE, 2015

PRONOUNCED ON : 11th SEPTEMBER, 2015

JUDGMENT (Per Revati Mohite Dere, J.) :

1. This is an appeal filed by the Insurance Company challenging the judgment and award dated 21st October, 2013, by which the learned District Judge-6, an Additional Member, MACT, Thane was pleased to award compensation of Rs. 88,46,000/- to the respondent-claimants, with interest @ 12% per annum (p.a.), from the date of filing of the claim petition till realization.

2. Considering the nature of controversy and the fact that the claim petition is of 1996, the appeal deserves to be taken up for final hearing forthwith. Accordingly, parties were put to notice earlier.

3. The learned Counsel for the appellant has impugned the aforesaid judgment and award on several counts- (i) that the issue of negligence has not been proved; (ii) that the last income tax return filed by

the deceased for the year 1996-97 ought not to have been considered, as the same was filed after the demise of the deceased; (iii) that the income of the deceased has not been properly calculated by the Tribunal, keeping in mind the pronouncements of the Apex Court in that regard and has erroneously come to the conclusion that the deceased was drawing a salary of Rs. 60,000/- per month, in the absence of any material to substantiate the same; and (iv) that the interest awarded to the respondent-claimants was exorbitant and contrary to the well settled principles laid down in motor accident cases.

4. The learned Counsel for the respondent-claimants supported the impugned judgment and award. He contended that the first respondent-claimant had brought on record all the documents on the basis of which the award was passed and that evidence was adduced in support of the same. He further submitted that the leave to defend granted to the appellant under Section 170 of the Motor Vehicles Act, 1988 ('M. V. Act') was contrary to the provision, as it was not a reasoned order and as such the appeal filed under Section 173 of the M. V. Act, was not maintainable.

5. Before we deal with the submissions advanced by the learned Counsel for the parties, it would be necessary to advert to the facts and the evidence that has come on record in the present case.

Deceased Dilip Madhukar Chuneekar was the husband of the first respondent, father of the second respondent and the son of the third respondent. On 30th March, 1996, Dilip Chuneekar, his brother Satish, sister-in-law Madura Chuneekar, brother-in-law Anil and maternal brother Suresh Madhukar Athalye were proceeding in a car, bearing No. BLD/2931 from Pune to Satara to meet the ailing father of the deceased. The deceased was driving the car at the relevant time. When the vehicle reached Shirvar near Pune-Satara Road, there was a traffic jam and all vehicles had come to a halt. A truck bearing No. MTQ/8521 was ahead of the vehicle, driven by the deceased and was in a stationary condition. Dilip Chuneekar also stopped his vehicle behind the said truck. A truck bearing No. MTL/5919, suddenly came from behind in excessive speed and rammed into the vehicle driven by the deceased Dilip. The said truck was being driven in a rash and negligent manner, resulting in the collision with the vehicle, driven by the deceased. As a result of the impact, the car of the deceased

rammed into the stationary vehicle standing ahead resulting in fatal injuries to the deceased and his sister-in-law Smt. Madura and grievous injuries to the other co-passengers in the vehicle. According to the respondent-claimants, due to the gross negligence of the driver of the vehicle i.e. truck No. MTL/5919, the aforesaid accident took place, resulting in the untimely deaths of Dilip and Madura. A criminal case was registered as against the driver of the offending vehicle. It is not in dispute that the driver of the offending truck bearing No. MTL/5919 was convicted in the said case. Pursuant to the said accident, the respondent-claimants filed a claim petition before the Tribunal, Thane being MACT Application No. 1012 of 1996. The said claim petition was filed in the year 1996 as against the owner of the truck Shahaji Hindurao Mulik i.e. the fourth respondent and the present appellant. The compensation sought in the claim petition, was Rs. 50,00,000/- . It appears, that subsequently as the owner of the vehicle did not contest the said petition, the appellant company sought leave to defend under Section 170 of the M. V. Act, which came to be granted by the Tribunal vide order dated 20th January, 2003. Thereafter, an application came to be filed by the respondent-claimants seeking amendment of the claim petition. The said application was filed on 29th

January, 2011. The material amendments sought were set out in the Schedule to the amendment, annexed to the said application. Clauses (5) and (8) of the said Schedule read thus :

“5. In para 5 Monthly Income of the deceased may be permitted to be amended from `Rs. 25,000/- to Rs. 30,000/- pm’ to `Rs.45,000/- pm’.”

“8. In para 13, 14(g) & in prayer (a) amount of compensation claimed `Rs.50,00,000’ be deleted & `Rs.1,50,00,000’ (Rupees One Crore Fifty Lacs Only) be inducted.”

The said amendment application was opposed by the appellant – Insurance Company. The Tribunal was however, pleased to allow the said amendment application, being Exhibit 141 vide order dated 16th January, 2012. Accordingly, permission was granted to the respondent - claimants to make necessary amendments as sought for, in the said application. In view of the amendment, the appellant company was permitted to cross-examine the first respondent-claimant. The respondent-claimants in order to prove their claim, examined the first respondent; Satish Madhukar Chuneekar - the brother of the deceased on the point of negligence; Mukund Chandrakant Bhise, Chartered Accountant and Shri Avinash Mehendale, Chartered Accountant.

