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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 783 OF 2015

WITH

CIVIL APPLICATION NO. 2429 OF 2015

AND

FIRST APPEAL NO. 1162 OF 2015

WITH

CIVIL APPLICATION NO. 3563 OF 2015

The New India Assurance Company Limited ...Appellant
Versus
Smt. Saira Imtiaz Lambe & Ors. ...Respondents

Mr. Devendra S. Joshi, for the Appellant.

CORAM: A. S. OKA & G.S. PATEL, JJ.
DATED: 23rd December 2015

PC:-

1. The matter was mentioned for speaking to the minutes of the Judgment and Order dated 22nd December 2015. Mr. Joshi, learned Advocate for the Appellant, states that he had given a notice of the present Application to Mr. Darandale for the Respondents who told him that he will be unavailable. Mr. Joshi also states that he has given to Mr. Darandale a copy of the corrected calculation/compensation, which he tendered today and which is taken on record and marked "X1" for identification.

2. In the second line of paragraph 1 of the Judgment dated 22nd December 2015, the correct reference should be to First Appeal No. 783 of 2015 and not First Appeal No. 683 of 2015.

3. Mr. Joshi also points out that there is an inadvertent typographical/computational error in paragraph 27 of the Judgment and Order dated 22nd December 2015. He points out that the monthly salary in rupees should be Rs. 65,475/- and not Rs. 68,750/-. Consequentially, the annual loss of dependency is not Rs. 8,25,000/- but Rs. 7,85,700/-.

4. Using the same multiplier of 13, the actual loss of income is, therefore, Rs. 1,02,14,100/- and not Rs. 1,07,25,000/-. Thirty percent of the revised figure would be Rs. 30,64,230/- and not Rs. 32,17,500/-. The total loss of dependency would, therefore, be Rs. 1,32,78,330/- and not Rs. 1,39,42,500/-.

5. Adding to this the amount of Rs. 1,60,000/- mentioned in paragraph 28, the total compensation payable is, therefore, Rs. 1,34,38,330/- and not Rs. 1,41,25,000/- as mentioned in paragraph 29 of our Judgment.

6. We accept the corrections mentioned by Mr. Joshi.

7. Finally Mr. Joshi points out that as a matter of fact, the Appellants have not made any deposit with the Tribunal so far.

Consequently, paragraph 35 of the Judgement is to be deleted and substituted with the following:

> "35. Both Appeals are disposed of in these terms. Any amounts that are presently deposited with this Court are to stand transferred to the Tribunal. The Appellants are directed to deposit the aforesaid amounts of Rs. 1,34,38,330/- and Rs. 1,40,000/- with the Tribunal with interest at the rate of 7% per annum as indicated above within a period of four weeks from today. The Respondents will be at liberty to apply to the Tribunal for withdrawal of the amount deposited."

8. We also notice, independently of Mr. Joshi's submissions, that the figures in paragraph 31 of the Judgment also need to be corrected. Paragraph 31 of the Judgment is, therefore, substituted with the following:

> "31. First Appeal No. 783 of 2015, therefore, succeeds in part. The compensation payable to the Respondent Nos. 1 to 3 is reduced to Rs. 1,34,38,330/-, to be apportioned 50:25:25 between Respondent Nos. 1, 2 and 3."

9. All these corrections are to be carried out in the original order as also in the order already uploaded on the server. For the sake of convenience, an unsigned copy of the modified order is appended to this order.

(G. S. PATEL, J.) **(A. S. OKA, J.)**

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 783 OF 2015

WITH

CIVIL APPLICATION NO. 2429 OF 2015

AND

FIRST APPEAL NO. 1162 OF 2015

WITH

CIVIL APPLICATION NO. 3563 OF 2015

THE NEW INDIA ASSURANCE CO. LTD.
Shivkripa Commercial Center, Gokhale Road,
Naupada, Thane (West), through Mumbai
Regional Office-I, New India Bhavan, 2nd
Floor, 34/38, Bank Street, Fort,
Mumbai – 400 023 …Appellant

Versus

1. **SMT. SAIRA IMTIAZ LAMBE**
   Age 39 years, Widow of the deceased
2. **MR. VASHEEM IMTIAZ LAMBE**
   Aged 22 years, Son of the deceased
3. **MISS. SAOBAR IMTIAZ LAMBE**
   Aged 20 years, Daughter of the deceased
   All residing at 405, Asmita Horisan, "A"
   Wing, Naya Nagar, Meera Road (East),
   District : Thane.
4. **MR. SHAILEN KUMAR TIWARI**
   Aged Adult, Occu.: Not known, Residing

at R/30, Building No.3, Shanti Nagar,
Sector-6, Meera Road (East),
District: Thane. ...Respondents

Mr. Devendranath S. Joshi, for the Appellant/Applicant.
Mr. Rohan S. Darandale, for Respondent Nos. 1 to 3.

