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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.632 OF 2015
WITH
CIVIL APPLICATION NO.3456 OF 2014
(FOR STAY)
IN
FIRST APPEAL NO.632 OF 2015**

Bajaj Alliance General Insurance Company Limited
952/954, Ground Floor,
Appasaheb Marathe Marg,
Prabhadevi,
Mumbai – 400 025.

...Appellant/Applicant
Orig.Opp.2 Insurance Company

Versus

1. Bipin Laxmichand Mehta
Age. 61 years, father of the deceased,
2. Ninotchka Bipin Mehta
Age:58 years, mother of the deceased
3. Bhavik Bipin Mehta
Age. 29 years, brother of the deceased
No.1 to 3 r/o. A/112, Sita Sadan,
Behind Bhatia School, Saibaba Nagar,
Kandivali (West),
Mumbai – 400 067.

...Respondents
Org. Applicants

4. R.R.Enterprises
Address at E-311, East of Kailash
Srinivaspuri,
Delhi – 110 065. ...Respondents
Org.Opnt.No.1

WITH
CIVIL APPLICATION NO.1538 OF 2015
(FOR WITHDRAWAL OF AMOUNT DEPOSITED
BY THE APPELLANT)
IN
FIRST APPEAL NO.632 OF 2015

1. Bipin Laxmichand Mehta
presently aged about 61 years,
2. Ninotchka Bipin Mehta
presently aged about 63 years,
3. Bhavik Bipin Mehta
presently aged about 29 years,
Residing at : A/112, Sita Sadan,
Behind Bhatia School, Saibaba Nagar,
Kandivali (West),
Mumbai – 400 067. ...Petitioners
(Respt.Nos.1-3
in First Appeal)

IN THE MATTER BETWEEN :

1. Bajaj Alliance General Insurance Company Limited
952/954, Ground Floor,
Appasaheb Marathe Marg,
Prabhadevi,
Mumbai – 400 025. ...Appellants

Versus

1. Bipin Laxmichand Mehta
Presently aged about 61 years,
2. Ninotchka Bipin Mehta
Presently aged about 63 years,
3. Bhavik Bipin Mehta
Presently aged about 29 years,
Residing at : A/112, Sita Sadan,
Behind Bhatia School, Saibaba Nagar,
Kandivali (West),
Mumbai – 400 067. ...Respondents
Org. Applicants
4. R.R.Enterprises
Address at E-311, East Kailash
Srinivasपुरi,
Delhi – 110 065. ...Respondents
Org.Opnt.No.1

**WITH
CROSS OBJECTION (STAMP) NO.19705 OF 2015
IN
FIRST APPEAL NO.632 OF 2015**

Bajaj Alliance General Insurance Company Limited
952/954, Ground Floor,
Appasaheb Marathe Marg,
Prabhadevi,
Mumbai – 400 025. ...Appellant
(Orig.Insurers)

Versus

1. Bipin Laxmichand Mehta
Presently aged about 61 years,
2. Ninotchka Bipin Mehta
Presently aged about 58 years,
3. Bhavik Bipin Mehta
Presently aged about 29 years,
Residing at : A/112, Sita Sadan,
Behind Bhatia School, Saibaba Nagar,
Kandivali (West),
Mumbai – 400 067. ...Cross Objectionists
(Org.Applicants)

And

4. R.R.Enterprises
Address at E-311, East of Kailash
Srinivaspuri,
Delhi – 110 065. ...Respondents
(Orig.Opp.party)

Mr.Milind M. Sathaye a/w Ms.Yogita Deshmukh, for the Appellant/
Applicant in First Appeal No.632 of 2015 ; Civil Application No.3456 of
2014 and in Cross Objection (St)No.19705 of 2015.

Mr.S.S.Vidyarthi, for the Respondent Nos.1 to 3 and for the Applicants in
Civil Application No.1538 of 2015.

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

RESERVED ON : 10th AUGUST, 2015.

PRONOUNCED ON : 27th NOVEMBER, 2015

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

1. By order dated 10th July, 2015, this Appeal was ordered to be disposed of finally at admission stage.

2. By this Appeal, the appellant - Bajaj Alliance General Insurance Company, has impugned the Judgment and Award dated 20th February, 2014, passed by the Chairman, Motor Accident Claims Tribunal, Mumbai, by which compensation of Rs.46,65,000/- was awarded to the respondent – claimants along with interest @ 7.5% from the date of the application till its realization. The respondent – claimants have also filed Cross Objection being Cross Objection (Stamp) No.19705 of 2015 in the aforesaid Appeal and have sought enhancement of compensation.

3. The appellant – company has impugned the aforesaid Judgment and Award on several counts ; i) that the issue of negligence i.e. the allegation that the driver of the offending vehicle was driving the vehicle in a rash and negligent manner has not been proved; ii) that the Tribunal has erred in applying the multiplier of '17', by taking the age of the

deceased into consideration and not the age of the claimants ; iii) that the income of the deceased was not calculated properly, keeping in mind the evidence that had come on record and the fact, that the deceased had died before completing his Final Chartered Accountancy Examination. According to the appellant, the Tribunal erred in concluding that the deceased would have received a salary of Rs.6 lacs per annum and lastly iv) the Tribunal had failed to frame the issue of contributory negligence.

4. The respondent – claimants in their cross objection contended ; (i) that the Tribunal had erred in granting leave under Section 170 of the Motor Vehicles Act to the appellant ii) that the respondent – claimants ought to have received additional compensation of Rs.13,50,000/- over and above what was awarded by the Tribunal ; and iii) that the amount awarded under the conventional heads also ought to be enhanced. They also questioned the order inasmuch as, it directs investment of 50% of the compensation awarded and sought release of the entire amount in favour of the respondent nos.1 and 2.