Manjiri Chuneekar, wife of the deceased filed her affidavit of evidence in August, 2005. In her affidavit, she has stated that the accident took place on 30th March, 1996. She has stated that when the vehicle which was driven by her husband (deceased) stopped behind the stationery truck, the offending truck came from behind in an excessive speed, and in a rash and negligent manner rammed into her husband's stationery vehicle, resulting in the car being sandwiched between the stationery truck standing ahead and the offending vehicle. It is stated that due to the negligence of the driver of the offending truck, her husband and sister-in-law suffered fatal injuries and the other co-passengers in the car received grievous injuries. She has stated that her husband at the relevant time was 44 years of age and was in good health. She has further stated that her deceased husband had set up his own business in the year 1984 in the name and style of 'Micro-Med (India) Ltd.' and that he was the proprietor of the said company. She has further stated that the deceased had also started another company in the name and style of 'M/s. Don Whitely Scientific Equipments Pvt. Ltd.' in the year 1989 and that she and her deceased husband were Directors of the said Company. According to the first respondent, the deceased was earning Rs. 4,00,000/- annually from the said

business. She has further stated that they were dependent on the deceased and that on account of his untimely death, they had lost monthly/annual income. She has further stated that the accident in which her husband died, was a result of the sole negligence of the driver of the offending truck and hence, claimed damages under various heads, from the owner of the vehicle i.e. the fourth respondent and the present appellant. In addition to the affidavit of evidence filed, the first respondent - claimant was also examined by her Advocate, wherein, she produced her affidavit of evidence being Exhibit 35, the certified copy of the FIR, spot panchnama, inquest panchnama, post-mortem notes, death certificate, which were marked as Exhibits 36 to 40. She also produced a copy of the insurance policy, which, by consent was marked as Exhibit 41. She also produced the RTO report, which was marked as 'Article A'. She also produced the income tax returns for the year 1994-95; 1995-96 and 1996-97 which were marked initially as Articles B, C and D respectively and later as Exhibits 43, 44 and 45. Pursuant to the leave to defend granted to the appellant vide order dated 20th January, 2003, the first respondent-claimant was cross-examined at length. In her cross-examination, the first respondent has stated that presently, she was running the business of Micro-Med (India) Ltd. and Don

Whitely Scientific Equipments Pvt. Ltd.; that Micro-Med (India) Ltd. was a proprietary concern of her husband and that she took over the business, after her husband's death in the road accident; that she too was a Director of 'Don Whitely Scientific Equipments' along with her husband; and that after his death, the second respondent was taken as a Director; that the business of Micro-Med (India) Ltd., a partnership concern, is now being run by her and her daughter Kshitija, and that they were the partners; that the shares standing in her husband's name were transferred in her and her daughter's name; that Micro-Med (India) Ltd. was not involved in any manufacturing activity, but was involved in controlling of hospital infections, by way of testing and consultations; and that 'M/s. Don Whitely Scientific Equipments Pvt. Ltd.' was involved in the manufacturing of medical equipments; that during the lifetime of her husband, the proprietary concern 'Micro-Med (India) Ltd.' was also manufacturing microbiological equipments, however, the manufacturing activity had to be stopped after his demise; and that the activity of the partnership firm is now restricted only to consultancy activities. She has admitted that the entire affairs of the company were being managed by her deceased husband and herself. She has also admitted that the return for the assessment year 1996-97 was

signed by her on behalf of her husband, six months after his demise. She has in her cross-examination also stated that the business of Micro-Med was being run from 1984 and that she is ready to produce balance-sheets of profit and loss account, of both the businesses from the year 1991-92 onwards. She has accepted that for the year ending 31st March, 2004, the net profit was Rs. 4,00,000/- and that the profit of the firm 'Micro-Med' was between Rs. 40,000/- and Rs. 50,000/- during the same period. She has denied the suggestion made by the appellant's counsel, that after the demise of her husband, the income from both the businesses had not adversely affected them. The first respondent has in fact volunteered in her cross-examination and deposed that if the deceased was alive, due to his business skills and acumen, the businesses would have attained international reputation and the income there from, would have multiplied by number of years. She has stated that after her husband's demise, the business has just survived and that there is no noticeable increase in the income. She has also deposed that the entire income from the businesses is split between her and her daughter, who is married.

The respondent-claimants examined Satish Chuneekar, the

brother of the deceased and an eye-witness of the accident. The said witness has deposed with regard to the manner in which the accident took place; how the offending truck had come in a very fast speed, ten minutes after their car had come to a halt; and the manner in which the said offending vehicle dashed into their car in a rash and negligent manner. He has stated that in the said accident, his wife Madura and brother Dilip suffered fatal injuries and died on the spot. There is nothing substantial which has come in the cross-examination of the said witness so as to disbelieve the manner in which the accident took place. Suggestions made to the said witness; that the deceased was driving at a fast speed; and due to application of sudden breaks, the accident occurred, have been categorically denied by the said witness.

Mukund Bhise, a Chartered Accountant, was examined by the respondent-claimants. The said witness has produced certain documents which were marked as Exhibits 104 and 105. The Exhibits 104 and 105, dated 20th June, 2005 have been issued by the Chartered Accountant firm, of the said witness giving details of the gross business receipts, business income and income-tax of Micro-Med (India) Ltd. and Don Whitely

Scientific Equipments Pvt. Ltd. respectively. He has admitted in his cross-examination that during the life time of the deceased, he was not working as a Chartered Accountant for the said companies and that Exhibits 104 and 105 were prepared by him at the instance of the first respondent – claimant, on the basis of the Xerox copies supplied by her.