CORAM:	**A.S. OKA &** **G.S. PATEL, JJ.**
RESERVED ON :	**1st December 2015**
PRONOUNCED ON:	**22nd December 2015**

JUDGMENT: (Per G.S. Patel, J.)

1. First Appeal No. 1162 of 2015 was filed before a learned Single Judge of this Court while First Appeal No. 783 of 2015 was assigned to a Division Bench. The two appeals are directed against two judgments and awards both dated 12th March 2015 of the Motor Accidents Claims Tribunal, Thane ("**the Tribunal**"; "**MACT**"). First Appeal No. 783 of 2015 is filed from the judgment rendered in Claim Petition No. 676 of 2008 relating to the death in a motor accident of one Imtiaz Lambe ("**Imtiaz**"), the husband of the 1st Respondent/1st Claimant and the father of the 2nd and 3rd Respondents (the 2nd and 3rd Claimants). First Appeal No. 1162 of 2015 is filed against the judgment in Claim Petition No.677 of 2008, and this relates to the death, in the same accident, of Imtiaz's mother, Amina Lambe ("**Amina**"). Both Claim Petitions were filed under Section 166 of the Motor Vehicles Act, 1988 ("**MV Act**"). On our previous directions, both First Appeals were clubbed together.

2. In both appeals: admit. Respondents waive service. By consent, both Appeals taken up for hearing and final disposal at the stage of admission. We have heard Mr. Joshi, learned Advocate for the Appellant as also Mr. Darandale for Respondent Nos. 1 to 3.

3. The accident in question occurred in the early hours of Monday, 26th May 2008 at about 5.30 a.m. At that time, Imtiaz, then 49 years old, was travelling with his mother, Amina, a 72 year old housewife, and his wife Saira, the present 1st Respondent and the 1st Claimant before the MACT, in a Toyota Qualis vehicle No. MH-04-BD-7862. They were proceeding northward along Ghodbunder Road in Thane from the Kapurbaudi area, just after the Old Agra Road junction, toward Mira Road. Somewhere in the proximity of the Batata Company, the Qualis in which they were riding, said to have been travelling at high speed, crashed into the rear of a stationary truck. The collision was severe. Imtiaz and his mother Amina both sustained grievous injuries. They died on the spot.

4. The 1st Claimant/Respondent is Imtiaz's widow, and Amina's daughter-in-law. The 2nd and 3rd Claimants/Respondents are, respectively, the son and daughter of Imtiaz and the 1st Respondent/Claimant (Amina's grandchildren). Both were minors at the time of the accident. They have since attained majority.

5. The 1st Opponent to the Claim Petition, viz., the 4th Respondent to the Appeal, one Shailen Kumar Tiwari ("**Tiwari**") is the owner of the Qualis in which Imtiaz, Amina and Saira were travelling. Tiwari did not enter an appearance or defend the claim and the matter proceeded *ex parte* against him.

6. The case of the Applicants was that the accident was caused by of the rash and negligent driving by the driver of the Qualis. The Applicants say that an offence was registered against him at the Kasarvadavali Police Station, Thane. There is no dispute that Tiwari owned the vehicle and that it was duly insured with the present Appellant ("**the Insurance Company**"). The Qualis's driver was Tiwari's employee. It is on this basis that the Applicants claimed that Tiwari and the Insurance Company were jointly and severally liable to compensate the Applicants. The claim before the Tribunal was in the amount of Rs. 2,38,42,520/- for Imtiaz's death and Rs. 2 lakhs in respect of Amina's death.

7. In both Claim Petitions, the Insurance Company entered Written Statements (subsequently allowed to be amended in Claim Petition No. 676 of 2008). Denying the Applicants' case, the Insurance Company resisted the claim. It pleaded that while the Qualis in question was indeed duly insured with a subsisting policy valid from 5th September 2007 to 4th September 2008, it had been hired by the Applicants or Imtiaz from Tiwari; that both deceased were, therefore, travelling in a vehicle taken on payment of hire charges to Tiwari, who, by thus using the Qualis for transportation of passengers for hire and reward, had breached the terms of the insurance policy and that this rendered the Insurance Company not liable to pay any compensation.