5. Before dealing 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.

On 7th December, 2007 at about 9.30 a.m., Arth (deceased) was driving a Maruti Car bearing No. MH-03-Z-9440, on the Mumbai- Agra Highway. According to the respondent – claimants, Arth was driving the car with due care and caution, in moderate speed, on the correct side of the road, when the offending truck bearing Registration No. HR-46-B-710 came in high speed from the opposite direction, and in a rash and negligent manner came on the wrong side of the road and dashed into the car driven by the deceased. Due to the severe impact of the offending vehicle, Arth sustained serious injuries. Arth was moved to the City Civil Hospital, Shahapur, where he succumbed to his injuries on the same day. Pursuant to the accident, an FIR was registered as against the driver of the offending vehicle, vide C.R.No.I-194 of 2007 with the Shahapur Police Station, for the alleged offences punishable under Sections 304(A), 279, 337 and 338 of the Indian Penal Code r/w Section 184 of the Motor Vehicles Act.

6. Pursuant to the unfortunate demise of Arth Mehta in the accident, his legal heirs i.e. the respondent nos.1 to 3 filed a Claim Petition under Section 166 of the Motor Vehicles Act, before the Motor Accident Claims Tribunal, Mumbai, on 19th December, 2007, as against the appellant – Insurance Company and the owner of the truck - R.R Enterprises i.e the fourth Respondent herein. Deceased – Arth, at the relevant time was 20 years of age. The Respondent Nos.1 to 3 are the father, mother and brother respectively, of deceased – Arth and are the original claimants. The respondent – claimants in their claim petition had prayed for compensation of Rs.1,00,00,000/- (one crore) with interest thereon, from the date of the application. The respondent – claimants in support of their claim petition examined (i) the first respondent – claimant ; (ii) Mukesh Jain – an eye witness to the accident; (iii) Sameer Lakhani, a Chartered Accountant, to show the salary that is drawn by a Chartered Accountant and (iv) Darshika Kapasi, a Chartered Accountant, with whom deceased – Arth was doing his articleship. The appellant – company did not lead any evidence in support of their defence.

7. The Tribunal after considering the evidence on record observed and held ; that the accident had taken place due to the rash and negligent act of the driver of the offending truck ; that the deceased was a brilliant student aged 20 years, who would have definitely become a Chartered Accountant in due course and would have earned between Rs.3 to 6 lacs per annum, and accordingly came to a conclusion that the deceased would have drawn an income of Rs.6 lacs per annum after becoming a Chartered Accountant. After considering the Judgment of the Apex Court in the case of Sarla Verma, the Tribunal applied the multiplier of '17', taking into consideration the age of the deceased and held that the respondent – claimants would be entitled to compensation of Rs.45,90,000/-. In addition to the said compensation for loss of dependency, the Tribunal under the Conventional Heads awarded for loss of estate and loss of expectation of life a sum of Rs.50,000/- and Rs.25,000/- for funeral expenses. Thus, the total compensation awarded was Rs.46,65,000/- with an interest @7.5% p.a. from the date of application till its realization. Out of the total compensation, 50% of the amount with interest was directed to be invested in fixed deposit, in the name of the Respondent Nos.1 and 2 i.e. father and mother of the deceased jointly, in any nationalized bank for a

period of 5 years and the balance 50% amount with interest thereon, was to be paid equally to Respondent Nos.1 and 2. The respondent no.3 was not awarded any compensation.

8. The first respondent – claimant filed his affidavit in lieu of examination in chief sometime in July 2013. He has stated that he was 60 years of age (in 2013) ; that Arth was born on 7th December, 1987 and the accident had taken place on 7th December, 2007. He has stated that on 7th December, 2007, Arth was driving a Maruti Car, bearing No. MH-03-Z-9440 with due care and caution, on the correct side of the road and at a moderate speed, on the Mumbai- Agra Highway and was proceeding towards Mumbai. He has stated that the deceased had a valid licence to drive the vehicle. He has stated that when the Maruti Car reached near the Diamond Hotel, which is in the Jurisdiction of Asangaon, Thane, the offending truck, bearing registration No. HR-46-B-710, came from the opposite direction and dashed into the car driven by Arth. He has stated that the driver of the offending truck was driving the truck in a rash and negligent manner, resulting in the driver losing control and coming on to

the wrong side of the road and dashing into the car driven by his son - Arth. He has stated that due to the severe impact of the offending vehicle, Arth sustained serious injuries and was moved to the City Civil Hospital, Shahapur, where he succumbed to his injuries on the same day. The respondent – claimants have produced certified copies of the FIR, Inquest Panchanama, spot panchanama, cause of death certificate, PM report and the original death certificate in support of the same. He submitted that pursuant to the accident, C.R.No.I-194 of 2007 was registered as against the driver alleging offences punishable under Section 304(A), 279, 337, 338 of the Indian Penal Code and under Section 184 of the Motor Vehicles Act.