It appears from the record, that Shri Veer, an Income Tax Officer, was sought to be examined by the respondent-claimants to prove the documents i.e. Exhibits 43 to 45 (Acknowledgments of the Income-tax returns for the year 1994-95, 1995-96 and 1996-97) and that the said witness was offered for cross-examination to the Advocate for the appellant. It also appears that the advocate for the appellant admitted that the said documents were acknowledgments of the income-tax returns and being public documents, it was not necessary to cross-examine the said witness and therefore, the said witness came to be discharged. The same is recorded in the order dated 9th January, 2006, passed by the Tribunal.

Shri Avinash Mehendale, the Chartered Accountant of the said two companies, was examined as the last witness by the Court Commissioner on behalf of the respondent – claimants. He has stated that

he had prepared the income-tax returns for both the private limited companies, prior to death of the deceased as well as after his death.

The Tribunal after considering the evidence and material on record awarded compensation of Rs. 88,46,000/- with interest @ 12% p.a. from the date of the application till realisation of the said amount. In addition to this, the Tribunal awarded conventional damages of Rs. 50,000/- towards loss of consortium to the first respondent; Rs. 25,000/- to each of the respondent-claimants for loss of love and affection; Rs. 25,000/- towards loss of estate and Rs. 10,000/- towards funeral expenses. The Tribunal whilst computing compensation, took the income of the deceased from both business as Rs. 60,000/- p.m. By adding 30% towards future prospects (i.e. Rs. 60,000/- + 30% = Rs. 78,000/-), the annual income was calculated at Rs. 9,36,000/-. Keeping in mind the dependency formula applicable, which was $\frac{1}{3}^{\text{rd}}$, the income was calculated at Rs. 6,24,000/- p.a. Thereafter, considering the age of the deceased i.e. 44 years, the Tribunal applied the multiplier of 14 and thereafter came to a figure of Rs. 88,46,000/-. Out of the said amount, Rs. 50,00,000/- was awarded to the first respondent; Rs. 30,00,000/- to the second respondent;

and Rs. 8,46,000/- to the third respondent. From the said amounts, a certain amount was directed to be invested in fix deposit with a Nationalised Bank. On the said compensation of Rs. 88,46,000/-, interest @ 12% p.a. was made payable from the date of filing of the petition till realization.

6. Perused the judgment and award of the Tribunal, as well as the evidence and documents on record. In the light of the evidence and material that has come on record, it would be necessary to deal with each of the issues raised, both, by the learned Counsel for the appellant as well as by the learned Counsel for the respondent - claimants.

7. At the outset, we would like to deal with the objection raised by the learned Counsel for the respondent-claimants, with regard to the maintainability of this appeal filed under Section 173 of the M. V. Act. According to the learned Counsel for the respondent-claimants, the leave to defend granted to the appellant under Section 170 of the M. V. Act, was not a reasoned order and hence contrary to the law laid down by the Apex Court. The said contention is devoid of merit and deserves to be rejected at the outset, for the reasons set out herein under.

8. It is not in dispute that the owner of the vehicle i.e. the fourth respondent and the present appellant were being defended by the same Advocate, before the Tribunal. It is also not in dispute that the Advocate withdrew his appearance on behalf of the owner of the offending vehicle and filed an application on 7th December, 2002, on behalf of the Appellant-Insurance Company, under Section 170 of the M. V. Act, seeking leave to defend the case on merits. Para 1 of the said application preferred by the appellant reads as under :

“1. The Opponent No. 2 submits that the opponent No. 1 against whom the claim has been made, has failed and neglected to contest the claim on merits and as such it is in the interest of justice and equity to grant the permission to the opponent No.2 to defend and/or contest the claim on all or any of the grounds that are available to the Owner of the Vehicle involved in the accident and against whom the claim has been made.”

9. The Tribunal was pleased to allow the said application vide order dated 20th January, 2003. The said order reads thus:

“No say filed. Opponent No. 2 want to defend this application on merit as opponent No. 1 has neglected to defend. Hence, permission as prayed is granted.”

10. Before we deal with the submission advanced by the learned Counsel for the respondent-claimants that no reasons were recorded in the aforesaid order, as mandated by Section 170 of the M. V. Act, it would be necessary to reproduce the said Section. Section 170 of the M. V. Act reads as under :

“170. Impleading insurer in certain cases.

Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom (the claim has been made.”
(emphasis supplied)

11. Under the said Section, the Tribunal has to record its satisfaction with regard to clause (a) or (b), by giving reasons in writing, before granting leave to defend to the Insurer. In order to enable the Tribunal to pass an order in terms of Section 170, it is necessary for the

Insurer to file an application under Section 170. Thus, unless the procedure is followed, an Insurance Company cannot have a wider defence on merits, than is available to it, by way of statutory defence. In the present case, we are concerned with clause (b) of Section 170 of the M.V.Act. As the person against whom the claim was made, had failed to contest the claim, the appellant – company filed the application (Exhibit 23) under Section 170, seeking leave to defend the claim petition. The said application was allowed in terms of the order dated 20th January, 2003 set out hereinabove. The question before us, is whether the said order can be said to be a reasoned order in terms of Section 170 of the M.V.Act. The Apex Court in the case of ***United India Insurance Co. Ltd. vs. Jyotsnaben Sudhirbhai Patel & Ors.***¹ had considered the effect of the expression “for reasons to be recorded in writing in Section 170 of the M.V. Act”. The impugned order in that case was a non-speaking order passed by the Tribunal under Section 170(b). The question before the Apex Court was, whether an appeal preferred by the appellant therein, before the High Court was maintainable or whether it was barred by the provisions of the M. V. Act. The Apex Court after considering the provisions of Section 149(2) and Section 179 of