8. We will first take up First Appeal No. 783 of 2015, the appeal against the judgment and award in the claim relating to Imtiaz's death in the fatal accident.

9. The Insurance Company also disputed Imtiaz's age. The Applicants had claimed that Imtiaz worked overseas in Qatar with a company named Qatar Steel Company, and that his salary at that time was Qrs. 19,155 per month, i.e., about Rs. 2,29,860/- per month at the then prevailing exchange rate of 1 Qrs. to Rs. 12/-. The Insurance Company denied that there was any income-tax deduction. It also claimed that since there was another vehicle involved in the accident, viz., the stationary truck into which the Qualis had collided, the claim was bad for non-joinder of necessary parties, for the Applicants were required to join the owner, driver and the Insurance Company of the parked truck. The Insurance Company also claimed that the driver of the stationary truck was solely and entirely responsible for the accident as he had parked it in an unsafe manner by the side of the road without any indication of it having been so parked. The Insurance Company denied the allegations of rashness and negligence on the part of Tiwari's driver.

10. The Insurance Company also disputed the quantum of the two claims and in addition submitted that Imtiaz could not be considered "a third party" to enable the Applicants to sustain their claim.

11. On these pleadings, issues were framed in both Claim Petitions. The issues are identical in both. Initially there were five issues. The MACT then framed additional Issue No. 1 in relation to the Appellant's contentions about the breach of the terms and conditions of the Policy. These issues and the Tribunal's findings on them, in the Claim Petition relating to Imtiaz's death, are set out below:

Sr. No.	Issues	Findings
1.	Do the Claimants prove that deceased Imtiaz Usman Lambe died in the motor vehicle accident took place on 26-5-2008 at 5.30 a.m. In front of Vijay Garden Bus Stop & Batata Company on Ghodbunder Road, due to rash and negligent act of driving of the jeep bearing registration No. MH-04-BD-7862 by its driver?	Yes.
Addl. Issue No. 1	Does the Opponent No. 2 prove that there was breach of terms and conditions of policy by the owner of the insured vehicle bearing No. MH-04-BD-7862 as pleaded in para No. 3(a) of written statement?	No.
2.	Does the opponent No. 2 prove that the accident took place due to rash and negligent act of parking the Truck unsafely on the road by its driver?	No.
3.	Does the opponent No. 2 prove that the petition is bad in law for non-joinder of necessary parties?	No.

4.	Are the Claimants entitled to compensation? If yes, to what extent and from whom?	Yes, to the extent of Rs. 1,81,68,640/- together with interest at the rate of 7% per annum from opponent Nos. 1 & 2 jointly & severally.
5.	What order and award?	As per final order.

12. The findings in the Claim Petition relating to Amina's death are the same, except that the amount awarded is Rs.1,40,000/-.

13. By the impugned order in First Appeal No.783 of 2015 (relating to Imtiaz's death), the Tribunal awarded an amount of Rs. 1,81,68,640/-, including a No Fault Liability of Rs. 50,000/-. This was apportioned between the Applicant Nos. 1 to 3 (present Respondent Nos. 1 to 3) in the ratio of 50:25:25. The Tribunal also awarded interest at the rate of 7% per annum from the date of application till the realization but on condition that the Opponents deposit the amount within two months from the date of the impugned order, failing which interest was directed to run at the rate of 9% per annum. Finally, the Tribunal directed that of the amount deposited, 40% was to released to the Claimants and 60% was to be kept in fixed deposit for five years and then subsequently renewed.

14. Mr. Joshi assails this order on several distinct grounds. In summary, his challenge is (i) as to quantum; (ii) on the question of contributory negligence of the driver and owner of the parked truck; (iii) on non-joinder of the driver, owner and insurer of the parked truck; and (iv) on breach of the terms of the policy.

