IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1152 OF 2013
(WITH CA/11022/2012 IN FA/1152/2013)

The Reliance General Insurance Company,
Through It's Manager,
C-9-10, 2nd Floor,
Aurangabad Business Center,
Adalat Road, Aurangabad,

...APPELLANTS
(Orig. Resp.Nos. 2 & 6)

VERSUS

1) Prabhakar S/o. Bhagwan Kamble,
Age:49 years, Occu: Labour,
R/o. Rui (Dhoki), Tq. & District Osmanabad.

2) Alka W/o. Prabhakar Kamble,
Age:47 years, Occu:-Household,
R/o. As above,

3) Sangita S/o. Prabhakar Kamble,
Age:16 years, Occu.:Education,
R/o. As above, Minor - U/G. of
her mother Claimant No.2

4) Mulani Fattubhai S/o. Rahiman,
Age: Major, Occu.: Business,
R/o. Malad, Tq. Daund, Dist. Pune,

5) Mohd. Aejaz Ahmed S/o. Mohd. Shabeer Ali,
Age: Major, Occu. Transport Business,
R/o. New Taj Colony, Basavkalyan,
Dist. Bidar (Karnataka State),

6) National Insurance Company Limited,
Gulbarga (Karnataka State),
Through : The Divisional Manager,

National Insurance Co. Ltd. Railway Station Road,
Ahilabai Holkar Chowk, Aurangabad,

7) Sidhu H.M. Patil,
Age: Major, Occu. Business,
R/o. H.No.222415, Bhekrainagar,
Papade Wasti, Phursungi, Pune.

RESPONDENTS
(Resp. Nos. 1 to 3 - Org. Claimants Resp. Nos. 4 to 7 - Org. Resp. Nos. 1 and 3 to 5.)

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Advocate for Appellant :Mr.Mohit Deshmukh h/f Mr.Chapalgaonkar S.G.
Mr.R.C.Bora, h/f. M.R. P.P. Bafna, Adv., for Respondent No.6
Mr. Murge Estling S., Adv. for R/1,2 and 3.
Mr. V.B.Deshmukh, Adv., for respondent no.5.
Mr. S.P. Urgunde, Adv. for respondent no.7.

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CORAM : P.R. BORA, J.
Dated: November 23, 2016

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PER COURT :-

1. The present appeal is filed against the judgment and award passed by the Member, Motor Accident Claims Tribunal, Osmanabad, in M.A.C.P. No.20/2010 on 30th of April, 2012. The aforesaid Claim Petition was filed by the legal heirs of deceased Sham Prabhakar Kamble who died in a vehicular accident happened on 30th of October, 2009.

2. As is revealing from the pleadings, three vehicles were involved in the alleged accident. Deceased Sham Kamble was travelling by a Pick Up Van which was proceeding from Sholapur to Pune; the Bolero Jeep, which was proceeding from Pune to Sholapur, and one Truck which was following the Pick Up Van.

3. Before the Tribunal, it was the contention of the claimants that the Driver of the Bolero Jeep (Registration No. MH-42/H-2207) was negligent in driving his Jeep and was driving the same in rash and negligent manner and he gave a dash to the Pick Up Van (Registration No.MH-12/DG-8096) and, suddenly thereafter, the Truck involved in the accident bearing registration No. KA-39/4040 gave another dash to the Pick Up Van from its rear side. According to the claimants, the accident happened because of the negligence on the part of the drivers of all the three vehicles involved in the alleged accident. The claimants, therefore, impleaded the owners and insurers of all the three vehicles as respondents and claimed the compensation of Rs.6,10,000/- jointly and severally from

all the respondents.

4. The petition so filed was resisted by all the respondents. All the owners denied negligence of their respective Drivers in occurrence of the accident. The petition was also contested on the quantum. The claimants examined total three witnesses in order to substantiate the claim so preferred by them. One of the claimants deposed before the Court. The claimants, then examined one eye witness, namely, Santosh Waghmare and employer of the deceased was also examined so as to bring on record income of the deceased. None of the respondents entered the witness box nor any other witness was examined on behalf of the respondents.