9. The first respondent – claimant in his affidavit of evidence has further stated that his son – Arth was aged 20 years at the time of the accident and was hale and hearty ; that he was a brilliant student right from his school days and had secured an 81.20% in his SSC examination, 79.50% in his HSC (Commerce) examination with 95% in Book-Keeping and Accountancy ; that at the relevant time, Arth had cleared the Professional Education Examination I & II in Chartered Accountancy,

conducted by the Institute of Chartered Accountants of India (hereinafter referred to as 'I.C.A.I' for the sake of brevity) in May 2006 and July 2007 respectively. He has stated that the I.C.A.I had issued a certificate, certifying that his son had passed the Professional Education Examination-I in the month of July 2006 and the Professional Education Examination - II in the month of July 2007. He has stated that at the relevant time, Arth was doing his Articleship with 'D.V. Kapasi and Associates', a Chartered Accountants Firm in Taxation and Audit and his secondment with 'T.P. Oswal & Co.', a renowned firm of Chartered Accountants, which provided services in the area of International Taxation. According to the respondent – claimant, Arth was selected by the said Chartered Accountants Firm, after four rounds of interview and was working and providing his valuable services to the said Firm in their assignments. He has stated that at the relevant time, Arth was receiving a monthly stipend of Rs.4000/-. The first respondent - claimant has produced a certified true copy of the identity card of the deceased issued by the I.C.A.I, the mark-sheets of the deceased of the PE-I and II examination held in May 2006 and 2007 respectively, a copy of his SSC and HSC marksheets and passing certificates, and a certified true copy of a letter dated 30.10.2007 issued by the I.C.A.I to C.A

Mrs. Darshika Vijay Kapasi confirming the deceased- Arth as an Article Clerk with her.

10. The first respondent-claimant has further stated that candidates who have only cleared the PE-II conducted by the I.C.A.I were earning Rs.31,25,744/- per annum, even though they had not cleared their final C.A exam. In support of the same, he produced a copy of the certificate issued by the I.C.A.I to one Mr. Sameer N. Lakhani which certifies that Sameer Lakhani, had passed his intermediate examination in May 2000 and had an annual income of Rs.18,65,260/-, Rs.28,95,534/-, and Rs.31,25,744/- for the Assessment Year 2010-2011, 2011-2012 and 2012-2013, respectively. The respondent – claimants produced copies of the income tax returns of Mr. Sameer Lakhani, in support of the same and copies of the income tax returns of Mr.Vijay Kapasi for the Assessment Years 2010-11, 2011-12 and 2012-13, who had also passed only the intermediate examination in the year 1995. He further stated that his son - Arth was not only a brilliant student but was also associated in social service and was involved in raising funds for barions projects for the blind and for setting up of a Training Centre-

cum-Workshop, for the handicapped through fund raising campaigns. He has produced copies of certificates issued by the Indian National foundation for the Blind and the Bombay Disabled's Association. The Indian National Foundation for the Blind certifies that the deceased had done excellent social service by raising funds for their projects. He has further stated that his son – Arth had also completed a computer course of study in edutainment in 1998 from Datapoint Computer Education and had completed two courses in Web-designing, Corel Draw, Photoshop, Frontpage, Flash and Multimedia with an ‘A’ grade in the year 2004 ; had done a course in Computer Applications under Windows in 2002 – 2003 and had also passed the first and second examination in Mathematics held by ‘Tilak Maharashtra Vidyapeeth’ in February 1998 and 1999 respectively. The respondent – claimant had produced certified copies of all the above stated courses.

11. In his affidavit, the first respondent – claimant has further stated that had his son - Arth been alive, he would have earned atleast Rs.10,00,000/- per annum by the year 2008 and would have handed over

the entire amount to his parents ; that in all probability he would have become an A.C.A and later an F.C.A and would have earned Rs. 50,00,000/- per annum. He has stated that according to the monthly journal of the I.C.A.I for the month of December 2007, an average salary offered to a candidate selected through campus placements was Rs.5.99 lacs per annum and the highest salary was Rs.12 lacs per annum. He has stated that in the I.C.A.I Journal for May 2011, there was an advertisement printed, wherein 'Lexi', the largest pen manufacturer was offering a remuneration of Rs.8 – 9 lacs per annum plus accommodation in Mumbai. According to the advertisement, candidates who had cleared PE II/PCE/PCC in first attempt and who were well versed with Excel could also apply. The respondent – claimant also relied on page 125 of the same journal, under the caption 'Career Watch' which gave statistics of top 10 remuneration offered during February – March 2011 in campus interviews. The statistics revealed that internationally reputed companies had selected candidates and offered them US \$ 1,20,000 – 1,50,000 per annum. In the I.C.A.I Journal of August, 2011 'M/s Madras Cements Ltd' had offered fresh C.A's, a gross compensation of Rs.6.02 lacs per annum. He has further stated that the respondent – claimant no.2 i.e. mother of the deceased was suffering from a host of serious

ailments; that he was not employed and was barely able to make ends meet by doing odd jobs, as he had retired in the year 2009 and that he too was suffering from a series of illness, entailing recurring medial expenditure. He has stated that besides the articleship, his son - was engaged in freelancing work of writing books of accounts and assessing tax for 'Bitsy Infotech Pvt. Ltd.' and 'KBM Extrusions Pvt. Ltd'. and that he was being paid Rs.15,500 at Bitsy and Rs. 10,000/- at KBM.

12. In the one page cross examination of the first respondent-claimant, it has come that he was born on 22nd November, 1953 and his wife i.e. respondent no.2 was born on 12th November, 1950 and that he had not produced any documents in support of the same. It has further come in the cross-examination of the said witness that he has one more son who has passed his C.A Examination and is earning and that he had personally not seen the accident and had no personal knowledge of the alleged negligence of the driver of the offending vehicle. He has stated that he is unaware of the passing percentage of C.A. Exams. Various suggestions were made to the respondent – claimant but he has denied the same. He denied the

suggestion that Arth was only attending full time college and was not earning from the articleship ; that his evidence with regard to the earning capacity of C.A's is false ; that his son did not have a bright future and excellent opportunities in this field ; and that the estimated income of his deceased son was speculative and exaggerated. Apart from the said cross-examination, there is no cross-examination of the first respondent - claimant with regard to the various documents submitted by the first respondent – claimant.

