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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1271 OF 2014
WITH
CIVIL APPLICATION NO.3156 OF 2014
(FOR STAY)
IN
FIRST APPEAL NO.1271 OF 2014

The New India Assurance Company Limited
Divisional Office, Kamgar Bhavan,
Sangli ...Appellant

Versus

1. Sunil Parsharam Garud
   Age 47 years, Occ: Service
   R/o Mahadeonagar Islampur,
   Tal.Walwa, District – Sangli

2. Kumar Sumit Sunil Garud
   Age. 20 years, Occ:Education
   R/o Mahadeonagar Islampur,
   Tal.Walwa, District – Sangli

3. Kumar Sanket Sunil Garud
   Age. 16 years, Occ:Education
   R/o Mahadeonagar Islampur,
   Tal.Walwa, District – Sangli

4. Raghunath Dnyanu Khambe
Age. Major, Occ:Business
A/p Urun Islampur, Taluka Walwa,
District – Sangli.

5. Imtiyas Lukaman Maner,
Age. 43 years, Occ:Driver
R/o Mahadeonagar Islampur,
Tal.Walwa, District – Sangli ...Respondents

WITH
CIVIL APPLICATION NO.2329 OF 2015
(FOR MONEY WITHDRAWAL)
IN
FIRST APPEAL NO.1271 OF 2014

1 Sunil Parsharam Garud
Age 52 years, Occ: Service
R/o Mahadeonagar Islampur,
Tal.Walwa, District – Sangli

2. Kumar Sumit Sunil Garud
Age. 25 years, Occ: At present Nil,
R/o. As above.

3. Kumar Sanket Sunil Garud
Age. 22 years, Occ: Education,
R/o. As above. ...Applicants (Orig. Respondent Nos.1 to 3)

<u>IN THE MATTER BETWEEN</u>

The New India Assurance Company Limited
Divisional Office, Kamgar Bhavan,

Sangli ...Appellant

Versus

1. Sunil Parsharam Garud
   Age 52 years, Occ: Service
   R/o Mahadeonagar, Islampur,
   Tal.Walwa, District – Sangli

2. Kumar Sumit Sunil Garud
   Age. 25 years, Occ:Education
   R/o As above.

3. Kumar Sanket Sunil Garud
   Age. 22 years, Occ:Education
   R/o As above.

4. Raghunath Dnyanu Khambe
   Age. Major, Occ:Business
   A/p Urun Islampur, Taluka Walwa,
   District – Sangli.

5. Imtiyas Lukaman Maner,
   Age. 48 years, Occ:Driver
   R/o Mahadeonagar Islampur,
   Tal.Walwa, District – Sangli ...Respondents

Mr.Shrikant Madhukar Dange, for the Appellant in the Appeal and for the Applicant in Civil Application No.3156 of 2014 and for the Appellant in Civil Application No.2329 of 2015.

Mr.Akshay Prakash Shinde, for the Applicants in Civil Application No.2329 of 2015 and for the Respondents in First Appeal No.1271 of 2014 and in Civil Application No.3156 of 2014.

CORAM **: *A. S. OKA &***
REVATI MOHITE DERE, JJ.

RESERVED ON : 13rd AUGUST, 2015.

PRONOUNCED ON : 29th OCTOBER 2015.

JUDGMENT (Per Revati Mohite Dere, J.) :-

1. Rule. Rule is made returnable with the consent of the parties forthwith and is taken up for final hearing.

2. The appellant - insurance company (Original opponent No. 2) has taken exception to the Judgment and Award dated 9th May, 2014, passed by the Learned Member of the Motor Accident Claims Tribunal, Islampur, Sangli, by which the respondent – claimants were granted compensation of Rs.49,02,216/- with Interest @ of 6% per annum from the date of filing of the claim petition till its realization.

3. The appellant is the Insurance Company of the vehicle, which was involved in the accident, in which the deceased – Ujwala died. Respondent No.1 is the husband of the deceased, Respondent Nos.2 and 3 are the sons of the deceased ; Respondent No.4 is the owner of the vehicle,

in which the deceased was traveling when it met with an accident ; and Respondent No.5 was the driver of the said vehicle. The impugned Award has been challenged by the appellant – company essentially on two counts, viz., (i) that the issue of negligence has not been properly considered by the Tribunal and (ii) that the future prospects ought not to have been granted to the respondent – claimants, as the deceased was not permanently employed in any Government post/organization/PSUs, but was serving in an unaided private college.