5. The Tribunal, after assessing the oral and documentary evidence brought before it, allowed the claim application only against the owner and insurer of the Bolero Jeep and awarded compensation of Rs.6,10,000/- to the applicants jointly and severally from the owner and insurer of the Bolero Jeep i.e. Respondent nos. 1 and 2 in

the Claim Application. Aggrieved thereby, the said respondents have preferred the present appeal.

6. Shri Deshmukh, learned Counsel appearing for the appellants, criticized the impugned judgment on several counts. Learned Counsel submitted that the claimants have utterly failed in proving that the accident in question happened because of the negligence on the part of the Driver of the Bolero Jeep and despite that the Tribunal has held the owner and insurer of the Bolero Jeep responsible for payment of compensation. Learned Counsel further submitted that the offense in connection with the accident in question was registered only against the Driver of the Pick Up Van and the entire Police papers which are part of the proceedings before the Tribunal reveal negligence on the part of the Driver of the Pick Up Van. According to the learned Counsel, when reliance was placed on such Police papers by the claimants also, the Tribunal ought to have held the Driver of the Pick Up Van responsible for causing alleged accident and the compensation must have been awarded only against the

owner and insurer of the Pick Up Van.

7. Learned Counsel further submitted that the Police papers have not been properly appreciated by the Tribunal while recording the conclusions on the point of negligence. Learned Counsel submitted that from the papers there is reason to believe that the alleged accident was head on collision between the Bolero Jeep and the Pick Up Van, and as such, the Tribunal must have held the driver of the Pick Up Van also responsible for the occurrence of the alleged accident. Learned Counsel further submitted that the evidence on record further shows that the truck which was involved in the alleged accident gave a dash to the Pick Up Van from its rear side wherein deceased Sham was stated to be sitting at the backside and when the dash was given by the Truck from its rear side, reasonable inference can be drawn that the dash given by the Truck may have also resulted in causing injuries to deceased Sham which have ultimately resulted in causing his death.

8. Learned Counsel submitted that from the evidence on record, the only conclusion which emerges is that the alleged accident had happened because of the composite negligence on the part of the Drivers of all the three vehicles involved in the alleged accident. In the circumstances, according to the learned Counsel, the Tribunal has manifestly erred in holding the Driver of the Bolero Jeep, alone responsible for occurrence of the alleged accident.

9. Learned Counsel further submitted that the Tribunal has also committed an error in determining the amount of compensation. Learned Counsel submitted that while determining the amount of dependency compensation, the Tribunal has applied multiplier based on the age of the deceased whereas it ought to have been applied as per the age of the claimants. In order to support his contention, learned Counsel relied upon the judgment of this Court in the case of United India Insurance Company Ltd. Vs. Sobha Amarjitsingh Rajput and connected matters (2016 SCC OnLine Bom.8996).

Learned counsel, therefore, prayed to hold that the alleged accident was the result of composite negligence on the part of the three drivers involved in the accident and to re-determine the amount of compensation by applying multiplier of 13 which would be appropriate multiplier having regard to the age of the claimants in the present application.

10. It was further argued by the learned Counsel that the deceased Sham was a gratuitous passenger in a pick up van and, as such, his risk was not covered by the Insurance Policy of the said pick up van. Learned Counsel submitted that though it was the contention of the claimants that deceased Sham was travelling along with goods in the said pick up van, the said fact has not been proved by the claimants. Learned Counsel submitted that the spot panchnama and other Police documents clearly reveal that no household articles, as were stated to have been carried by the deceased in the said pick up van, are shown to have been recovered from the spot of occurrence or from the said Pick Up Van. Learned

Counsel further submitted that the material on record, reveals that besides deceased Sham other five persons were also travelling through the said Pick Up Van. Learned Counsel submitted that from the available evidence on record, it ought to have been held by the learned Tribunal that breach of policy condition was committed by the owner of the pick up van thereby exonerating the Insurance Company from its liability to indemnify the insured. Learned Counsel, therefore, submitted that in case this Court accepts the contention of the present appellants that the alleged accident was the result of composite negligence on the part of the drivers of the three vehicles involved in the present accident, no liability can be fastened on the insurer of the pick up van.

