IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.528 OF 2014

National Insurance Co.Ltd., having
it's registered office at 3, Middleton
Street, Kolkata; a branch office at
Latur and a Divisional Office at
Solapur; NOW through it's Divisional
Office at Hazari Chambers, Station
Road, Aurangabad.

...APPELLANT
(Orig.Respdt.No.2)

VERSUS

1. Akrur s/o Udhav Gholve,
Age 27 years, Occu. Labourer;
R/o. Sonarwadi, Tq. Washi,
Dist. Osmanabad.

2. Rekha w/o Akrur Gholve,
Age 24 years; Occu. Household,
R/o Sonarwadi, Tq. Washi,
Dist. Osmanabad.

...RESPONDENTS
(Orig.Claimants No.1 & 2)

3. Jagannath s/o Maruti Pade,
Age: Major, Occu: Business;
R/o Pimpri (Shiradhon), Tq.
Kallam, Dist. Osmanabad.

(Orig.Respdt.No.1)

(Since deceased)
THROUGH HIS L.R.

(a) Chandrakant s/o Jagannath Pade,
Age 36 years, Occ. Business,
R/o Pimpri (Shiradhon) Tal.Kallam,
Dist.Osmanabad.

(Amendment in terms of order of Hon'ble Court
dt.05.02.14 on C.A.No.718/10).

...RESPONDENTS

Shri R.C.Bora, Advocate, h/f Mr. P.P.Bafna, Advocate for appellant.
Mr. V.S.Tanwade, Advocate, for respondent nos. 1 & 2.
Shri S.A.Wakure, Advocate, for respondent no.3.

...

CORAM: P.R. BORA, J.

***

Date of reserving the judgment:13/7/2017
Date of pronouncing the judgment: 11/9/2017

***

JUDGMENT:

1. The Insurance Company has filed the present appeal challenging the judgment and award passed by the Motor Accident Claims Tribunal at Osmanabad in M.A.C.P.No.96/2003 decided on 9.10.2007.

2. Present respondent nos. 1 and 2 had filed the aforesaid claim petition claiming compensation on account of death of their daughter in a vehicular accident happened on 26.3.2003 having involvement of a tractor bearing registration No.MH-25-B-2723, owned by respondent no.3 and insured with the appellant Insurance Company. It was the case of the claimants that their daughter named Swati was dashed by the offending tractor and in the accident so happened, she died on the spot. As contended in the petition, deceased Swati was aged about four years at the

time of her death. The claimants had alleged that the accident occurred because of rash and negligent driving of the offending tractor by its driver and, therefore, compensation of Rs.2,25,000/- was claimed by them jointly and severally from the owner and insurer of the said tractor. The claim petition was resisted by the Insurance Company on various grounds, including that of breach of policy conditions by the owner of the tractor. Learned Tribunal, after having assessed the oral as well as documentary evidence on record, held the claimants entitled for the compensation of Rs.2,25,000/- jointly and severally from the owner and insurer of the offending tractor. The Tribunal has passed a further order entitling the Insurance Company to recover the amount of compensation, which may be paid by it to the claimants, from the owner of the tractor. Aggrieved by the judgment and award as aforesaid, the Insurance Company has filed the present appeal.

3. Heard Shri R.C.Bora, learned Counsel holding for Shri P.P.Bafna, learned Counsel appearing for the Insurance Company, Shri V.S.Tanwade, learned Counsel

appearing for respondent no.2 and Shri S.A.Wakure, learned Counsel appearing for respondent no.3. Perused the impugned judgment and the other material available on record.

4. In the memo of appeal, the Insurance Company though has challenged the impugned judgment on various grounds, at the time of hearing of the appeal the learned Counsel for the appellant Insurance Company pressed only one ground that the amount of compensation as awarded by the Tribunal is unreasonable. The learned Counsel submitted that the Tribunal has grossly erred in adopting multiplier method for determining the amount of compensation in case of the deceased girl who was aged about four years. The learned Counsel, placing his reliance on the judgment of the Honourable Apex Court in the case of Oriental Insurance Co.Ltd. vs. Syed Ibrahim & Ors (2007 AIR SCW 6197), submitted that, at the most, the compensation of Rs.51,500/- as was awarded in the said case, could have been awarded in the present case. Learned Counsel, therefore, prayed for modification in the impugned award to the aforesaid extent and allow the

appeal of the Insurance Company to that extent.

5. Learned Counsel appearing for the respondents supported the impugned judgment and the award.

6. After having considered the submissions made on behalf of the learned Counsel appearing for the appellant Insurance Company, and on perusal of the impugned judgment, it does not appear to me that any case is made out by the appellant Insurance Company so as to cause interference in the impugned judgment and award. Perusal of the impugned judgment shows that, relying upon the judgments of the Honourable Apex Court in the case of Manju Devi Vs. Musafir Paswan (2005 (1) T.A.C. 609 (Supreme Court)), and U.P. State Road Transport Corporation Vs. Trilok Chandra (1996 A.C.J. 831) (SC), the learned Tribunal has adopted the multiplier method for determining the amount of compensation and has accordingly determined the amount of compensation to the tune of Rs.2,25,000/-.

7. Having regard to the quantum of compensation, it does not appear to me that present is the case where

the Insurance Company should have indulged in filing an appeal. The amount as has been awarded by the Tribunal cannot be, in any sense, said to be exorbitant or unreasonable. There cannot be a dispute that the compensation must be just and it cannot be a bonanza, not a source of profit. As has been observed by the Honourable Apex Court in the case of Oriental Insurance Co.Ltd. vs. Syed Ibrahim & Ors, (cited supra), the Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. As has been observed by the Honourable Apex Court, what would be 'just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. Every method or mode adopted for assessing compensation has to be considered in the background of 'just" compensation which is the pivotal consideration. No doubt, as has been further cautioned by the Honourable Apex Court, though a wide discretion is vested in the Tribunal, the determination has to be rational, and is to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The impugned judgment, considered in the light of the broad guidelines as provided by the Honourable Apex Court, referred hereinabove, does not appear to be arbitrary. It further does not appear to me that the Tribunal has in any way exercised the discretion vested in it in an unfair manner. A possible view has been taken by the Tribunal. In such circumstances, it does not appear to me that any interference is warranted in the impugned judgment and award. It has to be further stated that the Tribunal has also passed an order entitling the Insurance Company to recover the amount of compensation from the owner of the offending vehicle. The owner of the offending vehicle has, admittedly, not filed any appeal against the impugned judgment and award. In that view also, I am not inclined to cause any interference in the impugned judgment and the award. In the result, the following order is passed:

ORDER

1. The First Appeal is dismissed, however, without any order as to the costs.

2. The amount, if any, deposited by the appellant Insurance Company in this Court is permitted to be withdrawn by the original claimants and if any of them is expired, and is survived by the legal representative, by the said legal representative, if already not withdrawn.

(P.R.BORA)
JUDGE

...

AGP/528-14fa