15. As regards the question of whether or not the deceased and his mother were fare-paying customers and whether there was a breach of the terms and conditions of the policy, we are unable to accept Mr. Joshi's submissions. Before the Tribunal, there was no evidence led in this behalf. It is not possible to conclude from the record by a process of conjecture, as we are invited to do, that merely because Imtiaz, Amina and Saira were riding in a vehicle owned by another person, that they were for that reason alone fare-paying passengers. Before the Tribunal, Claimant No. 1, Saira, was examined. In cross-examination, she deposed that the Qualis belonged to Tiwari and that Tiwari and Imtiaz were friends. She specifically said (again in cross-examination) that no remuneration or charge was given to Tiwari in respect of the use of that vehicle. This answer was elicited in cross-examination. The evidence of the 1st Respondent on this aspect of the matter is not shaken. Before the Tribunal, the Insurance Company filed an application saying that since Tiwari had failed to contest the claim, the Insurance Company be permitted to do so. Pursuant to that, one Shubha Rajendra Panjani, the Divisional Manager of the Insurance Company filed an Affidavit of Evidence. In this she claimed that the Qualis vehicle was being used for hire and reward. That is a specific statement made in paragraph 4 of the Affidavit of Evidence. However, in cross-examination, Mrs. Panjari was compelled to admit that other than the documents filed by the Insurance Company there was no other material to show that the vehicle in question was in fact being used for hire and reward at the time of the accident. The documents before the Tribunal do not indicate that there is any material to show that the Qualis was hired out by Tiwari to Imtiaz. Thus, it is not possible to accept Mr. Joshi's submission that there is a breach of the terms and conditions of the policy in question.

16. The second argument canvassed by Mr. Joshi is that the principle negligence was that of the truck driver who had parked his truck in an unsafe manner on the side of the road and that it was this that caused the Qualis in which Imtiaz and his mother were travelling to collide with it. Of this, there is no evidence at all. The driver of the Qualis ought to have been examined by the Appellant if this was to be shown. This being a plea specifically taken by the Insurance Company in its Written Statement, the burden was on the Insurance Company to lead evidence in proof of the assertion. We do not think it reasonable to suggest that the truck driver should have been summoned. There is no material to indicate that there was negligence on the part of the truck driver. This also renders otiose any question of non-joinder of the owner, driver and insurer of that stationary truck.

17. The record indicates that the Insurance Company hired an investigator, one Mr. Dharmendra A. Hol, who made an investigation report dated 8th April 2011. However, this report does not seem to have been led in evidence nor was Mr. Hol produced as a witness in support of that report. There is, therefore, nothing to establish the negligence of the driver of the parked truck or to show that the Qualis was let out for hire or reward.

18. The assertions in the Insurance Company's written statement and in the Evidence Affidavit of its witness are simply that because the stationary truck was parked on the side of the road, therefore, there is *ipso facto* negligence on the part of the driver of the truck. This is clearly not enough. The accident occurred on 26th May 2008. Though this is not a matter of record, it is a simple matter of consulting any calendar to know that the day was a Monday. The accident took place very early in the morning, at about 5:30 a.m. Given the time of year, and the fact that the accident spot is just north of Mumbai, sunrise would have been relatively early; and evidence was surely at hand of at least the approximate hour of sunrise. Therefore, if the Insurance Company desired to establish negligence on the part of the driver of the parked truck, it needed to show by cogent evidence that despite sufficient light and visibility, that truck was parked in such a manner that the driver of the Qualis could not have seen it till it was too late. This is not established. We do not know, for instance, if the truck was parked around a bend or a curve and was thus hidden from view of vehicles coming up behind it. We do not know what the condition of the road was or how broad or narrow it is (or was) at that spot. We do not know if there was oncoming traffic or a median divider or there was sufficient space for the driver of the Qualis to manoeuvre, even at some speed, around the parked truck. Now the 1st Respondent was in the vehicle at the time of the accident. She was travelling with her husband and mother-in-law. In cross-examination, she said she could not see the road clearly from where she was seated. But she was not asked a vital question, viz., where the passengers' journey started. Had they been travelling through the night from some distant place? That might have explained fatigue and a fatal lack of attention on the part of the driver of the Qualis. It might also have cast a shadow of doubt about the vehicle being used for hire, though that aspect of the matter clearly needed still more evidence. These, and the related questions that suggest themselves, were matters for the Insurance Company to elicit either in cross-examination or by leading its own evidence. In place of evidence, we are invited to arrive at a finding of negligence on the part of the truck driver, and we are invited to do so by a process of the purest speculation. This is an invitation we must decline.

19. The final argument raised by Mr. Joshi relates to the question of quantum of compensation. On this aspect of the matter, there is considerable material on record. Mr. Joshi is, in our view, correct in his submission that there is absolutely no basis for the Tribunal to have taken the salary of the deceased of Qrs. 12,000/-.