13. The second witness examined by the respondent - claimants was Mr. Mukesh Harishchandra Jain, an eye witness to the accident. The said witness also filed his affidavit in lieu of oral evidence. He has specifically stated that on 7th December, 2007 at about 9.30 a.m. when he was proceeding towards Vasind, on the Mumbai-Agra road, on his motor cycle bearing No - MMW 9964, he saw a Maruti Car bearing No. MH-03-Z-9440. He has stated that although the said car overtook his motorcycle from the right side, the car at all material times, was well within the painted strip, in the middle of the road i.e. on the correct side of the road. He has

stated that there was no divider on the said road but there was a painted strip on the road which divided the two sides. He has stated that the deceased – Arth's car was moving at an approximate speed of 40-50 km per hour and that the speed of his motorcycle was about 30-40 km per hour. He has stated that he was behind the said vehicle, when the car reached near the Diamond Hotel. According to this witness, all of a sudden, a truck bearing No. HR-46-B-710 came from the Mumbai-Nashik direction i.e. from the opposite direction, in a fast speed, on the wrong side of the road and dashed into the Maruti Car, which was just ahead of him. He has stated that the driver of the truck was driving the truck in a rash and negligent manner and that the dash given by the truck was so massive, that the Maruti Car turned turtle and was badly damaged. He has stated that after the impact, he stopped his motorcycle, to help the driver and the occupant of the car. He has stated that the driver as well as the cleaner of the truck also alighted from the truck to help him. He has stated that they found two persons in the car, i.e. Arth and Ms. Hetal Gandhi. He has stated that as Arth was seriously injured on his chest and head and was gasping for life and the girl - Hetal Gandhi, who was sitting next to the driver's seat was also injured, he stopped a tempo which took Arth as well

as Ms.Hetal to a Rural Hospital at Shahapur. He has stated that Arth succumbed to the injuries suffered in the said accident, on reaching the hospital. He has stated that the police arrived at the spot within 15 minutes of the accident, pursuant to which he lodged an FIR as against the driver of the offending vehicle. He has stated that the deceased died solely due to the rash and negligent driving of the driver of the truck. The said witness was cross-examined, however, nothing substantial has come in his cross-examination. Although several suggestions were put to the said witness, including the suggestion that it was the deceased who was driving the car at a fast speed and was negligent, all suggestions were denied by the said witness.

14. The third witness examined by the respondent – claimants was Mr. Sameer Kanhayalal Lakhani, who had passed his intermediate examination but not his final C.A. The said witness produced his passing certificate of intermediate examination. He has stated that he was doing site audit i.e. internal audit for Pratibha Industries Limited, whose turnover was more than 2 thousand crores. He has tendered his certificates and

income tax returns for the Assessment Year 2010-11, 2011-12, 2012-13. In his cross examination, the said witness has admitted that he knew the respondent no.1 – claimant as he was the father of the deceased – Arth and as he was employed in a bank as a Manager. He had admitted that he had met Arth twice or thrice prior to his demise. He had admitted that he was deposing in the Court at the instance of the respondent – claimants about his income. He had admitted that the job market in India was not only dependent upon qualifications but there were other relevant factors which are involved. It has further come in his cross-examination, that he had come across many unemployed Engineers in India but not any unemployed Chartered Accountants. He has denied the suggestion that he was not earning the amounts disclosed by him and that he was deposing in the Court only to help the respondent – claimants.

15. Mrs.Darshika Vijay Kapasi, a chartered accountant by qualification, was examined as the fourth and last witness by the respondent – claimants. She has deposed that Arth was registered as an Article clerk with her. She has shown the xerox true copy of the identity card attested by

the I.C.A.I, which shows that Arth was an Article Clerk. She has also produced a copy of the letter addressed to her by the I.C.A.I mentioning therein the registration of Arth Mehta as an Article clerk. The said document has been exhibited vide Exhibit – 37. She has deposed that Arth was very talented and capable and she had formed this opinion on the basis of the two interviews taken by her and on the basis of his academic record. She has stated that since Arth had cleared his C.A Examination in the first attempt, he would have earned Rs. 60,000- 70,000/- per month. In the cross examination, the said witness has stated that she was paying the deceased Rs.4,000/- per month as stipend but she did not have any documents in support thereof. She has stated that Arth was working as an Article Clerk for about 3 - 4 months with her. She has admitted that the job market depends upon demand and supply. The said witness has denied the suggestion that there are many unemployed Chartered Accountants. She has further denied the suggestion that the chances of employment are more for Engineers and Doctors rather than Chartered Accountants. She has denied the suggestion that she had deposed in the Court, only to help the respondent – claimants. It has come in the cross-examination of the said

witness, that Arth was studying in N.M College, Vileparle and that the college timings for CA students was 7.30 a.m. to 10.30 a.m.

16. We have heard the learned counsel for the appellant and the respondent - claimants at length. Perused the evidence and the material on record.

17. We would at the outset, like to deal with the preliminary objection raised by the learned counsel for the respondent – claimants in the cross objection, with regard to the maintainability of this appeal filed by the appellant under Section 173 of the M. V. Act. According to the learned Counsel for the respondent-claimants, leave to defend was granted to the appellant on the basis of false representations made by the appellant to the Tribunal. It was contended that leave ought not to have been granted by the Tribunal as the owner of the offending truck had contested the claim petition and filed his written statement before the Tribunal.

18. We have perused the papers in this regard and are of the opinion that there is no merit in the said objection and that the same deserves to be rejected at the outset. It is not in dispute that the owner of the vehicle i.e. the fourth respondent had filed his written statement before the Tribunal on 17th January, 2011. It also appears that after the written statement was filed, none appeared on behalf of the fourth respondent. It is in these circumstances, as the owner of the truck had failed and neglected to defend the case on merits, that an application dated 25th July, 2011, was filed by the appellant – Insurance Company, wherein leave to defend was sought under Section 170 of the Motor Vehicles Act.

