IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO.:2474 OF 2017

SARIKA ARJUN TAKALE AND OTHERS
VERSUS
ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.,
THROUGH ITS MANAGER, AURANGABAD AND ANOTHER

***

Mr. Abhijit C. Darandale, Advocate for Appellant.
Mr. Rohit H. Dhat, Advocate for Respondent No.1.
Mr. Suhas B. Ghate, Advocate for Respondent No.2.

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AND

FIRST APPEAL NO.:832 OF 2017

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.
VERSUS
SMT. SARIKA ARJUN TAKALE AND OTHERS

***

Mr. Rohit H. Dhat, Advocate for Appellant.
Mr. Abhijit C. Darandale, Advocate for Respondent Nos.1 to 3.
Mr. Suhas B. Ghate, Advocate for Respondent No.4.

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CORAM : **V. K. JADHAV, J.**
DATE : 27th July, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Ahmednagar dated 8th February, 2016 in MACP No.27 of 2011, the

original Claimants have preferred First Appeal No.2474 of 2017 and the original Respondent / Insurer has also preferred First Appeal No.832 of 2017 to the extent of compensation as awarded by the Tribunal.

3 The learned counsel for Claimants submits that the learned Member of the Tribunal has not considered the income of deceased Arjun from his agriculture source separately. The learned counsel submits that the Tribunal has awarded meager amount under non-pecuniary heads such as loss of consortium, loss of love and affection and also under the head of funeral expenses. The learned counsel submits that the Tribunal has not awarded any compensation under the head of loss of estate. The learned counsel submits that the Tribunal has erroneously awarded multiplier 13 instead of 14 though there is a documentary evidence about the date of birth of deceased Arjun i.e. Exhibit 19.

4 The learned counsel for Insurer submits that though the Claimants have examined PW-2 Sanjay Wagh to prove the contents of salary certificate Exhibit 30, witness Sanjay Wagh has admitted in his cross-examination that though accounts are maintained in his workshop and the turnover of his workshop is more than

Rs.15,00,000/-, he has not mentioned separately the salary being paid to deceased Arjun. Witness Sanjay Wagh has also admitted in his cross-examination that though the vouchers of the salary being paid to the employees / labours are maintained in the workshop and though accounts are audited though a Chartered Accountant, he has not brought with him the said documents. He has further accepted that while paying the salary to the employees, deductions under TDS are required to be made. However, he has not brought any such document in respect of deceased Arjun. Even he has not taken any PAN number from deceased Arjun for carrying out the said deductions. He has also admitted in his cross-examination that his workshop is at a distance of 40 to 45 kilometers from village Bhoyre where deceased Arjun was residing. The learned counsel submits that as per the evidence of Claimant No.1, deceased Arjun was a full time politician and even he was a Sarpanch of the said village for some period and a Member of Gram Panchayat for a considerable period. The learned counsel submits that it is difficult to accept that deceased Arjun, who was Sarpanch of village Gram Panchayat, was doing that job by crossing a distance of 40 to 45 kilometers daily. The learned counsel submits that it has also come on record that deceased Arjun was himself cultivating the agriculture land. The learned counsel submits that ignoring the admissions given by the said witness Sanjay Wagh in his cross-examination, the Tribunal has considered the income of deceased Arjun from his employment at Rs.9,500/- as mentioned in the salary certificate Exhibit 30 and further made addition in the income to the extent of 30% towards future prospects. The Tribunal has also observed that the said amount includes the agriculture income of Rs.5,000/-. The learned counsel submits that deceased Arjun was a Manager of joint Hindu family and he was not personally cultivating the land. His other three brothers are also shown as owners in the agriculture land and even two sons of deceased Arjun, who are Claimants here, are also major sons. The learned counsel submits that at the most, the loss in the agriculture income due to lack of personal supervision and skill can be considered since the corpus of the land remained as it is. It appears from 7/12 extract that the agriculture land, even after the death of deceased Arjun, remained under cultivation. The learned counsel submits that the Tribunal has considered the income of deceased Arjun on higher side and awarded exorbitant amount of compensation under the head of loss of future income / dependency. The learned counsel submits that the Tribunal has awarded just and reasonable compensation under the non-pecuniary heads. No interference is required so far as the compensation awarded under the non-pecuniary heads is concerned.