20. Before the Tribunal several documents relating to the salary of the deceased Imtiaz with his overseas employer were led in evidence. These included, among others, an Employment Agreement dated 15th January 2006 and a set of pay-slips for the period from 31st December 2007 to 31st May 2008. The Employment Agreement shows that in addition to his basic pay of Qrs. 5000 per month, the deceased was entitled to various allowances including transportation, airfare and housing, plus a supplementary allowance and a monthly incentive. The aggregate amount of all these taken together was Qrs. 19,448/-. The Tribunal seems to have, in paragraph 31 of the impugned order, taken a broad approach and arrived at what appears to us to have been an estimate of his income as Qrs. 12,000 per month. After applying the currency conversion rate of Rs. 11.10 to the Qatari Riyal applicable at the relevant time, and of which there is also evidence on record, the Tribunal proceeded to arrive at its final Award of compensation.

21. We are in agreement with Mr. Joshi when he says that the Tribunal ought to have considered not the figure of Qrs. 12,000 but the basic pay of Qrs. 8,515 shown in the pay-slips. At the highest, a monthly incentive allowance of Qrs. 333 could be added to this making for an income for computation of Qrs. 8848 and not Qrs.12,000.

22. In not accepting the Tribunal's adoption of Qrs. 12,000, we have borne in mind the principles set out by the Supreme Court in *United India Insurance Company Limited v. Patricia Jean Mahajan.*[1] That was a case where a foreign national met with a fatal accident in India. The Supreme Court held that a balance must be struck to arrive at a reasonable and fair mean. What might be a modest amount in USD may be a fabulous amount in the Indian scenario. It is unwise and unsafe to adopt an excessive multiplicand. The Supreme Court made it clear that the multiplier system should not be deviated from except in exceptional cases.

23. Mr. Darandale for Respondents Nos. 1 to 3 relied on the decision of the Supreme Court in *National Insurance Company Limited v. Indira Srivastava*[2] to suggest that income to be taken into account should not be confined to the pay packet but family benefits

1 (2002) 6 SCC 281

2 (2008) 2 SCC 763

should be included as well. There is no quarrel with this proposition, generally stated. We must, however, bear in mind that the deceased worked abroad, where he stayed alone and not with his family. It would not be possible, therefore, to include these benefits and to treat them as being made for the family when his family did not actually stay with him in Qatar.

24. The Tribunal has also used a figure of 30% for loss of future prospects. We are unable to accept Mr. Joshi's submission that there is no case that the deceased went abroad to better his prospects. It seems to us self-evident that this would have been so; it is a matter that only needs to be stated to be accepted. Further, the evidence shows that he worked overseas for as long as 17 years. This also militates against the acceptance of Mr. Joshi's submission. Finally, there is the evidence of the 1st Respondent/1st Claimant who says in her evidence that the deceased Imtiaz had bright prospects, an assertion on which she was not cross-examined at all. It cannot be disputed that the deceased was 49 years old at the time. The percentage of 30% adopted by the Tribunal for loss of future prospects is in conformity with the decision of the Supreme Court in *Sarla Varma v. Delhi Transport Corporation.*[3] That decision has been subsequently reaffirmed in *Reshma Kumari v Madan Mohan*,[4] one that mandates that the formula and principle set out in *Sarla Varma* should not be deviated from without specific evidence on record.

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[3] (2009) 6 SCC 121 : 2009 ACJ 1298 (SC)

[4] (2013) 9 SCC 65

25. Mr. Joshi then advances, but in fairness, with no great enthusiasm, a submission that the deceased Imtiaz merely had a B.Com qualification and that "it is well-known that a B.Com would earn nothing". We know of no such general principle or presumption, nor does Mr. Joshi even attempt to establish one.

26. In view of the evidence of the deceased's income, it is safe to take as a starting point his basic pay at Qrs. 8,515/- and to add to this a modest incentive allowance (one that appears to have been paid to him repeatedly month on month). Inevitably, since we have not accepted the Tribunal's adoption of the basic income as Qrs.12,000 per month, the aggregate figure will decreased somewhat.