19. The Tribunal was pleased to allow the said application (Exhibit - 16) vide order dated 25th July, 2011. The said order reads thus:

“As the owner of the vehicle has not contested the claim the insurer permitted to raise the defence available to the owner of the vehicle.”

20. It appears from a perusal of the Roznama, that despite the fact, that the fourth respondent i.e. owner of the vehicle had filed his written

statement on 17th January, 2011, neither the fourth respondent nor his Advocate appeared in the said proceedings. It is thus evident, that as the fourth respondent failed and neglected to defend and contest the claim petition, the Tribunal allowed the application filed by the appellant – company and granted leave to defend. 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. It appears that what was recorded as a reason, was an indisputable fact i.e. the owner had neglected to defend. Under these circumstances, the appellant-Insurance Company was completely justified in contesting the proceedings on merits on the grounds, other than those enumerated under Section 149(2) of the M. V. Act. 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 is clearly maintainable and no fault can be found in the order dated 25th July, 2011 granting leave to defend to the appellant-insurance company.

21. Now coming back to the submissions advanced by the learned counsel for the appellant, we would like to deal with each of the submissions in detail.

22. The first submission of the appellant is that the driver of the offending truck was not driving the truck in a rash and negligent manner. We find that in the present case, the respondent – claimants have examined Mr. Mukesh Harishchandra Jain, an eye witness to the accident, who has stated in great detail, the manner in which the accident took place. He has stated that the deceased was travelling at a moderate speed and was on the correct side of the road and that his own motorcycle was just behind the said vehicle when the accident took place. He has stated the manner in which the offending truck came in a fast speed and in a rash and negligent manner, on the wrong side of the road and dashed into the Maruti Car which was just ahead of him, resulting in the vehicle turning turtle. He has stated that the driver of the truck was driving the vehicle in a rash and negligent manner. Nothing substantial has come in the cross-examination of the said witness to disbelieve his testimony. Mr.Jain himself was the

first informant who lodged the FIR against the driver of the truck, pursuant to which a CR was registered. The respondent – claimants have also produced documents i.e. copies of the FIR, Inquest Panchanama, spot panchanama, Cause of death certificate, PM report and original death certificate to show that the offending vehicle was being driven in a rash and negligent manner. It is pertinent to note that the appellant – company has not examined either the driver of the offending vehicle or any other eye-witness to the accident, to show to the contrary i.e. the offending vehicle was not negligent in the accident. Considering the ocular evidence that has come on record, we do not find any merit in the submission of the learned counsel for the appellant, that the respondent – claimants had not proved that the driver of the truck was driving the vehicle in a rash and negligent manner.

23. The submission of the learned counsel for the appellant that it was a case of contributory negligence, is also completely devoid of merit in the light of the ocular and documentary evidence that has come on record, which reveals that it was the driver of the offending vehicle who came in a

fast speed on the wrong side of the road and dashed into Arth's car. Considering the evidence on record, it cannot be said that the deceased had in anyway contributed to the accident and hence no fault can be found with the Tribunal for not framing an issue with regard to contributory negligence and consequently not considering the same.

24. The next submission of the learned Counsel for the appellant is that the Tribunal had erred in calculating the income of the deceased as Rs.6 lacs per annum. According to the learned counsel, the deceased had not even completed his C.A, thus, dis-entitling the respondent – claimants to any compensation. He further submitted that the deceased at the time of his death, had only cleared his PE-I and PE-II exam, which are the basic exams of the C.A. course and that a person clearing the same, may not necessarily clear the final Chartered Accountancy examination. The learned counsel contended that the Tribunal had failed to appreciate the fact, that the deceased had not completed his final C.A., and hence it was unlikely that he would have drawn a salary between 5 to 10 lacs and as such there was no basis for the Tribunal to arrive at the income of Rs.6 lacs per

annum. According to the learned counsel, there was no certainty that a person passing an entrance exam i.e. P.E – I and II would finally become a Chartered Accountant. The learned counsel for the appellant also submitted that Darshika Kapasi, the fourth witness had not produced any document to show that stipend of Rs.4,000/- was paid to Arth, for four months.

25. Perused the evidence in this regard. The first Respondent - claimant has placed on record the educational certificates and the mark-sheets of Arth i.e. his SSC and HSC examination marksheets; the PE-I examination and PE-II examination certificates and a letter dated 30th October, 2007, issued by I.C.A.I with regard to the registration of Arth, as an article clerk with Mrs. Darshika Kapasi and certifying that Arth was registered for the C.A course. The SSC and HSC (Commerce) marksheets show that Arth had secured 81.20% and 79.50% respectively and had scored 95 marks in 'Book keeping & Accounting', in HSC. It has also come on record that Arth had cleared his PE – I and PE- II Examination in the first attempt ; that apart from these examinations, Arth had done computer courses, courses in Web-designing, Corel Draw, Photoshop,