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(2003) 7 SCC 212

the M. V. Act and after considering various judgments of the Apex Court, including the case of ***Shankarayya & Anr. vs. United India Insurance Co.***

Ltd. & Anr.², in para 14, observed as under :

“14. In the instant case, the Insurance Company was impleaded as third respondent. The driver and owner of the vehicle, though appeared before the Tribunal, did not contest the proceedings. They did not file the written statement nor did they choose to give evidence before the Tribunal. Admittedly, the appellant filed an application under Section 170 of the Act seeking permission of the Tribunal contest the proceeding giving the necessary details. The award passed by the Tribunal also evidently shows that pursuant to this permission, the counsel for the appellant-Insurance Company cross-examined the witnesses produced by the claimant to prove the negligence of the offending vehicle. **Unfortunately, however, the Tribunal, while passing its orders on the petition filed under Section 170 of the Act only stated that the prayer was granted, though the mandate of Section 170(b) of the Motor Vehicles Act states that the Tribunal while passing an order shall record its reasons. This Court in Shankarayya's case (supra) had emphasised this aspect. But it is very much evident in this case that the driver and the owner of the motor vehicle did not file the written statement and failed to contest the proceedings. The Tribunal could have merely recorded that fact while allowing the application. In a situation contemplated by Clause (b) of Section 170, nothing more was required than recording that indisputable fact. For failure to do so, the appellant shall not suffer prejudice. Therefore, the appellant-Insurance Company was justified in contesting the proceedings on the grounds other than those enumerated under Sub-section (2) of Section 149 of the Act, pursuant to the permission granted by Court. For the same reason, the Insurance Company can be legitimately considered to be 'person aggrieved' within the meaning of Section 173 of the Act.**”

² (1998) 3 SCC 140

12. In the present case, the appellant-insurer contested the proceedings before the Tribunal, on the ground that the owner of the offending truck had failed and neglected to contest the claim on merits. The Tribunal has noted this indisputable fact i.e. the fourth respondent had neglected to defend, in its order and had accordingly granted the appellant, leave to defend the claim. From a perusal of the order passed by the Tribunal dated 20th January, 2003 below Exhibit 23, it appears that the order is clearly in terms of clause (b) of Section 170 of the M. V. Act and cannot be said to be an unreasoned one. Thus, what was recorded as a reason, was an indisputable fact i.e. the owner had neglected to defend. Thus, as observed by the Apex Court in *Jyotsnaben Sudhirbhai Patel (supra)*, there is recording of the indisputable fact in the order granting leave to defend and as such the requirement of Section 170 of the M. V. Act, has been complied with, in letter and spirit. No elaborate reasons were required. It is evident from the record of the case, that the owner of the offending vehicle had failed to defend the said case and had not even filed his written statement in the said proceedings. Although, the Tribunal could have also recorded the said fact, while allowing the said application, not

mentioning the same, would not in any way vitiate the order, granting leave to defend. As is observed by the Apex Court in the case of ***Jyotsnaben Sudhirbhai Patel (supra)***, for failure to do so, the appellant shall not suffer any prejudice. In fact, in a situation contemplated by clause (b) of Section 170, nothing more was required than recording of the indisputable facts. Under these circumstances, the appellant-Insurance Company is completely justified in contesting the proceedings on merits, other than those enumerated under Section 149(2) of the M. V. Act.

13. Thus, in the light of what is discussed above, we do not find any merit in the objection raised by the learned counsel for the respondent - claimants. We find that the appellant - insurance company was an 'aggrieved person' within the meaning of Section 173 of the M. V. Act and as such, the present appeal was clearly maintainable and no fault can be found in the order dated 20th January, 2003 granting leave to defend to the appellant-insurance company.

SUBMISSIONS OF THE APPELLANT

14. Now, coming to the submissions advanced by the learned Counsel for the appellant, on the point of negligence, we may note, that

negligence has been proved by the respondent-claimants, by adducing evidence in this regard. Satish Chuneekar (witness No. 2), an eye witness and a co-passenger in the car, which was driven by the deceased, was examined to prove that the driver of the offending vehicle was rash and negligent. There is nothing substantial brought on record by the appellant, in the cross examination of the said witnesses so to disbelieve his testimony. Apart from the evidence of Satish Chuneekar, it may be noted that the driver of the offending vehicle was convicted in the criminal case and the said judgment and order of conviction has also been placed on record, which is at Exhibit 94. There is no material placed on record to show that the conviction was overturned. It also appears from the record, that the appellant-insurance company had intended to examine the driver of the offending vehicle, and had infact preferred applications for summoning him before the Tribunal. Initially, summons was served on the driver of the offending vehicle and thereafter, bailable warrant came to be issued. However, the driver of the offending vehicle failed to appear and therefore the appellant - Insurance company filed a closure purshis, stating that they were unable to secure the presence of the said witness. Thus, we do not find any merit in the submission of the learned Counsel for the

appellant that negligence of the driver of the offending vehicle was not proved, in the light of what is discussed hereinabove.