4. The respondent – claimants supported the Award and contended that no interference was warranted in the same.

5. Before we deal with the rival submissions advanced by the parties, it will be necessary to set out the factual matrix of the case and the evidence adduced by the respondent – claimants, in support of the Claim Petition.

On 3rd January, 2009, Ujwala Sunil Garud (deceased) was proceeding from Mumbai to Islampur, after attending a meeting. She was travelling in a Mahindra Scorpio Vehicle, bearing No.MH-10-AG-1515. When the vehicle came on the Pune-Mumbai Road near Ravet Fata, the driver of the said vehicle lost control over the vehicle, as he was driving the vehicle at high speed, resulting in the vehicle turning turtle. As a result of the accident, Ujwala sustained serious injuries and died on the spot. The driver of the vehicle is stated to have driven the said vehicle in a rash and negligent manner resulting in the accident. Pursuant to the accident, an FIR came to be registered as against the respondent no.5 i.e. the driver of the vehicle, which was registered vide C.R.No.6 of 2009 with the Dehu Road Police Station, for the alleged offences punishable under Section 279, 304A, 337 of the Indian Penal Code and under Section 184 of the Motor Vehicles Act. Respondent Nos.1 to 3 filed a Claim Petition in 2009, under Section 166 of the Motor Vehicles Act in the Motor Accident Claims Tribunal, and sought compensation of Rs.85,00,000/- Respondent nos.4 and 5 (Original Opponent Nos.1 and 3) contested the claim and filed their written statements (Exhibit – 22). They questioned the age and income of the deceased and denied that the accident occurred due to rash and negligent driving of respondent no.5 – driver. According to the Respondent nos.4 and 5, the respondent no.5 had a valid licence at the time of the accident and had driven the vehicle cautiously with due care and caution. They did not dispute the ownership and insurance of the vehicle.

6. The appellant – insurance company (Original opponent no.2) contested the claim by filing a written statement, which is at Exhibit – 17 and questioned the age and income of the deceased and the manner in which the accident occurred. They denied that the vehicle was being driven rashly and negligently and that the deceased suffered grievous injuries in the accident. They appellant – insurance company contended that Respondent Nos.1 and 2 were not dependent on the deceased and had their own independent income.

7. The respondent – claimants in support of their claim petition examined the first respondent i.e. Sunil Parsharam Garud ; Prashant Prabhakar Mokashi, a Clerk of Rajarambapu Co-operative Bank, Sakharale Branch ; Shivaji Shankar Pisal, an employee of Rajarambapu Co-operative Sugar Factory, who was attached to the Accounts Section of the said

Factory; Kumar Panditrao Inamdar, an Office Superintendent attached to the Rajarambapu Institute, in which Institute, the deceased was serving; Babasaheb Patil, a Clerk of Hutama Co-operative Sugar Factory and Jaysing Keshav Patil, an Accountant working in Hutama Co-operative Sugar Factory. As far as the first respondent and Kumar Panditrao Inamdar, are concerned, they were examined to prove the qualifications of the deceased, the nature of her job and her salaried income. Shivaji Pisal was examined to show the income received by the deceased in her account. The rest of the witnesses were examined to show the agricultural income of the deceased received by her from the agricultural land, which she held in her name along with her family members i.e. her husband, brother-in-law and mother-in-law.

8. The Tribunal after considering the evidence on record concluded that the respondent – claimants had proved; (i) that the driver of the vehicle was rash and negligent ; (ii) that had the deceased survived, being a permanent employee, she would have been entitled to a higher salary and the benefit of the 6th Pay Commission, and as such would have

drawn a salary of around Rs.34,000/- ; (iii) after applying the formula laid down in Sarla Verma’s case, considering the dependency etc, including future prospects, applied the multiplier of 14 and awarded compensation of Rs.49,02,216/- to the respondent – claimants with an interest @ of 6% per annum from the date of filing of the Claim Petition till its realization. Both the appellant and the fourth respondent were held jointly and severally liable to pay the said compensation. Under the conventional heads the Tribunal awarded Rs.25,000/- towards loss of consortium ; Rs.10,000/- towards loss of estate and Rs.10,000/- towards funeral expenses. The apportionment was to be done as follows ; 20% of the compensation amount was to be paid to the respondent no.1 – claimant i.e. husband of the deceased and 40% was to be paid equally to respondent nos.2 and 3 i.e. sons of the deceased. Out of the said compensation allotted to the respondent nos.2 and 3, an amount of Rs.10,00,000/- each i.e. Rs.20,00,000/- was to be invested in FDR in the name of respondent Nos. 2 and 3 with a Nationalized Bank for a period of 5 years.