Frontpage, Flash and Multimedia with 'A' grade. It also appears that apart from academics, Arth was associated with social work i.e. raising of funds for the Indian National Foundation for the Blind etc. A perusal of all the marksheets and several certificates show that Arth was not only an academically bright student but had also done a lot of social work at such a young age. All this material that has come on record has gone unchallenged. It also appears from the evidence of the first respondent – claimant, that the deceased was doing freelancing work of writing books of accounts and assessing tax for the companies 'Bitsy Infotech Pvt. Ltd.' and 'KBM Extrusions Pvt. Ltd.' and that he was being paid Rs. 15,500/- and Rs. 10000/- respectively, for the same. The respondent - claimants have also placed on record the income tax returns of Sameer Lakhani, a Chartered Accountant, who had passed his preliminary examinations but not his final Chartered Accountancy examination, to show that despite not having passed the final examination, his income for the years 2010-2011, 2011-2012, 2012-2013 was Rs.18,65,260/-, Rs.28,95,534/-, and Rs. 31,25,744/- respectively. There is virtually no cross-examination of the first respondent even with regard to the said evidence adduced by the respondent - claimants. The first respondent – claimant had also produced relevant

extracts of the I.C.A.I journals to show the earning capacity of a C.A ; one who had completed his C.A. and of those who had completed only their PE-I and PE – II examination, but not the final C.A Examination. There is no specific cross-examination on these extracts or its contents except a general suggestion that the claim was an exaggerated one and that the evidence with regard to the earning capacity of CA's was false, which of course were denied by the respondent – claimant. Infact, in the one page cross-examination of the first respondent – claimant, nothing substantial has come on record to discredit his testimony.

26. Mrs.Darshika Kapasi in her examination-in-chief had produced the true Xerox copy of the identity card and the letter issued by the I.C.A.I denoting that the deceased was working with her as an article clerk (Exhibit 31). She has specifically stated that the deceased Arth was very talented and that such a qualified person could earn Rs.60,000/- to 70,000/- per month. In her cross examination it has come that she was paying Arth Rs.4,000/- per month and that he was working as an article clerk with her for a period of 3-4 months. Nothing substantial has come in her cross-examination to

disbelieve her testimony. Similarly, it has come in the evidence of Sameer Lakhani that despite not having completed his final C.A., he was earning approximately Rs.18 lacs in 2010 – 2011, approximately Rs.28 lacs in 2011 – 2012 and Rs.31 lacs in 2012 – 2013. This evidence has also virtually gone unchallenged.

27. The Tribunal had rightly come to the conclusion that the income of the deceased should be taken as atleast Rs.6 lacs per annum for the purpose of calculating the multiplicand. Mrs. Darshika Kapasi in her examination in-chief has categorically deposed that deceased Arth was a very talented boy and someone with such qualifications could easily earn Rs. 60,000/- to 70,000/- per month. The respondent claimants have also placed on record extracts from the I.C.A.I journals for the month of December-2007 and May-2011. In the issue of December 2007, it is stated that the I.C.A.I had organized successfully, one more round of campus placements during September-October 2007 and the figures show that the average salary offered was Rs.5.99 lacs per annum and the highest salary was Rs.12 lacs per annum. The subsequent journals of I.C.A.I show a substantial increase in salaries. Considering the evidence and the

documents that have come on record, it is evident that the deceased had a bright academic record and was competent and in these circumstances, there is no reason to suppose that the deceased would not have cleared his final C.A. Examination. The deceased would have become a full-fledged Chartered Accountant and then would have secured a good job in the private sector. The documents and the evidence shows that the average salary offered as of the year 2007 was Rs.5.99 per annum and highest was Rs.12 lacs per annum. According to the first respondent – claimant had Arth been alive, he would have earned atleast Rs.10 lacs per annum in 2008. The evidence of Mrs.Darshika Kapasi also shows that Arth was very talented and that such a qualified person could earn Rs.60,000/- to 70,000/- per month. Thus, even if we take the average salary of a C.A., in 2007, according to the I.C.A.I journal, it was Rs.9 lacs per annum. Considering the material on record, we are of the opinion that the income of the deceased even without passing final C.A., would have been atleast Rs.60,000/- per month. Even if Sameer Lakhani's evidence is seen, it is evident that he was earning Rs.18 lacs in 2010, Rs.28 lacs in 2011 and Rs.31 lacs in 2012, though he had not completed his Final C.A. and had only cleared his PE – I and PE – II examination. The income-tax returns

produced of Sameer Lakhani were only for 2010 – 2011, 2011 – 2012 and 2012 – 2013 and not of 2007. Moreover, even at the time of the accident, Arth had started earning as he was doing the work of writing books of accounts of the two companies apart from earning stipend. Thus, the income of the deceased for the purpose of ascertainment of loss of dependency of the respondents can be taken to be in the sum of Rs.7,20,000/- per annum.

Therefore, considering the evidence on record, we are of the opinion that the Tribunal ought to have taken the income of the deceased at the rate of Rs.7,20,000/- per annum for calculating the multiplicand.

28. The next question which arises before us is whether the deceased would be entitled to future prospects? It appears that the Tribunal has not considered and granted 'future prospects'. As per the documents on record and evidence of the first respondent – claimant, Darshika Kapasi and Sameer Lakhani, it is evident that Arth was very bright and intelligent, with a promising future. It also appears that Arth had passed his PE- I and PE – II examination in the first attempt, where the overall passing percentage for such exams is on the lower side. Had the deceased been alive, he would

have become a C.A., and then earned at least Rs.6 lacs per annum and his income would have increased substantially in time to come. The deceased had done several courses, which would have given him an edge over others, professionally. Thus, the deceased would have had greater prospects of earning more due to career advancement.

29. We may note here that *Sarla Verma (Smt) and Others v/s Delhi Transport Corporation and Another*¹ dealt with a case of a salaried person. The Apex Court held that in case of a 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 *Santosh Devi v/s National Insurance Company Limited and Others*², *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 *Santosh Devi's case (supra)* were reiterated in *Rajesh & Ors. vs. Rajbir Singh & Ors.*³, wherein, the Apex Court held that in cases of self employed persons

1 (2009) 6 SCC 121

2 (2012) 6 SCC 421

3 (2013) 9 SCC 54

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 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 was 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. In the present case, the deceased was only 20 year of age. While determining the income for the purpose of calculating the

multiplicand, we have taken the income of Rs.7,20,000/- per annum after taking into consideration the future prospects of increase in the earnings. Hence, no further amount can be added under this head.