15. From the material on record, it is clearly evident that the driver of the offending vehicle had driven the truck in a rash and negligent manner and had dashed the car of the deceased which had come to a halt, due to a traffic jam and as such was responsible for the accident, in which the deceased Dilip lost his life.

16. The second submission of the learned Counsel for the appellants is that the income-tax return for the year 1996-97 ought not to have been considered, as the same was filed after the demise of Dilip by the first respondent - claimant i.e. on 27th September, 1996 (six months after the demise of the deceased). He submitted that the income tax returns for the year 1994-95 shows that the income of the deceased was Rs. 81,790/- and for the year 1995-96, it was Rs. 1,91,560/-. He submitted that the income for the year 1996-97 reflects an income of Rs. 4,22,503/- and as such, could not be relied upon, considering that the same was filed after the demise of the deceased. He also submitted that the income-tax returns of

three years i.e. Exhibits 43 to 45 were not proved.

17. As far as the contention of the learned counsel for the appellant, that the income tax documents were merely marked as Articles and the contents thereof were not proved, is devoid of merit, inasmuch as, the respondent – claimants had produced Mr. Veer, an Income-tax Officer to prove the said acknowledgments of the filing of Income Tax Returns, which are at Exhibits 43 to 45. It appears from the record i.e. Exhibit 1, that the Advocate for the appellant had declined to cross-examine Shri S. R. Veer, when he was offered for cross-examination. The order below Exhibit 1 dated 9th January, 2006 reads as under :

“Adv. Shri R. M. Sonak for the applicant present. Opponent No. 1 exparte. Adv. Shri S.E.Darandale for opponent No.2 present. In view of observations in order dated 21/11/2005 on application by Id. Advocate for the applicant for admission of the documents article ‘B’, ‘C’ and ‘D’ which are admitted and marked as Exh. 43 to 45 subject to cross-examination on correctness thereof, the applicant has produced witness Shri S. R. Veer. He is offered to Adv. Shri Darandale for opponent No.2 for cross examination. Adv. Shri Darandale declines to cross-exam. in view of admitted position that the said acknowledgment for filing income tax returns are public documents and the said acknowledgment only mentions the taxable income of the assessee/deceased. Witness is discharged. (emphasis supplied)

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18. Thus, the income tax acknowledgments which were filed at Exhibits 43 to 45 can certainly be taken into consideration and read in evidence. As is recorded in the aforesaid order, the advocate for the appellant had declined to cross examine the Income Tax Officer, as he admitted that acknowledgments for filing of income tax returns were public documents. In view of the said position, it now cannot be contended that the contents thereof were not proved or that the said documents were not proved. Infact, the correctness of the said acknowledgments of Income Tax Returns, at Exhibits 43 to 45 have gone unchallenged, as is evident from the order dated 9th January, 2006. In any event, a Tribunal constituted under the Motor Vehicles Act, 1988 is not bound by the strict Rules of Evidence. Thus, there is no merit in the contention raised by the learned counsel for the appellant, that the Income Tax documents have not been proved by the respondent – claimants.

19. With regard to the submission, that the income tax returns for the year 1996–97 be ignored as the same was filed 6 months after the demise of the deceased, it is pertinent to note, from a perusal of the cross-examination of the first respondent – claimant, that no suggestion

whatsoever, was put to the said witness that the income mentioned in the income-tax return for 1996-97 had been inflated after the demise of the deceased. As no suggestion was made to the said witness, it was not necessary to lead further evidence in support thereof. In fact, in the absence of any suggestion, that the income was inflated in the subsequent returns of 1996-97, it can be said that the respondents - claimants were not put to notice of the said ground, which is now sought to be raised. Considering that the first respondent - claimant was admittedly the author of the income tax return filed for the year 1996-97, a suggestion ought to have been given to her that the same was inflated. In the absence of any suggestion to that effect, the income mentioned in Exhibit 45 has virtually gone unchallenged. Thus, the said income of the year 1996-97 can certainly be considered, while considering the income of the deceased on the date of his death.

20. The third issue raised by the learned Counsel for the appellant is that the Tribunal has erroneously come to the conclusion that the income of the deceased was Rs. 60,000/- per month (Rs. 30,000/- from each business) and consequently erred in awarding compensation of Rs.

88,46,000/-. As far as the said submission of the learned Counsel that the amount of Rs. 60,000/- which is reflected in the impugned judgment and award is without any basis, will have to be accepted in the light of the evidence which has come on record. Nowhere, in the evidence of the first respondent, it has come that the deceased was drawing an income of Rs. 60,000/- per month. The income-tax return for the year 1996-97, shows that the income of the deceased from salary was Rs. 45,000/- and income from business was Rs. 3,74,686/-. This document was produced by the respondent-claimants in support of their claim to show that the gross total income of the deceased for 1996-97 was Rs. 4,22,503/-. It is thus not clear, as to on what basis the Tribunal had come to a conclusion that the income of the deceased was Rs. 60,000/- per month. The learned counsel for the respondent-claimants was also unable to substantiate the same. In the absence of any material in support of the same and considering the income-tax returns for the year 1996-97, the finding that the deceased was drawing an income of Rs. 60,000/- per month will have to be set-aside. There was no justification for the Tribunal to come to a conclusion that the deceased was drawing a salary of Rs. 60,000 per month.