9. The first respondent – claimant in support of the Claim Petition filed his affidavit of evidence i.e. Exhibit - 26. He has stated that on 3rd January, 2009, his wife – Ujwala was proceeding from Mumbai to Islampur, after attending a meeting in a Mahindra Scorpio Vehicle, bearing No. MH-10-AG-1515 ; that when the vehicle came on the Pune-Mumbai Road, near Ravet Fata, the driver of the said vehicle lost control over the same, as he was driving the vehicle at high speed, in a rash and negligent manner, resulting in the vehicle turning turtle ; that pursuant to the accident, an FIR came to be registered as against the respondent no.5 - driver of the vehicle, which was registered vide C.R.No.6 of 2009 with the Dehu Road Police Station ; that as a result of the accident, Ujwala sustained serious injuries and died on the spot ; that his wife – Ujwala was aged 44 years ; was a strong and stout women ; that she had completed her Post Graduation in Engineering Faculty and had done some short term courses ; and had attended Seminars, Workshops and Engineering Programs. He has stated that his wife - Ujwala was a member of the 'Institution of Electronics and Telecommunication Engineers' and also a member of the 'Biomedical Engineering Society of India'; that she has attended the First National Convention of Women Engineers; that she had

passed the Vocal Examination of ‘Akhil Bhartiya Gandharv Mahavidyalay Mandal, Mumbai; that at the relevant time, she was serving as a Professor in ‘Rajarambapu Institute of Technology’, Rajaramnagar, Islampur, and was drawing a Salary of Rs.25,376/- per month; that she was a permanent employee and had a great career ahead ; that she would have been entitled to future benefits, allowances from time to time and that she had a bright future of traveling abroad in connection with her expertise. He has further stated that considering her age, qualification and expertise, she would have become a Senior Professor within 5 years and within a few years thereafter, would have gone on to become the Dean of the College. He has stated that his wife was the earning member of the family and that all the family members were dependent on her income and that she was looking after the education of their children. He has also stated that his wife was supervising her own agriculture land and was drawing an income of Rs.2,00,000/- from supply of sugarcane annually.

10. It has come in the cross examination of the first respondent – claimant that he was working as a Grade-II Engineer in the Irrigation Department since 1983 and was drawing a salary of Rs.55,000/- per

month ; that a sum of Rs.10,100/- was being deducted from his salary towards income tax, professional tax, group insurance and provident fund ; that his salary about 3 years back was about Rs.40,000 /- to 42,000/- per month ; that his elder son – Sumit (respondent no.2) had completed his M.B.B.S Examination in 2011 and that after completing his M.B.B.S from a Government College he was required to work in a rural area for 2 years ; and that his second son – Sanket (respondent no.3) was studying B.Tech and would be completing his education in 2015. In the cross examination several suggestions were put to the first respondent – claimant, however he has denied the same. Nothing substantial has come on record in the cross-examination of the first respondent with respect to the age, qualification, income, expertise of the deceased as well as with respect to dependency on the deceased. He has denied the suggestion that the driver of the said vehicle was not driving the said vehicle in a rash and negligent manner ; that his son – Sumit was receiving Rs.14,000/- per month during his housemanship ; that his wife was not a permanent employee ; that as the Rajarambapu Institute was 15-20 kms away from Islampur, the number of college students were reducing; that the Diploma Courses in the College were shut down because of reduction of the students; that there was no possibility of future increments in his wife's job and that the agricultural income from sugarcane was not shown by the deceased in the income tax returns. A few admissions that have come on record in the cross examination of the said witness are that the deceased had not appeared for NET-SET examination, however, he has stated that the same was not compulsory for teachers in the Engineering faculty. He has admitted that he was a co-owner of the agricultural land, alongwith his deceased wife – Ujwala, his brother and mother and that 60% of the income received from sugarcane was spent on cultivation of sugarcane crops. He has denied the suggestion that 70% of the expenditure of the children's education was looked after by him and that his son had become economically independent and that the deceased would spend 60% of her income on herself.