11. Learned Counsel appearing for the original claimants has supported the impugned judgment. According to the learned counsel, the Tribunal has rightly considered the evidence on record and has passed a well reasoned order which requires no interference.

12. Learned Counsel appearing for the owner of the pick up van also supported the impugned judgment and has prayed for dismissal of the appeal. Learned Counsel further submitted that though the Insurance Company has taken the defense that the owner of the pick up van has committed breach of policy condition by carrying gratuitous passenger in the goods vehicle, the defense so taken by the Insurance Company has not been proved by it before the Tribunal. Learned Counsel further submitted that the evidence on record sufficiently shows that deceased Sham was travelling in the pick up van along with his goods and, as such, his risk was very well covered. Learned Counsel submitted that the Tribunal has considered all these aspects and has passed a well reasoned order.

13. Learned Counsel appearing for the Insurance Company of the truck bearing No.KA-39/4040 has also supported the impugned judgment. Learned Counsel submitted that the Tribunal has rightly held that no blame can be attributed on the part of the driver of the truck in

occurrence of the alleged accident. Learned Counsel submitted that no interference is required in the impugned judgment and order.

14. I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the entire evidence which was adduced before the Tribunal. Perusal of the Police papers and, more particularly, the spot panchnama reflects that initially the Bolero Jeep and Pick Up Van collided with each other and, thereafter, pick up van was dashed by the truck. The Tribunal has elaborately discussed as to how the accident has happened and because of whose negligence the same can be said to have happened. The Tribunal has observed that the Bolero Jeep entered on wrong side and gave dash to the Pick Up Van. In the circumstances, though the offense was registered against the driver of the pick up van, the said evidence has been discarded by the Tribunal and the Driver of the Bolero jeep is solely held responsible for occurrence of the alleged accident. I have carefully

perused the Police papers and, as stated hereinabove, more particularly, the spot panchnama. It appears that the locations of the vehicles on the spot, as has been considered by the Tribunal, is after the occurrence of the accident. There is reason to believe that after having collided with each other, both the respective vehicles might have been dragged to some distance on their respective sides. In the circumstances, the difference as to the distances mentioned by the Tribunal on the existing position of the vehicles cannot be the sole ground for deciding as to because of whose negligence the alleged accident had happened. From the pleadings of the parties and the situation on the spot, it is evident that the Bolero Jeep and the Pick up van collided with each other. The Bolero jeep gave a dash to the pick up van from its one side and much damage is caused to the concerned side of the Bolero Jeep. The Driver of the Pick Up Van could have avoided the accident in question having seen the Jeep coming from the opposite direction in high speed. It appears that no such precaution was taken by the driver of the pick up van. In the circumstances, negligence cannot be solely attributed on the part of the driver of the Bolero Jeep and it has to be held that in occurrence of the alleged accident, to some extent, the driver of the pick up van was also responsible. From the evidence on record I have no hesitation in recording a finding that the alleged accident was result of composite negligence of the driver of the Bolero Jeep as well as the driver of the Pick Up Van.

15. In so far as the driver of the Truck is concerned, no blame can be attributed to him. It has come on record that no much damage has been caused to the rear side of the Pick up Van though truck is stated to have been dashed to the rear side of the pick up van. It is, therefore, evident that the driver of the Truck has made all attempts to stop his truck and hence the dash was not that heavy. It was a sudden act beyond apprehension of the truck driver. In the circumstances, no negligence can be attributed on the part of the truck driver. Thus, the alleged accident had happened because of the composite negligence on the part of the driver of the Bolero Jeep and the driver of the Pick Up Van.

