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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1152 OF 2015

WITH

CIVIL APPLICATION NO. 3541 OF 2015

UNITED INDIA INSURANCE CO. LTD.
11/2, Neelkamal, Pune Solapur Road, Near
Siddheshware Ser Station, Pune – 411 028 **...Appellants**

Versus

1. **SHAKUNTALA BABASAHEB DHAKTODE**,
   Age 55 years, Occu.: Household,
2. **NAMRATA BABASAHEB DHAKTODE**
   Age 28 years, Occu.: Household,
3. **DASHRATH DINKAR JADHAV**,
   Age Major, Occu.: Business, R/o. S. No. 168, Tukai Darshan, Fursungi, Taluka Haveli, District Pune.
4. **SAUDAGAR VITTHAL MANGLE**,
   Age 35 years, Occu.: Driver,
   R/o. Kokarwadi, PO. Tandalwadi, Tal. Paranda, District Osmanabad – 413 505
   At present R/o. Dhamalwadi, Near Bhekrai Naka, Fursungi, Taluka Haveli, District Pune. **...Respondents**

Mr. Ketan Joshi, for the Appellant/Applicant.
Mrs. S.V. Sonawane, for Respondents Nos. 1 and 2.

CORAM:	**A.S. OKA &**
	G.S. PATEL, JJ.
RESERVED ON :	**19th November 2015**
PRONOUNCED ON:	**1st December 2015**

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

1. This is an Appeal against the Judgment and Award dated 18th March 2015 of the Motor Accidents Claims Tribunal, Pune in Motor Accident Claim Petition No. 401 of 2013 under Section 166 of the Motor Vehicles Act, 1988. By that judgment, the Tribunal awarded an amount of Rs.43,34,016/- as compensation to the Claimants. This comprises an amount of Rs. 42,59,016/- as the principal amount, Rs. 50,000/- towards loss of consortium and Rs. 25,000/- towards funeral expenses. Interest was awarded at the rate of 9% per annum from the date of the Petition, 22nd April 2013, till the date of deposit. The Tribunal also directed that the Award be equally apportioned between the claimants, respectively the widow and unmarried daughter of Babasaheb Devram Dhaktode, the deceased ("**Babasaheb**").

2. Given the narrowness of the controversy, parties were put to notice by the order dated 16th October 2015 that the Appeal would be taken up for final disposal at the stage of admission. Hence, admit. Respondents waive service. By consent, called out and taken up forthwith for hearing and final disposal. Heard Learned Advocates for the parties.

3. The claim arises in relation to a fatal accident that occurred on 15th March 2013 at about 9.30 a.m.. On that day, at about 9.30 a.m., Babasaheb he was on his way to his office on an Activa Scooter No. MH-12-JW-3380. He reached the Tekwade Petrol Pump near Hadapsar. At that time, a truck bearing No. MH-12-EQ-731 came from behind him and collided with his scooter. Babasaheb fell off his scooter. The rear wheel of the truck passed over his head, crushing his face and skull. Babasaheb died on the spot.

4. The claim was brought by Babasaheb's 55 year old widow and 28 year old unmarried daughter. The 1st Opponent was the owner of the truck. The 2nd Opponent was its driver. The 3rd Opponent was the Insurance Company, the present Appellant.

5. All the Opponents filed their respective written statements. The ownership of the truck, the fact that it was driven by the 2nd Opponent and that it was duly insured with the 3rd Opponent are not in dispute. The allegation that the truck hit Babasaheb's scooter and that this resulted in his death is denied. The Opponents also did not admit the age, income and dependency of Babasaheb and submitted that the claim was excessive.

6. The Tribunal framed the following issues and recorded its findings against each:

Sr. No.	Issues	Findings
1.	Whether the accident dated 15-03-2013 took place due to rash and negligent driving of Truck bearing RTO registration No. MH-12-EQ-731 owned	In the affirmative

	by Opponent No. 1, causing death of Babasaheb Devram Dhaktode?	
2.	Whether the deceased is responsible for the accident? If yes, to what extent is his contributory negligence?	In the negative
3.	Whether the Applicants are entitled to get compensation? If yes, to what extent and from whom?	Yes. As per final order.
4.	What Award?	As per final order.

7. The 1st Claimant, Babasaheb's widow, Shakuntala, led her evidence. Opponent Nos. 1 and 2, the owner and driver of the truck did not enter the witness box. In addition to the oral evidence, the Applicants also filed a copy of First Information Report in Crime No. 96 of 2013, the spot panchanama, the inquest panchanama, the advance death certificate and the charge sheet.

8. There is no real dispute as to the facts relating to the accident itself. The only ground in Appeal relates to the quantum. We need not, therefore, discuss the correctness of the Tribunal's findings as to liability. It is sufficient to note that the evidence that Babasaheb was knocked down by the truck and that his head and skull were crushed under its rear wheel have not been seriously or convincingly controverted.