11. The other crucial witness who was examined on the point of salary and employment of the deceased was Kumar Panditrao Inamdar. The said witness has stated in his examination in chief, that he has been working in the Rajarambapu Institute of Technology, Rajaramnagar, Islampur, since 1983 and was currently the Head of the Accounts Department. He has

stated that the record of all the employees and teachers including the salary drawn by them was maintained by the Institute. He has stated that deceased – Ujwala was serving as a Professor in their College and that she had done her B.E. (Electrical) and M.E (Electrical). He has stated that she joined the Institute on 1st January, 1986 and according to the documents submitted by the deceased, her date of birth was 15th November, 1964. He has tendered a Service Book of the deceased, which was taken on record and marked as Exhibit – 63. He produced the salary register of the deceased from the year 2009 to 2010. A copy of the same was taken on record and marked as Exhibit – 64. He also produced the salary certificates/salary slips of the deceased which bear the College Seal. He has stated that the salary certificates/salary slips of the deceased show that she was drawing a salary of Rs.25,376/- per month. He has produced all the salary certificates/salary slips of the deceased which are marked as Exhibit – 65 (colly.) He has further stated that the 6th Pay Commission came into force in November, 2010 giving retrospective effect for payment as per the the 6th Pay Commission from January, 2006. He has stated that since Ujwala Garud expired in 2009, she could not receive the benefit of the the 6th Pay Commission and therefore Exhibit – 65, which was produced shows her last drawn salary as Rs.25,376/- and does not include the benefit of the 6th Pay Commission. He has stated that the deceased was a permanent employee of the Institute and has produced a document in support thereof, which was exhibited vide Exhibit – 66. He has tendered the due and drawn register of the deceased which was also exhibited vide Exhibit – 67. According to him, if the deceased was alive, she too would have received the benefit of the 6th Pay Commission and would have been entitled to a salary in accordance thereto. He has produced a document in support thereto, which is at Exhibit – 68. He has stated that although Rajarambapu Institute of Technology, was a private unaided college, when permission was granted to start the said College, the State Government had directed that the said unaided private Colleges, would have to comply with all the Rules/Regulations/Directives of the State Government. He has stated that all the employees of his college are receiving the benefits in accordance with the Government Rules. He has stated that considering the qualifications and the experience of the deceased, she would have definitely become an Associate Professor. The said witness was cross examined at length, however nothing substantial has been brought in the cross examination of the said witness. It has come in the cross examination of the said witness that the said institute i.e. Rajarambapu Institute of Technology, had started in the year 1986 ; that after 15 years, Annasaheb Dange College was opened at 'Ashtha' and thereafter a College was started at 'Shirala' ; that all these Colleges were unaided Colleges ; that Rajarambapu Institute of Technology, had also started a College by the name 'Rajarambapu Polytechnic College' but the same was closed down after 7 years due to lack of students ; and that the salary of a teacher/professor, came from the students fees. The said witness was cross examined on the documents which were tendered vide Exhibits - 64, 65 and 66, however nothing substantial has come in the cross examination of the said witness to disbelieve him. The said witness has denied the suggestion that the deceased was not a permanent employee of the institute; that the institute was not paying salary as per the Government Rules ; that the signature of the deceased on the salary certificate/salary slip was not of the deceased.

12 As far as the evidence led with respect to the agricultural income of the deceased, the Tribunal has rightly come to the conclusion,

after considering the evidence of witnesses in this regard, that the respondent no.1 – claimant was receiving income from the lands, even after the demise of the deceased. The Tribunal has discussed the evidence in this regard at length and we do not find any error/infirmity in this finding.

13. We have perused the impugned Judgment and Award and the evidence that has come on record with the assistance of the parties. We have also given our anxious consideration to the submissions advanced by both the learned counsel for the parties. With regard to the submission of the learned counsel for the appellant – company, that the respondent – claimants had failed to prove negligence, we do not find any merit in the said submission. No doubt, the first respondent – claimant is not an eye-witness to the accident, however, he has produced on record all the relevant documents i.e. FIR, spot panchanama, P.M.report etc., to show that the deceased sustained fatal injuries in the said accident. There is nothing substantial brought on record in the cross-examination of the first respondent on the point of negligence except making suggestions a) that the driver of the vehicle was not driving the vehicle in a rash and negligent

manner and b) that the driver was not driving in a high speed, both of which have been denied by him. It is pertinent to note, that despite the fact that the respondent no.5 - driver of the vehicle had appeared and filed his written statement, no steps were taken by the appellant – insurance company to either examine the driver of the vehicle nor was any material brought on record, to prove the contrary. Inspite of the fact, that the best witness was available, the appellant – company did not examine the driver and hence an adverse inference will have to be drawn, for failure to examine the driver of the vehicle.