16. The next question arises as about another objection raised by the Insurance Company that deceased Sham was gratuitous passenger in the Pick Up Van. It has to be stated that the Pick Up Van was also insured with the Insurance Company with which the Bolero Jeep is insured. It was argued by the learned Counsel appearing for the appellant that a specific defense was raised by the Insurance Company about the breach of policy condition committed by the owner of the Pick Up Van. However, it is a matter of record that the Insurance Company did not adduce any evidence so as to prove the defense so raised by it. From the material on record no such concrete conclusion can be drawn that deceased Sham was a gratuitous passenger and was not passenger with goods in the Pick Up Van. I am, therefore, not inclined to exonerate the Insurance Company of the Pick Up Van from the liability of indemnifying the insured i.e. the owner of the Pick Up Van.

17. Now, next objection which has been raised is in respect of quantum of compensation determined by the

learned Tribunal. So far as the income of deceased is concerned, the same is not disputed. Moreover, the claimants have duly proved the income of the deceased by examining his employer and by placing on record the salary certificate. The only objection which is raised is about the application of multiplier. As was submitted by the learned Counsel for the appellant, the Tribunal has applied multiplier of 18 for determining the amount of compensation whereas the multiplier ought to have been applied on the basis of the age of the dependents of the deceased. Learned Counsel has placed reliance on the recent judgment of this Court (Coram: Shalini Phansalkar Joshi, J.) delivered in the case of United India Insurance Company Ltd. Vs. Sobha Amarjitsingh Rajput and connected matters (2016 SCC OnLine Bom.8996). In the aforesaid judgment, the learned Single Judge, after having considered all previous judgments on the point delivered by the Apex Court, and different High Courts, including this High Court, has recorded a finding that the appropriate multiplier in the case of death of a Bachelor would be the age of his parents and not the age of the deceased. In view of the above Judgment the appropriate multiplier ought to have been based on the age of the parents of the deceased i.e. of 13 and not of 18 according to the age of the deceased. The Tribunal has, after having deducted the amount of personal expenses held the dependency of the parents on the income of the deceased to be Rs.2,231/- per month i.e. Rs. 26,772/- per annum and has multiplied the same by 18 and has thus determined the amount of dependency compensation to the tune of Rs.4,81,896/-. The amount of dependency compensation so determined needs to be modified by applying multiplier of 13 which comes to Rs. 3,48,036/-. However, it is noticed that the learned Tribunal while awarding non pecuniary damages has awarded a meager amount. The Tribunal has awarded only Rs.10,000/- to the claimants towards loss of estate. In view of the guidelines laid down by the Hon'ble Apex Court in some recent Judgments much more compensation was liable to be granted to the claimants. Considering this factor even if the contention of the learned Counsel for the appellant is accepted that the Tribunal wrongly applied higher multiplier the difference in the amount of compensation may be only of few thousands. In the circumstances, I do not find it appropriate to cause interference in the amount of compensation as determined by the Tribunal. The sum and substance is that no interference is required in the amount of compensation as awarded by the Tribunal.

18. Though this Court has modified the finding recorded by the Tribunal as about negligence holding that the alleged accident happened because of composite negligence on part of the Drivers of both the vehicles; Bolero Jeep and the Pick Up Van, so far as the claimants are concerned, no prejudice will be caused to them and they will not have any difficulty in recovering the amount of compensation in view of the fact that both the aforesaid vehicles are insured with the appellant Insurance Company.

. With the observations as above, though the finding as about the negligence has been modified, the award as about the compensation remains undisturbed and the appeal stands disposed of.

19. The amount of compensation as has been awarded by the Tribunal has been deposited by the Insurance Company in this Court along with the interest accrued thereon till the date of depositing the amount. In view of the fact that now the appeal has been disposed of, I see no difficulty in allowing the original claimants to withdraw the amount so deposited by the Insurance Company in terms of the order passed by the Tribunal. The applicants are accordingly permitted to withdraw the amount. Pending Civil Applications, if any, stand disposed of.

(P.R. BORA, J.)

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