**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.983 OF 2005

United India Insurance Co.Ltd.,
Through it's Divisional
Manager and Authorised Representatives
And Signatory, Jalgaon Divisional
Office, Mansing Market, Opp.Atul
Dairy, Jalgaon.

**...APPELLANT
(Original Opponent
No.3)**

VERSUS

1. Smt.Sanjanabai w/o Kashinath Patil,
Age 43 years, Occupation, Household.

2. Smt.Bhagibai w/o Nathu Patil,
Age 67 years, Occupation: Nil

3. Mr.Yatish Kashinath Patil,
Age 24 years.

4. Miss Gayatri Kashinath Patil,
Age 18 years.

All r/o Kudavad, Tal: Shahada,
District Nandurbar.

5. Dhannajy Bhaidas Shimpi,
Age: Adult, Occupation: Driver,
R/o Anarad, Tal.Shahada.

6. Vijay Raghunath Wadnere,
Age: Adult, Occupation: Jeep owner,
R./o. Shahada, Dist. Nandurbar.

**...RESPONDENTS
(No.1 to 4 original Claimants.
Respondent No.5 to 6 - Orig.
opponent Nos. 1 & 2)**

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Mr.A.B.Gatne, Advocate for the appellant.
Mr.D.A.Mane, Adv., h/f Mr.Milind Patil, Adv., for respondent nos. 1, 3 and 4.
Adv.S.D.Tambat-Dhumal for respondent nos.5 & 6.

CORAM: P.R.BORA, J.

DATE : April 15th, 2016

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ORAL JUDGMENT:

1. Heard learned Counsel appearing for the Insurance Company and the learned Counsel appearing for the Original claimants.

2. The impugned award is objected only to the extent of quantum of compensation awarded by the Tribunal. Shri A.B.Gatne, learned Counsel appearing for the appellant Insurance Company, submitted that two gross mistakes are committed by the Tribunal while determining the amount of compensation. According to the learned Counsel, the Tribunal has erred in adding hundred per cent of the amount of the wages in the actual wages being drawn by the deceased towards the future prospects. Learned Counsel invited my attention to paragraph No.11 of the judgment and submitted that the Tribunal has observed that the income of the deceased would have been doubled by the time of his attaining the age of superannuation. Learned Counsel submitted that in view of

the law laid down by the Honourable Apex Court in the case of **Sarla Verma and Ors. V/s. Delhi Transport Corporation and Anr. 2009(5), Mh.L.J. 775** for age group of 37 to 40, if at all any increase in the wages is to be taken into account, that should be at the rate of 50 per cent, and not beyond that. Learned Counsel further submitted that the Tribunal has also erred in applying multiplier of 16. According to the learned Counsel, having regard to the age of the deceased, the appropriate multiplier would be of 15. Learned Counsel, therefore, submitted that on these two counts, the impugned award needs to be modified.

3. Learned Counsel appearing for the original claimants brought to my notice that though the Tribunal might have observed that the salary income of the deceased would have been doubled till he attains age of superannuation, while actually calculating the compensation, the Tribunal has held the income to the tune of Rs.11,250/- and has rightly assessed the compensation.

4. In so far as application of multiplier is concerned, learned Counsel was fair enough to submit that in view of **Sarla Verma's** judgment (cited supra), the multiplier of 15

must have been applied by the Tribunal.

5. I have carefully perused the impugned judgment. In paragraph no.11 itself, the Tribunal has provided all particulars as to how it has assessed the amount of compensation. Admittedly, the salary of deceased Kashinath was Rs.7514/- per month. There is further no dispute that in view of the judgment in Sarla Verma's case (cited supra), towards future prospects, having regard to the age of the deceased, 50 per cent amount was liable to be added for assessing just and fair compensation. Thus, if the income of the deceased is held to the tune of Rs.7500/-, amount of Rs.3750/- was liable to be added in the aforesaid salary income which comes to Rs.11,250/-. Learned Tribunal has rightly assessed the compensation by holding the income of the deceased to the tune of Rs.11,250/-. Thus, there appears no substance in the objection raised on behalf of the Insurance Company that the Tribunal erred in giving the claimants hundred per cent rise in the salary income under the head of future prospects. I see no error on the part of the Tribunal in arriving at the conclusion that the amount of compensation was to be assessed by holding the salary income of the deceased to the tune of Rs.11,250/-,

6. However, in so far as application of multiplier is concerned, the Tribunal has certainly committed a mistake in applying multiplier of 16. The Tribunal, after having deducted one third amount of the total income of the deceased towards his personal expenses has held the annual income of Rs.89, 604/- prima facie available with the deceased to be spent by him on his dependents and has multiplied the same by 16, has thus determined the compensation to the tune of Rs.14,33,664/- (89,604 x 16 = 14,33,664). As stated earlier, the compensation needs to be determined by applying the multiplier of 15. By applying the said multiplier, the amount of compensation comes to Rs.13,44,060/- (89,604 x 15 = 13,44,060).

7. In so far as the compensation awarded by the Tribunal of Rs.18,000/- under other heads, I do not see any reason to cause any interference in the amount so granted by the Tribunal. The original claimants are thus entitled for total compensation of Rs.13, 62, 060/- jointly or severally from the driver, owner and insurer of the offending vehicle.

8. The Insurance Company has deposited the entire

amount under the impugned award with interest accrued thereon till date. Now, the original minor claimants have become major. Therefore, there seems no reason for directing the amount of compensation of their share to be deposited in Fixed Deposit Receipts. However, apportionment needs to be made of the compensation so determined amongst the claimants. According to me, it would be appropriate to award 40 per cent of the total amount of compensation to original claimant no.1 Smt. Sanjanabai, 20 per cent each to original claimant nos. 2, 3 and 4. Accordingly, the original claimants are permitted to withdraw the amounts of their share along with interest accrued thereon. The balance amount be paid to the Insurance Company along with interest.

9. In view of the discussion made above, the impugned award thus needs to be modified only upto the aforesaid extent. It be modified accordingly. The appeal stands allowed in the aforesaid terms. Pending Civil Applications if any stand disposed of.

(P.R.BORA)
JUDGE

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AGP/983-05fa