14. The second submission of the learned counsel for the appellant is that the Tribunal had erred in coming to a conclusion, a) that the deceased was a permanent employee of the Institute, which was an un-aided private institute, drawing a salary of Rs.25,376/- per month and b) that the deceased would have been entitled to receive the benefit of the 6^{th} Pay Commission and consequently the respondent – claimants would be entitled to future prospects in conformity with the decision of the Apex Court in the case of Sarla Verma. We do not find any infirmity in the said

finding. The said finding is based on the evidence that has been adduced in this regard i.e. the evidence of the first respondent – claimant and Kumar Inamdar and the judicial pronouncements in this regard. There is no merit in the submission advanced by the learned counsel for the appellant, that as the deceased was not working with a Government organization/PSUs but was working in a private, unaided institute, she was not entitled to receive 30% towards future prospects. It appears from the evidence of the first respondent – claimant that deceased – Ujwala aged 44 years, was a highly qualified lady, having done her post graduation in Electrical Engineering and some short term courses. It also appears that she had participated in Seminars, Workshops and Engineering Programmes. The deceased was a member of the 'Institution of Electronics and Telecommunication Engineers' and of 'Bio-Medical Engineering Society of India' and had attended the first National Convention of Women Engineers. The deceased was working in Rajarambapu Institute of Technology as a Professor and was drawing a Salary of Rs.25,376/- per month and was a permanent employee of the Institution. It appears from the track record of the deceased that she had a great career ahead and as such would have been entitled to future benefits, allowances from time to time. It also appears that considering the age, qualification and expertise of the decesed, she had the prospects of rising higher in her field. It also appears from the evidence that the deceased was an earning member of the family and that all the family members were dependent on her income and that she was looking after the education of their children. It also appears that the deceased was drawing an agricultural income of Rs.2,00,000/- from sugarcane annually.

15. From the perusal of the evidence of Kumar Inamdar, it is evident that the deceased joined the Institute in January 1986 and that her date of birth as per Service records was 15th November, 1964. From the documents produced by the said witness, it is evident that the deceased was serving as a Professor in the said Institute since 1986, was made permanent in 1988 and was drawing a salary of Rs.25,376/- in 2009. The said witness has categorically stated that although the said institute was an un-aided private institute, it was required to comply with the Government directives, including grant of benefits under the 6th Pay Commission to its employees. Thus, it appears from the evidence that the employees of the institute were being paid in accordance with the 6th Pay Commission from 2010, with retrospective effect from 2006. It appears from the record that the deceased was confirmed as a permanent employee of the said institute

in the year 1988. It also appears from the evidence and documents on record that the deceased was highly qualified and experienced and as such, had great prospects in the future, entitling her to future increments and financial benefits. Thus, there is no infirmity in the finding of the Tribunal that the deceased was a permanent employee, serving in the Institute, drawing a salary of Rs.25,376/-, that she would have been entitled to the benefit of the 6th Pay Commission as well as future prospects considering her track record.

16. The submission of the learned counsel for the appellant that the deceased had no future prospects as she had not appeared for NET-SET examination is devoid of any merit. It appears from the evidence, that the said NET-SET examination was not applicable to Technical Educational Institutes and no material is brought on record to show the contrary. The submission of the learned counsel for the appellant that as the deceased was not working with a Government Institute/Organization/PSU, she would not be entitled to 30% future prospects, is completely devoid of merit. The fact that the deceased was working in a private unaided school would not

make any difference, as the Institute was bound to comply with all State directives/regulations, including payments to its employees under the 6th Pay Commission.