21. Coming to the next question, as to how then should the income of the deceased be computed from both, the firm and the company, in order to arrive at a just and reasonable compensation? A perusal of the evidence of the first respondent - claimant shows that her husband had done his B.Sc. in Zoology and was an MBA. Her evidence also reflects that her deceased husband was an Entrepreneur, who had renovated a number of equipments for Micro Biology and Bio-technology, and was well respected for his work by the heads of Industries in the said field. It is also evident from her evidence that the company was doing extremely well, till the untimely death of the deceased and that the returns filed, clearly show that there was a rise in the salary and business income of the company and firm respectively, by more than 100% p.a.

22. The evidence of the first respondent – claimant also shows that the Company Micro-Med was manufacturing scientific equipments and offering consultancy to various hospitals; that Don Whitely Scientific Equipments Pvt. Ltd. was in collaboration with a British Company, and that the equipments were only being manufactured by their Company in India; that the deceased was trained in U.K for the same; that there was a major

change in the running of the companies after the death of the deceased and that it was difficult to replace him, who was an entrepreneur in the said field; that the deceased was running his business and was taking out a minimal amount from the company as salary; that after the demise of the deceased Dilip, the first respondent could not find one person for both these activities i.e. for manufacturing and marketing, which were being looked after by the deceased Dilip and hence, she was constrained to appoint two persons for the same job; that she had to mortgage her jewellery with the Thane Janata Sahakari Bank Ltd. to raise funds; she had to send the persons appointed by the Company to U.K., for training; that after the demise of her husband, the workers were instigated to file a case against her in the Labour Court, as a result of which, the company suffered losses in the business, resulting in her selling two residential flats. All the aforesaid evidence has gone unchallenged, inasmuch as, there is no cross-examination by the appellant company on the said evidence. It is thus evident that after the demise of the deceased, the respondent - claimants faced difficulties financially, resulting in the income coming down drastically. Merely because the first respondent - claimant has admitted that the shares of the company were transferred in the name of the first

respondent and her daughter, by itself, does not show that any material benefit had accrued to them. Her evidence also shows that there was a loss in the business from 1996-97, soon after the demise of her husband and that in 2004, it had drastically come down to Rs. 40,000/- to Rs. 50,000/- p.a. In fact, a perusal of Exhibits 43, 44 and 45 show that the income of the deceased from his business had increased from the year 1994-95 to 1995-96 by more than 100%, and again from 1995-96 to 1996-97, there was a similar increase. It may be noted that the gross total income shown for the assessment year 1994-95, was Rs. 85,242/- and that tax of approximately Rs. 11,674/- was paid for the said year. The salary shown in the said returns was Rs. 16,000/- and income from the business was shown as Rs. 65,789/-. For the assessment year 1995-96, the total income shown was Rs. 1,91,560/-. For the said year, tax of approximately Rs.51,000/- was paid. The salary shown in the said returns was Rs. 16,000/-; and the income from business was shown as Rs. 1,75,562/-. The deceased died on 30th March, 1996. The tax returns for the assessment year 1996-97 were filed on 27th September, 1996, reflects income from salary as Rs. 45,000/-; and income from business as Rs. 3,74,686/- and the gross total income shown was Rs. 4,22,503/-. It appears that advance tax of Rs.39,000/- was

paid by the deceased, prior to his demise, in three installments. Thus, a perusal of the said documents i.e. Exhibits 43 to 45 clearly show that there was a substantial rise i.e. by more than 100%, in the gross total income of the deceased. The rise from 1994-95 to 1995-96 is approximately the same as the rise from 1995-96 to 1996-97. Considering the fact, that the said documents i.e. Exhibits 43 to 45 have gone unchallenged and considering the fact that no suggestion was made to the first respondent, that the said document which is at Exhibit 45 is an inflated document, it was not necessary for the respondent-claimant to lead any further evidence to prove the contents of the said document and hence, the said document, which is at Exhibit 45 can certainly be relied upon while assessing and computing the quantum of compensation.

23. Now, what is the multiplicand that can be applied to the present case? There are catena of judgments, more particularly, the judgment of the Apex Court in the case of ***Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr.***³, which sets out how the multiplicand is to be calculated. The said judgment has been reiterated by the Supreme Court

³ (2009) 6 SCC 121

in several cases. The Apex Court has held, that there are only three facts which are required to be established by the claimants for assessing compensation in case of death – (a) age of the deceased; (b) income of the deceased; and (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are - (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with regard to the age of the deceased.

24. It has also been held that to have uniformity and consistency, the Tribunals should determine compensation in cases of death, by following the well-settled steps, which are as under :

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependent family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has

been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

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.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also added.

25. After following the aforesaid steps, the only income of the deceased less income-tax should be the starting point for calculating the compensation. As far as addition to income for future prospects is concerned, the Apex Court observed that in view of the imponderables and uncertainties, it had found favour in adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years (where the annual income is in the taxable range, the words :actual salary” should be read as “actual salary less tax”). It was

further observed that there should be an addition of only 30% if the age of the deceased was 40 to 50 years and that there should be no addition if the age of the deceased is more than 50 years. The Apex Court observed that though the evidence may indicate a different percentage of increase, it was necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculation being adopted. It further observed that where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the Courts will usually take only the actual income at the time of death. A departure there from should be made only in rare and exceptional cases involving special circumstances.

26. As far as deduction for personal and living expenses is concerned, the Apex Court observed that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third where the number of dependent family members is 2 to 3, one-fourth, where the number of dependent family members is 4 to 6, and one-fifth, where the number of dependent family members exceeds six.

