IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.435 OF 2014

1. Sanjay Akaram Sanmukh
Age 52, Occ. Service
2. Prashant Sanjay Sanmukh
Age 25, Occ. Service.
Both r/o. Bazaar Peth,
Ahilyanagar, Sangli,
Dist. Sangli ...Appellants

Vs.

1. Pandurang Subroa Jamandade
Age: Major, Occ. Owner of Jeep,
R/o. Manerajuri,
Taluka: Tasgaon, Dist. Sangli.

2. United India Insurance Co. Ltd., Sangli.
Policy No.161107/31/11/01/00000449,
valid from 06-05-2011 to 05-05-2012.

3. Ajay Daji Bhosale
Age: Major, Occ. Proposed purchaser of
jeep. R/o. Prakash Nagar, Sangli.

4. United India Insurance Co. Ltd., Miraj,
Dist. Sangli. Policy valid from
09-05-2011 to 08-05-2012. ...Respondents.

Mr. T.S.Ingale, Advocate for Appellants.
Mr. Ketan Joshi, Advocate for Respondent Nos.2 to 4.

CORAM: R.M.SAVANT, J.
DATED : 3rd August, 2016

Oral Judgment:

Admit. Considering the limited challenge, heard forthwith.

2 The above First Appeal takes exception to the judgment and order dated 12.7.2013 passed by the learned Member of the MACT, Sangli by which

order the Claim Petition being Motor Accident Claim Petition No.39 of 2012 filed by the Appellants came to be partly allowed and the Respondent Nos.1 to 4 herein were directed to jointly and severally pay sum of Rs.2,76,000/- (including the amount of NFL) to the claimants along with future interest @ 6% p.a. from the date of filing of the petition till realization of the amount. Thereafter further directions have been issued as regards the manner in which amount is required to be paid.

3 It is not necessary to burden this order with unnecessary details. As indicated above, the Appellants herein are the original claimants in the said Motor Accident Claims Petition No.39 of 2012. The said claim petition was filed on account of death of the wife of the Appellant no.1 and was the mother of the Appellant No.2. The said death took place as a consequence of accident which took place on 7.6.2011 at about 6.30 a.m. when the deceased Kalpana had gone for morning walk towards Ahilya Nagar, Bazar Peth Road, Sangli on foot. On her return journey, she was given a dash by a motor vehicle being jeep bearing registration no. MH-09-Q-8541 which came from the opposite direction and was being driven in a rash and negligent manner. On account of said dash, the said Kalpana sustained grievous and serious injuries for which she was taken to the hospital but she succumbed to the said injuries. The said vehicle that is jeep was driven by one Sharad Vilas Waghmare and it was insured with the Respondent Nos.2 and 4 Insurance Company. On account of

her death, the Appellants that is the Claimants claimed an amount of Rs.20 Lakhs as and by way of compensation as they lost the company of the said Kalpana as also her love and affection.

4 The Respondent Nos.2 to 4 were opponents to the said Claim Petition denied the claim of the claimants in toto. They denied that the said accident took place on account of rash and negligent driving of the jeep by its driver. They also denied the age and income of the said Kalpana. It was their case that accident occurred on account of fault of the said Kalpana. It seems that the Respondent No.3 had purchased the vehicle from the Respondent No.1 subsequent to the accident. Two said Respondents also filed their Written Statement and it was their contention that if the Court comes to conclusion that they are liable to pay compensation, then the same be recovered from the Respondent Nos.2 to 4 herein that is the Insurance Company.

5 On the basis of pleadings, the following issues were framed:

<u>Issues</u>

1. Whether the claimants prove that, Kalpana died in an accident dated 7.6.2011 in which a vehicle bearing no.MH-09/Q-8541 was involved ?

2. Whether the claimants prove that the said accident took place because of rash and negligent driving of vehicle bearing No.MH-09/Q-8541 ?

3. Whether the claimants are entitled for compensation ? If so, to what extent ? From

whom ? What order ?

The Claimants in support of their contention have led the evidence of Claimant No.1 Sanjay Sanmukh as P.W.1. They have also produced certified copies of the F.I.R., Spot Panchanama, Post-Mortem Notes, Extract regarding ownership of jeep issued by the R.T.O., Insurance policy and permit of the jeep, which were numbered as Exhibits 27 to 34 respectively. The Claimants also produced xerox copies of the school leaving certificate of the Claimant No.2 Prashant, the Pay Certificate of Sanjay Sanmukh, Ration Card along with list at Exhibit 3. The Claimants also produced the School Leaving Certificate of Kalpana. As against this, the Respondent Nos.1 and 3 herein who were opponent nos.1 and 3 produced the insurance policy in respect of the jeep issued by the Respondent Nos.2 & 4, Driving Licence of Shri Ajay Bhosale and the extract of the driving licence issued by the R.T.O. of Sharad Waghmare along with list at Exhibits 24 and 46. Respondent Nos.2 and 4, however, did not adduce any oral as well as documentary evidence.

6 The MACT proceeded to adjudicate upon the said Petition. The MACT at the first instance adjudicated as regards whether it was on account of rash and negligent driving of the jeep that the accident occurred. The MACT having regard to the evidence on record came to a conclusion that the accident had occurred on account of the rash and negligent driving of the said

jeep.