17. The submission of the learned counsel for the appellant that a unaided private school survives on the students' fees and that one of its associate institute was closed for want of students and therefore there was no guarantee that the institute would have continued is devoid of merit. It appears that no specific suggestion to that effect has been given. Even assuming the same to be true, what cannot be overlooked is the fact that the deceased was a highly qualified and experienced lady and as such, she could have secured a good job in any other College/Institute. Thus, the Tribunal has rightly considered and granted benefit of the Judgment of the Apex Court in the case of ***Sarla Verma (Smt) and Others v/s Delhi Transport Corporation and Another***[1] and has rightly awarded 30% towards future prospects. Admittedly, the deceased was 44 years of age at the time of the accident and respondent no.1 – claimant was 48 years and the children were aged 20 and 16 years respectively in the year 2009. It

1 (2009) 6 SCC 121

appears from the evidence on record that the deceased was contributing towards the expenditure of the family, including for the education of her children and that her family members were dependent on her income. The Tribunal had rightly came to a conclusion based on the evidence on record that the last drawn salary of the deceased in December 2008 was Rs.25,376/- per month. It appears that after all statutory deductions and other deductions, her Net Salary was Rs.15,276/-. From the Gross Salary of Rs.25,376/-. a sum of Rs.200/- towards Professional Tax and other deductions were for Provident Fund, Life Insurance Corporation etc.

18. The submission of the learned counsel for the appellant that respondent no.1 – claimant i.e the husband of the deceased was earning at the relevant time and as such was not dependent on the income of his wife cannot be accepted, in view of the evidence that has come on record. No doubt, the first respondent – claimant was working in the Irrigation Department and was drawing a monthly salary of Rs.55,000/- per month, out of which Rs.10,000/- odd was being deducted towards various deductions including statutory deductions. According to the evidence that

has come on record, the deceased would spend her entire salary on the family members and was also paying for her children's education. There is no serious challenge to this part of the evidence that has come on record. In this day and age, considering the cost of living, the income of both the husband and wife are equally important for running the house as they supplement each other's income. It cannot be generally said that as the other spouse (surviving) is earning, there is no dependency. When a husband and wife, with separate incomes are living together and sharing their expenses, and in consequence thereof, their joint living expenses are less than twice the expenses of each living separately, then each, by the fact of sharing is conferring a benefit on the other. This results in higher savings. In case, one spouse loses the benefit of contribution rendered by the other in managing the household, in such a situation, the surviving spouse would be entitled to compensation for loss of dependency (for loss of services rendered in managing households). In the present case, it has come in the evidence that the deceased was contributing her entire salary for the household needs including for the education of her two sons, who were studying at the relevant time. The said evidence as noted earlier has gone unchallenged.

19. As far submission advanced by the learned counsel for the appellant – company, that while calculating the compensation, the age of the first respondent – claimant i.e husband of the deceased, ought to have been taken into consideration, and not the age of the deceased, as done by the Tribunal, we are of the opinion that the said submission is without substance. The Apex Court in the case of ***National Insurance Company Limited v/s Shyam Singh and Others***[2] considered the age of the claimants only keeping in mind the gross difference between the age of the deceased and the age of the claimants and keeping in mind the longtivity of the parties, after following ***Vijay Shankar Shinde and Others v/s State of Maharashtra***[3] , observed in Para 9 as under:-

> “9. This Court in ***Vijay Shankar Shinde and Others v/s State of Maharashtra,*** after referring to the earlier judgments of this Court, in detail, dealt with the law with regard to determination of the multiplier in a similar situation as in the present case. The said findings of this Court are as under:
>
> "6. …......
>
> 7. ….......In fact in U.P. State Road Transport Corporation v. Trilok Chandra (1996) 4 SCC 362, Ahmedi, J. (As the Chief

2 (2011) 7 SCC 65
3 (2008) 2 SCC 670

> Justice then was) has pointed out the shortcomings in the said Schedule and has held that the Schedule can only be used as a guide. **It was also held that the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. If a young man is killed in the accident leaving behind aged parents who may not survive long enough to match with a high multiplier provided by the Second Schedule, then the Court has to offset such high multiplier and balance the same with the short life expectancy of the claimants. That precisely has happened in this case. Age of the parents was held as a relevant factor in case of minor's death in recent decision in Oriental Insurance Co. Ltd. v. Syed Ibrahim and Ors. AIR 2008 SC 103. In our considered opinion, the Courts below rightly struck the said balance**."