5 On careful perusal of the pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the Tribunal has considered the salary certificate Exhibit 30 as it is. Witness Sanjay Wagh has not placed before the Tribunal the relevant documents to substantiate his contention that he was paying the monthly salary of Rs.9,500/- to deceased Arjun. Deceased Arjun was a full time politician and he was also the Sarpanch of the said village. Witness Sanjay Wagh has not placed on record the account extract, the vouchers of the salary being paid to the employees including deceased Arjun and the income tax returns and also the income tax deductions at source from the salary being paid to the employees. It is difficult to accept that though the turnover of workshop of witness Sanjay Wagh is more than Rs.15,00,000/-, no such record is maintained. It is also difficult to accept that deceased Arjun being a full time politician also an agriculturist, was doing the painting and denting work by crossing a distance of 40 to 45 kilometers daily. The Claimants have not produced on record any document pertaining to the qualification possessed by deceased Arjun to point out that he was expert in the said work. Though the learned counsel has brought attention of this Court to some un-exhibited documents to point out that

deceased Arjun was working in Kinetic Company in the year 2008, however, even after looking into those un-exhibited documents, it appears that deceased Arjun had worked in the said company as a helper for certain period and thereafter, it appears that he left that job. It is not clear that till he was employed by witness Sanjay Wagh in the year 2006, where deceased Arjun was doing the same work or that he had undergone any course to become an expert in painting and denting work. It appears that the Tribunal has not considered this material aspect and accepted the income of deceased Arjun as mentioned in the said salary certificate Exhibit 30. Furthermore, there is no positive evidence about the income of deceased Arjun from the agriculture source. It is well settled that there cannot be a total loss in the agriculture income since the corpus of the land remained as it is even after the death of the person, who owned and possessed the said agriculture land. However, the Tribunal has considered the agriculture income at Rs.5,000/- per month. It appears from 7/12 extract Exhibit 20 that deceased Arjun was owner in possession of the agriculture land. In view of the above discussion, it would be just and reasonable to consider the notional income of deceased Arjun at Rs.5,000/- per month and by way of addition in his income towards the future prospects as well as loss in the agriculture income on account of lack of personal supervision and skill, the loss in the future income is in tune of Rs.8,500/- per month. As per the date of birth of deceased Exhibit 19, his age as on the date of accident is less than 45 years. Thus, the relevant multiplier would be 14 instead of 13. Further 1/3rd of his income is required to be deducted towards his personal and living expenses. In view of the above, the Claimants are entitled for the compensation of Rs.9,52,056/- under the head of loss of future income / dependency. In view of the ratio laid down by the Supreme Court in the case of ***Rajesh and others Vs. Rajbir Singh and others***, reported in, ***(2013) 9 Supreme Court Cases 54***, the Claimant No.1 is entitled for Rs.1,00,000/- for loss of consortium and the Claimant Nos.2 and 3 are entitled for Rs.50,000/- each for loss of love and affection. The Claimants are entitled for Rs.1,00,000/- for loss of estate and Rs.25,000/- for funeral expenses. Thus, the Claimants are entitled for the total compensation of Rs.12,77,056/-. In view of the above, the judgment and award passed by the Tribunal requires modification. Hence, the following order:

O R D E R

I. **First Appeal No. 2474 of 2017** (Sarika Arjun Takale and others *Vs.* ICICI Lombard General

Insurance Company Ltd. and another) and **First Appeal No. 832 of 2017** (ICICI Lombard General Insurance Company Ltd. *Vs.* Smt. Sarika Arjun Takale and others), are hereby partly allowed. No costs.

II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Ahmednagar dated 8th February, 2016 in MACP No.27 of 2011, is hereby modified in the following manner:

> "The opponents do jointly and severally pay the amount of Rs.12,77,056/- (Rupees Twelve Lacs Seventy-Seven Thousand and Fifty-Six Only) alongwith the interest at the rate of 9% per annum from the date of application i.e. 31st December, 2010 till realization (inclusive of No Fault Liability amount)"

III. Except the quantum as aforesaid, rest of the judgment and award stands confirmed.

IV. Award be drawn as per the modification as above.

V. If any amount is paid as per the judgment and award passed by the Tribunal, the same shall be the part of the award after modification and if amount in excess deposited by the Insurer before this Court, the same shall be refunded to the Insurer and the Claimants are permitted to withdraw the amount as per modified award.

VI. Both the appeals are accordingly disposed of.

VII. Pending civil applications stands disposed of.

[V. K. JADHAV, J.]

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