The trial Court thereafter ventured to consider the issue as to what compensation, the Claimants would be entitled to, on the said respect the MACT took into consideration the fact that the deceased Kalpana at the time of accident was of 42 years of age and so far as her income is concerned, in view of the fact that Kalpana was doing household work, Kalpana would be earning Rs.36,000/- per year and if one-third amount is to be deducted, the same would come to Rs.24,000/- and thereafter by applying the multiplier of 11 calculated the future loss in the sum of Rs.2,64,000/-. The MACT awarded Rs.5,000/- by way of consortium and also awarded Rs.5,000/- to the Appellant No.2 that is her son for loss of love and affection and thereafter arrived at the total amount of Rs.2,76,000/-. The MACT thereafter having regard to the recent trends in the rate of interest awarded interest rate @ 6% p.a. from the date of filing of the petition till realization of the amount by account payee cheque. As indicated above, it is the said judgment and order dated 12.7.2013, which is taken exception to by way of above First Appeal.

7 It is required to be noted that the above First Appeal has been filed by the Claimants seeking enhancement in the compensation awarded by the MACT, Sangli. Hence, in so far as the insurance company is concerned, it has acquiesced in the said award. The Appellants have challenged the award principally on the ground that the income of the said Kalpana has not been

properly computed and the MACT has erred in taking the income at Rs.36,000/- per year on a notional basis. It was the submission of the learned counsel appearing on behalf of the Appellants that the Second Schedule, Clause 6(b) of Section 163-A of the Motor Vehicles Act, 1988 was required to be applied by the MACT, Sangli whilst computing the income of the said Kalpana. In respect of the said contention, reliance was sought to be placed on the judgment of the Apex Court reported in (2010) 9 SCC 218 in the matter of **Arun Kumar Agrawal and Another v. National Insurance Company Limited and Others** wherein the Apex Court has held that though Section 163-A does not apply to cases in which claim for compensation is filed under Section 166. However, in an action under Section 166 in the absence of any definite criteria for determination of compensation to dependants of non-earning housewives/mothers, it is reasonable to rely upon criteria specified in Schedule II, Clause 6 and then apply the appropriate multiplier. The relevant paragraphs of the said judgment are paragraphs 35 and 36 of the said judgment, which for the sake of ready reference are re-produced herein:

> "*35. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have a regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by the wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the*

notional income of a non-earning person at Rs.15,000/- per annum and in case of a spouse, 1/3rd income of the earning/surviving spouse for the purpose of computing the compensation.

36. Though Section 163-A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in Clause 6 of the Second Schedule and then apply an appropriate multiplier keeping in view the judgments of this Court in Kerala SRTC v. Susamma Thomas, U.P. SRTC v. Trilok Chandra, Sarla Verma v. DTC and also take guidance from the judgment in Lata Wadhwa case. The approach adopted by different Benches of the Delhi High Court to compute the compensation by relying upon the minimum wages payable to a skilled worker does not commend our approval because it is most unrealistic to compare the gratuitous services of the housewife/mother with the work of a skilled worker."

8 Hence, the Apex Court has extended the applicability of the Second Schedule and Clause 6(b) under Section 163-A to cases where for determination of compensation to the dependants of non-earning housewives/mothers. Unfortunately, in the instant case, it seems that the said provision as also the above decision was not brought to the notice of the MACT, Sangli when it adjudicated upon the claim petition.

9 In so far as the said aspect is concerned, it is required to be noted that the salary certificate of Sanjay Sanmukh, who is the husband of the said Kalpana was produced. His total salary in terms of the said certificate as on 1.12.2011 was in the sum of Rs.22,191/-. However, out of the said amount

income-tax of Rs.200/- and the professional tax of Rs.200/-, conveyance allowance of Rs.150/- which are shown in the said salary certificate would have to be deducted so as to arrive at his net income which would be Rs.21,631/- On the said basis, the income of Kalpana has to be computed in terms of clause 6(b) of the Second Schedule. Hence, the income of Kalpana would be $1/3^{rd}$ of the said amount i.e. Rs.7,210/-. In terms of law applicable, $1/3^{rd}$ of the said amount would have to be deducted for personal expenses and, therefore, the amount comes to Rs.4807 and therefore, the yearly income would be 4807 x 12= Rs.57,684/-. In so far as the multiplier is concerned, Kalpana was 42 years of age when she expired and, therefore, in terms of the Second Schedule to the Motor Vehicles Act, 1988 as confirmed by the Apex Court in the judgment reported in (2009) 6 SCC 121 **Sarla Verma v. Delhi Transport Corporation**, multiplier that was required to be applied is 14. Hence, by applying multiplier of 14 to the amount of Rs.57,684/-, the total amount comes to Rs.8,07,576/-. Hence, in so far as the amount of Rs.2,64,000/- awarded by the MACT, Sangli for future loss of estate, the same would have to be substituted by an amount of Rs.8,07,576/-.

10 In so far as the amount towards consortium is concerned, the Claimants are awarded Rs.1 Lakh as and by way consortium as also an additional amount of Rs.1 Lakh for loss of love and affection and Rs.10,000/-as funeral expenses. The rate of interest is also increased to 9% p.a. from the 6%

awarded by the MACT. The total amount comes to Rs.10,17,576/- from which an amount of Rs.2,76,000/- would have to be deducted which is the total amount awarded by the MACT. Hence, the amount to which the Appellants would be entitled to under the instant order would be Rs.10,17,576 – Rs.2,76,000=Rs.7,41,576/-. The said amount of Rs.7,41,576/- would, therefore, fetch interest at the higher rate from the date of filing application i.e. MACP No.39 of 2012 till realization. Judgment and order passed by the MACT, Sangli is set aside and is substituted by the above.

11 The First Appeal is allowed to the aforesaid extent and is disposed of.

12 Decree to be drawn up accordingly.

(R.M.SAVANT, J)