Thus, if the deceased is a young person, who dies in an accident leaving behind aged parents/claimants, who may not survive long enough, the Court would have to offset the high multiplier provided in the second schedule and balance the same with short life expectancy. The said observations will not apply to the facts of the present case, inasmuch as, the deceased was aged 44 years at the relevant time and the respondent no.1 – claimant was 48 years and as such the age difference was only of 4 years. Further, the Apex Court in the case of ***UP State Road Transport Corporation v/s Trilok Chandra***[4] has observed as under :-

4 (1996) 4 SCC 362

For concluding the analysis it is necessary now to refer to the judgment of this Court in the case of General Manager, Kerala State Road Transport, Trivandrum vs. Susamma Thomas 1994(2) SCC 176. In that case this Court culled out the basic principles governing the assessment of compensation emerging from the legal authorities cited above and reiterated that the multiplier method is the sound method of assessing compensation. The Court observed :

> "The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yeild the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last."

Hence, following the above dictum laid down in UP State Road Transport Corporation (supra), we find no merit in the said submission advanced by the learned counsel for the appellant.

20. The Tribunal has rightly come to a conclusion, on the basis of the record that the last drawn salary of the deceased in December 2008 was Rs.25,376/- per month and that after the implementation of the 6th Pay Commission, the salary of the deceased would have been Rs.34,843/-. The Tribunal has rightly come to the said conclusion that the recommendations of the 6th Pay Commission were applied to teachers in November 2010 giving retrospective effect from January, 2006 and as such the deceased would have been entitled to the benefit of the 6th Pay Commission, when she died in January 2009 and as such she would have been entitled to a salary of Rs.34,843/- as per the 6th Pay Commission on the said date. The Tribunal had thereafter deducted professional tax and Income Tax from the said amount of Rs.34,843/- as required and arrived at an amount of Rs.33,360/-. We find that there is an error in the said calculation here. We find that the Tribunal has deducted only Rs.1283/- for Income Tax from Rs.34,843/- instead of deducting 10% from the said amount of Rs.34,843/- which is Rs.3484/-. Thus, according to us, sum of Rs.200/- would have to be deducted towards Professional Tax and Rs.3484/- as Income Tax, from the amount of Rs.34,843/-. After deducting the said amounts, the salary would be Rs.31,159/-. Thus, the net yearly income of the deceased would

be Rs.31,159 X 12 = Rs.3,73,908/- Thereafter, as rightly awarded by the Tribunal, 30% would have to be added towards future prospects, which would then be Rs.4,86,080/-. From the said amount of Rs.4,86,080/-, 1/3rd would have to be deducted towards personal expenses of the deceased. After deducting 1/3rd towards personal expenses, dependency would come to Rs.3,24,054/-. The deceased was 44 years old at the time of her death, considering the formula set out in Sarla Verma's case, the multiplicand which have to be adopted would be '14'. Thus, the respondent – claimants would be entitled to receive the compensation of Rs.45,36,756/-. As far as, compensation under the conventional heads are concerned, we doe not find any error in the compensation awarded to respondent no.1 – claimant towards loss of consortium. However, the amounts awarded towards loss of love and affection and funeral expenses needs to be enhanced. Accordingly, amounts towards loss of love and affection is increased to Rs.50,000/- each and amount towards funeral expenses is increased to Rs.25,000/-. Accordingly, respondent nos.2 and 3 are granted Rs.50,000/- each towards loss of love and affection and all the respondents are granted Rs.25,000/- towards funeral expenses in conformity with the Judgment of the Apex Court in the case of ***Rajesh and Others v/s Rajbir Singh and***

Others[5]. It appears that although in the body of the Judgment the Tribunal has awarded interest @ 7% per annum on the compensation awarded by him, however in the operative part of the order the interest awarded is reflected as @ 6%. Considering the Judgments and interest generally awarded in such cases, we are of the opinion that the rate of interest be enhanced to 7% from 6%. This error will have to be corrected by exercising the power under Rule 33 of Order XLI of the Code of Civil Procedure, 1908.

21. Accordingly, we pass the following order :-

ORDER

i) The appeal is partly allowed ;

ii) The respondent – claimants would be entitled to a compensation of Rs.46,61,756/- at the rate of 7% per annum from the date of the Claim Petition till its realization;

iii) The apportionment shall be done in accordance with the Judgment and Award dated 9th May, 2014, passed by the Learned Member of the Motor Accident Claims Tribunal,

5 (2013) 9 SCC 54

Islampur at Sangli.

iv) Writ of this judgment along with R&P shall be forwarded to the Tribunal, within four weeks.

22. Civil Application nos.3156 of 2014 and 2329 of 2015 do not survive and the same are disposed of.

23. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE,J.) **(A.S. OKA,J.)**