27. As far as multiplier is concerned, the Apex Court in *Sarla Verma's case* (*supra*) held that the multiplier to be used should be as mentioned in column 4 of the following table:

Age of the Deceased	Multiplier scale as envisaged in Susamma Thomas	Multiplier scale as adopted by Trilok Chandra	Multiplier scale in Trilok Chandra as clarified in Charlie	Multiplier specified in second column in the Table in II Schedule to MV Act	Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation)
(1)	(2)	(3)	(4)	(5)	(6)
Upto 15 yrs.	—	—	15	20	
15 to 20 yrs.	16	18	18	16	19
21 to 25 yrs.	15	17	18	17	18
26 to 30 yrs.	14	16	17	18	17
31 to 35 yrs.	13	15	16	17	16
36 to 40 yrs.	12	14	15	16	15
41 to 45 yrs.	11	13	14	15	14
46 to 50 yrs.	10	12	13	13	12
51 to 55 yrs.	9	11	11	11	10
56 to 60 yrs.	8	10	09	8	8
61 to 65 yrs.	6	08	07	5	6
Above 65 yrs.	5	05	05	5	5

28. The Apex Court observed that about 50% can be added to the actual salary, by taking note of the future prospects. In addition to the aforesaid, the claimants would also be entitled to compensation under the

head of “loss of estate” and some amount towards funeral expenses and for loss of consortium, while awarding compensation.

29. ***Sarla Verma's case (supra)*** dealt with a case of a salaried person. The Apex Court held that in case of salaried person, additions have to be made depending upon the age of the deceased to the actual income of the deceased while computing future prospects. In ***Santoshi Devi's case (supra)***, *Sarla Verma* was explained and it was held that it was permissible to extend the benefit of making additions to the total income of the persons, who were self employed or on fixed wages. Infact, the principles laid down in ***Santoshi Devi's case (supra)*** were reiterated in ***Rajesh & Ors. vs. Rajbir Singh & Ors.***⁴, wherein, the Apex Court held that in cases of self employed persons or persons with fixed wages, the actual income of the deceased must be enhanced for the purpose of computation i.e. by 50% where the deceased was below 40 years; by 30% where he belonged to the age group 40-50 years and by 15% where the deceased was between the age group of 50 to 60 years. It was, however, observed that no such addition was permissible where deceased was over 60 years of age. Infact, in ***Rajesh & Ors. (supra)***, the Apex Court reiterated the meaning of `just

4 (2013) 9 SCC 54

compensation' and observed that, at the time of fixing such compensation, the courts should not succumb to the niceties or technicalities to grant just compensation in favour of the claimants. It further observed that it is the duty of the Court to equate, as far as possible, the misery on account of the accident with the compensation so that the dependents should not face the vagaries of life on account of discontinuance of the income earned by the deceased and it is the Courts duty to award just, equitable, fair and reasonable compensation, irrespective of the claim made.

30. Keeping in mind the aforesaid principles, we now proceed to determine what is the 'just compensation' that the respondent-claimants would be entitled to. As is evident from the evidence adduced on behalf of the first respondent-claimant, the last gross income of the deceased was Rs. 4,22,503/-; which was rounded off and shown as Rs. 4,19,690/-; the income from salary being Rs. 45,000/- and income from business profit being Rs. 3,75,686/-. Thus, the last income of the deceased as is reflected from Exhibit 45 shows the nature of income receivable from both, salary as well as from business. The said gross income arrived at was after deducting the income-tax payable thereon.

31. The age of the deceased was 44 years. From a perusal of the income-tax returns, it is evident that the deceased had income from two sources; one from 'Micro-Med (India) Ltd.', a partnership firm and another from 'M/s. Don Whitely Scientific Equipments Pvt. Ltd.' , a Private Limited Company. The gross annual income rounded off, for the year 1996-97 was Rs. 4,19,690; wherein, salary income was Rs. 45,000/- p.a. and income from business was Rs. 3,74,686/-. As far as the income from salary is concerned, i.e. Rs. 45,000/- p.a., 30% would have to be added towards future prospects as is permissible, i.e. Rs. 45,000/- + 30% = Rs. 58,500/-. After considering the fact, that there were three dependents and applying the 1/3rd dependency formula, the amount arrived at is Rs. 39,000/-. Considering that the age of the deceased was 44 years, Multiplier of 14 would be applicable in the present case, and hence, the total amount would be Rs. 5,46,000/-. As far as the business income of the deceased is concerned, as is reflected from the income-tax returns for the year 1996-97, it is evident that the deceased's income from his business after deducting tax was Rs. 3,74,686/-. A perusal of all the three income-tax returns filed by the respondent-claimants i.e. for the year 1994-95, 1995-96 and 1996-97 would reveal that the business income of the

deceased had risen by more than 100%. In 1994-95, the business income was Rs. 65,789/-, in 1995-96, it was Rs.1,75,562/- and in the year 1996-97, the business income was Rs. 3,74,686/-. The said income was after paying income-tax thereon. As is evident from the evidence on record, the deceased was an Entrepreneur, who had renovated a number of equipments for Micro Biology and Bio-technology, and as such, was well respected for his work by the heads of Industries in the said field. It is also reflected from the evidence on record that the deceased was a qualified person having done his B. Sc. in Zoology and was an MBA. It is also evident that he was trained in U.K by the British Company, which was working in collaboration with Don Whitely Scientific Equipments Pvt. Ltd. The first respondent, in her evidence, has also stated that due to the business skills and acumen of her husband Dilip, the business would have attained international reputation and that the income would have multiplied by number of years. The income-tax returns clearly show a rise in the business income of the company by more than 100% p.a. As is evident from the evidence of the first respondent, the company was doing extremely well till the untimely death of the deceased and after his death, the business had been affected considerably. It has also come in her