27. We find that the Tribunal used a currency exchange rate of 11.10 Indian Rupee to the Qatari Riyal. There is no material to show that this is incorrect. Accordingly, we accept this rate. The Tribunal correctly made a deduction of 1/3rd from the income towards personal expenses. Taking the deceased's income as Qrs. 8848 (Qrs. 8515 + Qrs. 333), and taking the accepted currency exchange rate at Rs. 11.10 to 1 Qr., this would work out to a monthly income of Rs. 98,212.80. One-third of this is required to be deducted, i.e., an amount of Rs. 32,737/-, and this would yield a monthly income of Rs. 65,475. The annual loss of dependency would, therefore, be Rs. 7,85,700/-. Following the decision of the Supreme Court in *Sarla Varma* and given that the age of the deceased was 49 years, the multiplier of 13 adopted by the Tribunal is correct and should be adopted by us as well. This yields an aggregate loss of dependency of Rs. 1,02,14,100/-. In addition, 30% prospective loss of dependency should be added to this and this works out to a further Rs. 30,64,230/-. The aggregate total loss of dependency is thus Rs. 1,32,78,330/-.

28. In addition, the Tribunal awarded an amount of Rs. 1,00,000/- to the 1st Respondent towards loss of consortium and Rs. 40,000/- to Respondent Nos. 2 and 3 towards loss of their father. Rs. 10,000/- have been granted towards funeral expenses and an additional Rs.10,000/- towards loss of estate, making a net addition of Rs. 1,60,000/-. We do not believe these figures to be unreasonable. We are also mindful of the fact that the record before us indicates that the 1st Respondent has since been diagnosed with and treated for breast cancer. It would be neither just nor fair on our part at this stage, having regard to these circumstances, to reduce these *ad hoc* amounts granted by the Tribunal.

29. We, therefore, accept the figure of Rs. 1,60,000/- to be added to the total loss of dependency and this yields a total compensation of Rs. 1,34,38,330/-.

30. In support of his contention that the Tribunal could not have awarded a penal or differential rate of interest, Mr. Joshi relied, and in our view quite correctly, on the decision of the Supreme Court in *National Insurance Company Limited v Keshav Bahadur.*[5] In that case, the Tribunal awarded interest at the rate of 12% and also directed that in case of failure to pay within the stipulated period, the interest will be 18%. This was negatived by the Supreme Court which awarded interest at 9%. We are therefore in agreement with

5 (2004) 2 SCC 370

Mr. Joshi that the Tribunal could not have awarded such differential interest rates. We confirm the award of interest at the rate of 7% on the revised amount stated above.

31. First Appeal No. 783 of 2015, therefore, succeeds in part. The compensation payable to the Respondent Nos. 1 to 3 is reduced to Rs. 1,34,38,330/- to be apportioned 50:25:25 between Respondent Nos. 1, 2 and 3.

32. Coming now to First Appeal No. 1162 of 2015, the claim was for Rs. 2,00,000 in relation to the fatal accident that took the life of Amina Lambe. The award was for Rs. 1,40,000/-. Mr. Joshi's argument is that Respondent Nos. 1 to 3 were not dependent on Amina, and that no amount could have been awarded to them. We are unable to accept this submission. As a matter of law, the issue is no longer *res integra*. It is fully covered by the decision of the Supreme Court in *Manjuri Bera (Smt) v. Oriental Insurance Company Limited*,[6] in which the Supreme Court clearly said that it is devolution of the estate of the deceased that is important and not actual dependency.

33. The remaining grounds taken by the Insurance Company have already been discussed earlier. The only question is as to the compensation awarded. The Tribunal took a notional income of Rs. 3,000/- per month; made a deduction of one-third; used a multiplier of 5 given Amina's age of 72 and granted certain *ad hoc* amounts for funeral expenses and loss of estate. The total compensation was worked out to Rs. 1,40,000/-, including the no-

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6 (2007) 10 SCC 643

fault liability amount of Rs. 50,000/-, to be apportioned 40:30:30 between Respondent Nos. 1 to 3. Half of this was directed to be paid out while the remaining 50% remained in deposit. In this order too, the Tribunal incorrectly awarded penal interest.

34. We allow First Appeal No. 1162 of 2015 only to the extent of rate of interest awarded. We direct interest to be payable only at the rate of 7% per annum. We are not inclined to interfere as regards the quantum awarded.

35. Both Appeals are disposed of in these terms. Any amounts that are presently deposited with this Court are to stand transferred to the Tribunal. The Appellants are directed to deposit the aforesaid amounts of Rs. 1,34,38,330/- and Rs. 1,40,000/- with the Tribunal with interest at the rate of 7% per annum as indicated above within a period of four weeks from today. The Respondents will be at liberty to apply to the Tribunal for withdrawal of the amount deposited.

(G. S. PATEL, J.) **(A.S. OKA, J.)**

Note: This order is modified as per order dated 23rd December 2015 passed on the speaking to the minutes of order.