9. The plea of contributory negligence seems not to have been pursued with any great seriousness and even before us it is not seriously canvassed.

10. The only dispute, as we have noted, is as to the quantum of the Award. Admittedly, Babasaheb was a Branch Manager with a Bank. He was 58 years old at the time. His last gross salary was Rs. 63,151/-. The professional tax was Rs. 200/- and the income tax was Rs. 3,978/-. After allowing for these deductions, his salary was Rs. 59,153/- per month. His annual income was, therefore, Rs. 7,09,836/-. The Tribunal relied on the decision of the Supreme Court in *Sarla Varma v. Delhi Transport Corporation*[1], in our view quite correctly, and proceeded to deduct one-third of the total income on account of personal and living expenses. It thus arrived at a total loss of dependency of Rs. 4,73,224/-. Since the deceased was 58 years old at the time, the Tribunal took the accepted multiplier of nine, following, once again, the Supreme Court decision in *Sarla Varma*. It is on this basis that the claim has been reckoned.

11. As regards interest, the Tribunal took into account the decision of the Supreme Court *Municipal Corporation of Delhi v. Upahar Trading Victims Association & Ors.*[2] and arrived at an interest rate of 9% per annum, which we find is reasonable and moderate.

12. The only submission canvassed before us by the learned counsel for the Appellants is that since Babasaheb was on the verge of retirement, the multiplier used by the Tribunal, relying on the decision in *Sarla Varma*, ought not to have been taken into account. He submits that a much lower multiplier should have been used. We find it difficult to appreciate this argument. The fact that a

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1 (2009) 6 SCC 121 : 2009 ACJ 1298 (SC)

2 (2011) 14 SCC 481

person in service is approaching retirement does not mean that he or she is on the date of his retirement rendered incapable. It is well known that even after the mandatory date of retirement, especially given the increased life expectancy of modern times, persons are engaged in consultancy or take up other remunerative (and in some cases, even highly lucrative) positions or appointments. Learned counsel for the Appellants was unable to point out any binding decision of the Supreme Court or of this Court to suggest that a lower multiplier should have been taken. We find the reliance by the learned counsel for the Appellants on the decision of a Division Bench of the Karnataka High Court in *Union of India v. K.S. Lakshmi Kumar & Ors.*[3] to be inapposite, especially in view of the subsequent decision of the Supreme Court in *Sarla Verma*. In any case, that decision cannot and does not guide our hand in a matter such as this.

13. Learned Advocate for the Appellants also relied on the decision of the Supreme Court in *Puttamma & Ors. v K. L. Narayana Reddy & Anr.*[4] to suggest that on account of the impending retirement, a different multiplier ought to have been used by the Tribunal. We regret that we are unable to appreciate this submission. It appears to us to be wholly incorrect. In *Puttama*, the High Court, while enhancing the compensation awarded, split the multiplier and used two different multiplicants. The Supreme Court noted that the view in *Sarla Verma* has been approved by a larger three-Judge bench in *Reshma Kumari v Madan Mohan*,[5] and the formula set out in *Sarla Verma* is the correct one. The Supreme

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3 2001 ACJ 134

4 (2013) 15 SCC 45

5 (2013) 9 SCC 65

Court held that absent any specific reason and evidence on record, split multipliers should not be used and, further, the multiplier to be used is the one set out in *Sarla Verma*. In paragraph 36 of *Reshma Kumari*, and which was quoted in paragraph 31 of *Puttama*, the Supreme Court in fact obseverd that not only should the *Sarla Verma* multiplier formula be applied, but that it is "high time that we move to a standard method of selection of multiplier, income for future prospects and deduction of personal and living expenses", an advance made in certain other overseas jurisdictions. In view of this, it is not possible to accept the submission made by Learned Counsel for the Appellants, which is in sum and substance a plea to deviate from the binding decisions of the Supreme Court in both *Sarla Verma* and in *Reshma Kumari*.

14. We are unable to accept the submission of the learned counsel for the Appellants that there is any infirmity in the impugned order or that it calls for interference. The Appeal is dismissed.

15. By the order dated 16th October 2015 in Civil Application No. 3541 of 2015 in this Appeal, the entire amount was required to be deposited with the Tribunal, and the 1st and 2nd Respondents were permitted to withdraw the amount of Rs. 4 lakh and Rs. 1 lakh respectively. In view of our judgment, the 1st and 2nd Respondents are now entitled to withdraw the entire amount remaining deposited with accrued interest. In addition, all amounts deposited in this Court are to be transferred to the Tribunal. The Respondents are at liberty to make the necessary application to the Tribunal.

16. In view of dismissal of the Appeal, nothing survives in the Civil Application and the same is disposed of as such.

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