evidence that she had to mortgage her jewellery to raise funds; had to send persons appointed by the Company to U.K for training; that the workers had filed cases against her in the Labour Court, and that, she has suffered losses in the business, resulting in her selling two residential flats. The said evidence that has come on record has virtually gone unchallenged. Considering the income-tax returns of all the three years, it appears that there was a rise of more than 100% in the business income of the deceased and hence, the respondent-claimants would be entitled to an addition of 50% towards future prospects. The last drawn income from business as is reflected in the income-tax returns is Rs. 3,74,686/-, after deducting tax on the same. Considering the aforesaid facts, we are of the opinion, that to the said business income, an addition of 50% would have to be made. The amount therefore, would come to Rs. 5,62,029/-. After deducting 1/3rd towards personal expenses, the amount would be Rs. 3,74,686/-. Applying the Multiplier of 14, the amount comes to Rs. 52,45,604/-. Thus, after considering both, income from salary as well as business income, the total amount of compensation that the respondent-claimants would be entitled to, would be Rs. 57,91,604/-. As far as amounts awarded under the conventional heads are concerned, the Tribunal has awarded Rs. 50,000/-

towards loss of consortium to the first respondent-claimant; Rs. 25,000/- towards loss of love and affection to each of the respondent-claimant; Rs. 25,000/- towards loss of estate to each of the respondent-claimants and Rs. 10,000/- towards funeral expenses. As far as the amounts awarded under the conventional heads are concerned, keeping in mind the judicial pronouncements in this regard, we are of the opinion that the first respondent-claimant would be entitled to an amount of Rs. 1,00,000/- towards loss of consortium; the second and third respondents would be entitled to a sum of Rs. 50,000/- each towards loss of love and affection; Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards funeral expenses. Thus, the total compensation that would be payable to the respondent-claimants would be Rs. 60,41,604/-.

32. The last issue raised by the learned Counsel for the appellant is that the interest rate of 12% p.a. granted by the Tribunal is exorbitant and on the higher side.

33. We have perused the judgments of the Apex Court in this regard. The Apex Court in the case of ***Kaushnuma Begum (Smt) & Ors.***

vs. New India Assurance Company Limited & Ors.⁵, noticed that the nationalised banks are granting interest @9% on fixed deposits for one year and held as follows :-

"24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that "in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf". Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants. The amount of Rs 50,000 paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date."

34. The Apex Court in **Abati Bezbaruah v. Deputy Director General, Geological Survey of India & Anr.**⁶ noticed the varying rate of interest being awarded by the Tribunals, High Courts and Apex Court itself. In the said case, the Apex Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration the relevant factors

⁵ (2001) 2 SCC 9

⁶ (2003) 3 SCC 148

like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc.

35. Infact, the Apex Court in **Puttamma & Ors. vs. K. L. Narayana Reddy & Anr.**⁷, kept the question open for Tribunals and Courts to decide the rate of interest, keeping in mind the rate of interest allowed by the Apex Court in similar cases and other factors such as inflation, change in economic policy adopted by the Reserve Bank of India from time to time, the period from which the case is pending, etc. Infact in ***Puttamma's case (supra)***, the Apex Court enhanced the compensation @ 12% p.a. from the date of filing of the claim petition.

36. Keeping in mind all the aforesaid Judgments, and after considering the peculiar facts of this case, we are of the opinion that the interest granted on the compensation amount by the Tribunal to the respondent-claimants is on the higher side. Although, the claim petition is of 1996, the delay that has occurred in the said case is not attributable to

⁷ (2013) 15 SCC 45

the appellant alone. Both the parties are responsible for the delay, resulting in the claim petition of 1996 being decided in 2013. As is evident from the record, the respondent-claimants sought amendment of their claim petition in 2011, which was allowed in 2012. Having regard to the same, we are of the opinion that the interest of justice would be met, if the interest granted on the aforesaid amount is reduced from 12% to 9% p.a. in the facts of the case.

37. Accordingly, we dispose of the appeal by passing the following order :

ORDER

(i) The appeal is partly allowed with no order as to costs;

(ii) The impugned award is modified to the extent that the respondent-claimants will now be entitled to compensation of Rs. 60,41,604/- with interest @ 9% p.a. from the date of filing of the application till the date of realization. The claimants will be entitled to proportionate costs of claim application.

(iii) The apportionment of the claim will be done as follows : 60% of the aforesaid amount will be awarded to the first respondent; 25% to the second respondent and 15% to the third respondent. The Tribunal shall pass appropriate directions for investment of the amount of compensation or part thereof after hearing the claimants;

(iv) The Tribunal shall compute the amounts payable as per the modified Award, as expeditiously as possible and in any event, within six weeks from the date of receipt of writ of this Judgment;

(v) Writ of this Judgment along with R & P shall be forwarded to the Tribunal within four weeks;

(vi) All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)

(A. S. OKA, J.)