31. Learned Counsel for the appellant next contended that the respondents – claimants i.e. the father, mother and brother of the deceased, cannot be considered to be the dependents of the deceased. He urged that the respondent no.1 i.e. father of the deceased was working in a Bank as a Manager and the respondent no.3 – brother of the deceased was a C.A. and were earning and hence neither of them could be termed as a 'dependent'. According to him, as both the respondent nos.1 and 3 were earning, the respondent no.2 - mother could also not be termed as a 'dependent' and hence the claim application was clearly misconceived and not maintainable.

32. There can be no dispute that the parents of the deceased as well as his brother in a sense are the legal representatives of the deceased and as per Section 166 of the M.V.Act, any legal representative can make an application for compensation. The question that arises before us, is,

whether the father of the deceased could be said to be a dependent of the deceased, as he had a job and was working and if the father cannot be termed as the dependent of the deceased, whether the mother could be termed as a dependent, considering that the father of the deceased was earning and supporting the family.

33. At the outset, it may be noted, that the Tribunal had rightly come to the conclusion that the respondent no.3 – claimant i.e. the brother of the deceased cannot be said to be a dependent of the deceased as it had come in the evidence of the first respondent, that the respondent no.3 had completed his C.A. and was working. The respondent – claimants have also not challenged this finding in their cross-objection. Thus, the only question is whether the respondent nos.1 and 2 i.e. father and mother of the deceased can be considered to be the dependents of the deceased ? From the evidence that has come on record, it appears that the respondent no.1 – father was born on 22nd November, 1953 and the respondent no.2 – mother was born on 12th November, 1950. Thus, at the time of the demise of Arth in the accident in 2007, the respondent nos.1 and 2 were aged 54 and 51 years respectively and in 2013, when the evidence was recorded they were 60 and

57 years old. It has come in the evidence of the first respondent – claimant which was recorded in 2013 as under :-

“29. I say that my wife the applicant No.2 herein who is the mother of the deceased has been suffering from a host of ailments over the last 15-20 years such as severe arthritis, herpes, asthma, her L-5 vein is totally damaged and other illnesses. She also has foot drop. Because of this she is barely able to walk. Since the death of the deceased, in the above accident on account of a rude shock of losing her young son, she has been suffering from severe mental depression. I am not employed anywhere and **I am barely able to make ends meet by doing some odd jobs as I had retired in the year 2009 when my employer company closed down.** Presently since the last many years I am hardly able to meet her medical costs. I too am suffering from Hypertension, high cholesterol and am a diabetic which also entails recurrent medical expenditure. Our health and financial problems have compounded after the death of my son Arth the deceased herein”.

34. It is pertinent to note, that there is absolutely no cross-examination on the aforesaid evidence that has come on record, to show

that the first respondent was employed and was earning well or was receiving any retirement dues/pension or that the first and second respondents were not dependent on the income of the deceased. Infact, there is not even a suggestion to that effect. There is no cross examination even to the evidence of the first respondent, that had Arth been alive, he would have handed over the entire amount to his parents. The only evidence that is sought to be relied upon by the learned counsel for the appellant is a stray admission given by Sameer Lakhani, which is as under :-

“The applicant herein is the father of the deceased and he is employed in Bank as a Manager therefore, I knows him”.

35. A perusal of the stray admission does not in anyway show that the appellant was working as a Manager with a Bank in 2013. Neither does this admission further the case of the appellant, considering the fact, that there is absolutely no cross to the said evidence of the first respondent in general or specifically with regard to the evidence, that he had retired in 2009 nor any suggestion with regard to his employment or that he was not dependent. The appellant has not brought on record any material to the contrary to suggest that the first respondent was gainfully employed and as

such was not dependent on the income of the deceased. Considering the aforesaid, we are of the opinion that both, the first and the second respondents could be said to be the dependents of the deceased.

36. Coming to the next question, as to what would be the appropriate multiplier applicable in the facts of the present case? The Tribunal while computing the compensation had applied the multiplier of '17' keeping in mind the age of the deceased. According to the learned counsel for the appellant, the Tribunal ought to have considered the age of the parents and not the age of the deceased, while applying the multiplicand to the facts of the case.

37. We may note that the Apex court in the case of ***Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma and Another***⁴. was required to deal with a similar situation where the deceased was 19 years old. The Hon'ble Court while calculating the compensation applied the multiplier as per the age of the parents of the deceased. The Court held:

“11.Therefore, we have no doubt in ascertaining the future income of the deceased at Rs. 25,000/- p.m. i.e. Rs. 3,00,000/-

4 (2015) 2 SCC 180

*p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per **Oriental Insurance Co. Ltd. v. Deo Patodi** and applying the appropriate multiplier of 13, keeping in mind the age of the parents of the deceased, as per the guidelines laid down in **Sarla Verma** case, we arrive at a total loss of dependency at Rs.26,00,000/-[(Rs. 3,00,000 minus 1/3 X Rs. 3,00,000)X 13]”.*

38. The Apex Court in the case of **National Insurance Company Limited v. Shyam Singh and Others**⁵ was required to deal with a similar situation where the aged parents were sole dependents of their young deceased son. After consideration and following the case of **Ramesh Singh v. Satbir Singh**⁶ the Apex court held that the multiplier that would apply would be after considering the age of the parents of the deceased. The Court has held in Para 9 and 10:

*“9. This Court in the case of **Ramesh Singh v. Satbir Singh**, (2008) 2 SCC 667, 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*

⁵ (2011) 7 SCC 65

⁶ (2008) 2 SCC 667

findings of this Court are as under:

- "6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in [New India Assurance Co. Ltd. v. Charlie](#) AIR 2005 SC 2157, it is clear that the choice of multiplier is determined by the age of the deceased or claimants whichever is higher. Admittedly, the age of the father was 55 years. The question of mother's age never cropped up because that was not the contention raised even before the trial court or before us. Taking the age to be 55 years, in our opinion, the courts below have not committed any illegality in applying the multiplier of 8 since the father was running 56th year of his life.*
- 7. The learned Counsel relying on the Second Schedule of the Act contended that the deceased being about 16 or 17 years of age, a multiplier of 16 or 17 should have been granted. It is undoubtedly true that [Section 163-A](#) was brought on the statute book to shorten the period of litigation. The burden to prove the negligence or fault on the part of driver and other allied burdens under Section 140 or Section 166 were really cumbersome and time consuming. Therefore as a part of social justice, a system was introduced via [Section 163-A](#) wherein such burden was avoided and thereby a speedy remedy was provided.*

The relief under Section 163-A has been held not to be additional but alternate. The Schedule provided has been threadbare discussed in various pronouncements including Deepal Girishbhai Soni v. United India Insurance Co. Ltd. AIR 2004 SC 2107. The Second Schedule is to be used not only for referring to age of victim but also other factors relevant therefor.

Complicated questions of facts and law arising in accident cases cannot be answered all times by relying on mathematical equations. In fact in U.P.SRTC v. Trilok Chandra (1996) 4 SCC 362, Ahmadi, J. (as the Chief 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. AIR 2008 SC 103. In our considered opinion, the courts

below rightly struck the said balance."

10. *In our view, the dictum laid down in Ramesh Singh case is applicable to the present case on all fours....."*

(Emphasis supplied)

39. Thus, what is evident from the above decisions is that the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. In the present case, the age of the deceased at the relevant time was 20 and the father and mother were aged 54 and 51 years at the time of the accident and 60 and 57 years when the evidence was recorded. Keeping in mind the above decisions, we are of the view that the Tribunal erred in applying the multiplier of '17', by considering the age of the deceased. In the facts of the present case, according to us, the multiplier which ought to be applied is '11', considering the average age of the first and second respondent i.e. 54 and 51 i.e. 52 years.

40. Having regard to all the aforesaid facts, the evidence and the judicial pronouncements in that regard, what is the just and fair compensation that the first and the second respondents would then be entitled to ? Admittedly, the deceased was 20 years of age when he died in the accident. As the deceased, was aged 20 years and a bachelor, 50% of

the said income would have to be deducted towards his personal expenses. 10% deduction towards income tax i.e. Rs.72,000/- per annum will have to be made. Thus, the net income would be Rs.6,48,000/-. From the said amount of Rs.6,48,000/-, 50% would have to be deducted towards personal expenses of the deceased, as he was a bachelor. Accordingly, the amount would be Rs.3,24,000/- per annum. Taking into consideration the average age of the first and second respondent – claimants, the multiplier that would apply is '11'. Considering the multiplicand and the multiplier that would be applicable i.e. Rs.3,24,000/- X 11, the amount arrived at would be Rs.35,64,000/-. Under the conventional heads, the Tribunal has awarded only Rs.50,000/- to the first and second respondents towards loss of estate and expectation of life and Rs.25,000/- towards funeral expenses. We find that the said amount of Rs.50,000/- awarded to the parents requires to be enhanced to Rs.75,000/- each to the first and second respondents. No interference is however, warranted in the funeral expenses awarded by the Tribunal. Thus, the total compensation that the first and second respondent – claimants would be entitled to is Rs.37,39,000/-, which can be rounded off to Rs.37,40,000/-.

41. With regard to the submission advanced by the learned counsel for the respondent – claimants that the interest awarded ought to be enhanced from 7.5% to 9.25%, we are of the opinion that the same requires to be enhanced from 7.5% to 9%. We may note that as far as the interest rate is concerned, the Apex Court in the case of **Puttamma and Others v/s K.L.Narayana Reddy and Another**⁷, after elaborate analysis to determine appropriate rate of interest in Motor Accident claims, held that -

“In view of the aforesaid provisions of the Act, 1988 (Section 171) and the observations of this Court, as noticed above, we keep this question open for Tribunals and Courts to decide the rate of interest after taking into consideration the rate of interest allowed by this Court in similar cases and other factors such as inflation, change in economy, policy adopted by the Reserve Bank of India from time to time and the period since when the case is pending”. (emphasis supplied)

42. Similarly, in **Abati Bezbaruah v. Deputy Director General, Geological Survey of India & Another**⁸ the Apex Court, taking note of the varying interest rates being awarded by Tribunals and High Courts, held that the rate of the interest must be just and reasonable depending on the

⁷ (2013) 15 SCC 45

⁸ (2003) 3 SCC 148

facts and circumstances of the case and should be decided after taking into consideration the relevant factors. We are of the opinion that in the facts of the present case, the interest would have to be enhanced from 7.5% to 9% per annum. Accordingly, we pass the following order :-

ORDER

- i) The appeal is partly allowed ;
- ii) The cross-objection filed by the respondent – claimants is also partly allowed ;
- iii) The first and second respondents would now be entitled to compensation of Rs.37,40,000/- along with interest @9% per annum to be calculated from the date of filing the claim petition till its realization;
- iv) The apportionment shall be done in accordance with the Judgment and Award dated 20th February, 2014, passed by the Chairman, Motor Accident Claims Tribunal, Mumbai ;
- v) Writ of this judgment along with R&P shall be forwarded to the Tribunal, within four weeks.

43. Civil Application nos.3456 of 2014 and 1538 of 2015 do not survive and the same are disposed of.

44. All concerned to act on the authenticated copy of this Judgment.

REVATI MOHITE DERE, J.

A.S.OKA,J.