IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 1616 OF 2004

The New India Assurance Co. Ltd.,
Branch Latur,
Through Divisional Manager,
Adalat Road, Aurangabad.
.... APPELLANT.

VERSUS

1. Pundlik s/o Gangadhar Mote,
Age : 55 years, occu.: Agril.,
R/o.: Dawangaon, Tq. Udgir.

2. Parvatibai W/o. Pundlik Mote,
Age : 50 years, Occu.: Household,
R/o.: Dawangaon, Tq. Udgir.

3. Kum. Shobha D/o. Pundlik Mote,
Age : 12 years, Occu.: Education Minor,

4. Kum.Sangita D/o. Pundlik Mote,
Age : 10 years, Occu.: Minor
Both Minorso Are R/o.; of Real Father
Pundlik Gangadhar Mote, Claimant No.1.

5. Sayed Mohammadsab Sayed Ismail,
Age : Major, Occu.: Business,
R/o.: Hadoli, Tq. Kandhar (Deleted)
(Note : Service of Notice not required)

6. Rajendrakumar J. Murthi,
Age : Major, Occu.: Business,
R/o.: Janta Zopadpatti Kashimira,
Bhyandar- Thane.

7. Pralhad s/o. Narsing Gaikwad,
Age : Major, Occu.: Auto Driver,
(Note : Service of Notice not required)

8. National Insurance Co. Ltd.,
Hanuman Chowk, Latur. Dist. Latur.

.... RESPONDENTS.
(Resp. Nos.1 to 4
Org. Claimants,
Resp. Nos. 5 to 8
Org. Respondents)

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Advocate for Appellant : Shri. S G Chapalgaonkar
Advocate for Respondents Nos. 1 to 4 : Shri. Milind Patil
Advocate for Respondent No.8 : Shri R. C. Bora h/f Shri P. P. Bafna

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CORAM : P. R. BORA, J.
DATE : 31.07.2017

ORAL JUDGMENT :

1) The Insurance Company has filed the present appeal challenging the judgment and award passed by the Motor Accident Claim Tribunal at Udgir in MACP No. 09 of 2002 (Old No. 458 of 1998) decided on 10th September, 2004.

2) The present respondents Nos. 1 to 4 had filed the aforesaid claim petition claiming compensation on account of the death of Gangadhar Pundlik Mote, alleging the same to have been caused in a vehicular accident happened on 25th June, 1997 having involvement of a rickshaw bearing registration No. MH-24-A-9100 and a Truck bearing registration No. MH-04-P-6406. It was the case of the claimants that the aforesaid truck gave a dash to the aforesaid autorickshaw by which deceased Gangadhar was travelling at the relevant time and in the

accident so happened Gangadhar died as a result of injuries caused to him in the said accident. The claimants had, therefore, claimed the compensation against the owner and insurer of the offending truck as well as the owner and insurer of the autorickshaw by which deceased Gangadhar was travelling when the accident happened. The learned Tribunal after having assessed the oral and documentary evidence brought on record held the claimants entitled to get the total compensation of Rs.4,63,000/- inclusive of No Fault Liability compensation and the amount of compensation was made jointly severally payable by the owner and insurer of the offending truck. Aggrieved by, the Insurance Company with which the truck was was insured, has filed the present appeal.

3) Shri Chapalgaonkar, learned Counsel appearing for the appellant criticised the impugned judgment and award on various grounds. The learned Counsel submitted that though the alleged accident was a clear case of composite negligence, the Tribunal has wrongly attributed the entire blame on the driver of the truck. The learned Counsel further submitted that the Tribunal has also erred in determining the amount of compensation. The learned Counsel submitted that while assessing the amount of compensation, Tribunal has applied wrong multiplier. The learned Counsel submitted that since the deceased was a bachelor and the parents claimed to be his

dependents, the Tribunal must have applied the multiplier based on the age of the parents and not on the basis of the age of the deceased. The learned Counsel further submitted that in view of the fact that deceased was the bachelor, the Tribunal must have deducted 1/2 of his total income towards his personal expenses, whereas the Tribunal has deducted only 1/3rd of his income towards the personal expenses.

4) In order to support his argument, the learned Counsel relied upon the judgment of the Division Bench of this Court in the case of **New India Assurance Company Limited Vs. Ramrao Lala Borse, 2015 SCC OnLine Bom 6564 : 2016 ACJ 2791** and judgment delivered by the single Judge of this Court in the case of **United India Insurance Company Ltd. Vs. Sobha Amarsingh Rajput**, **2016 SCC OnLine Bom 8996**.

5) Shri Milind Patil, learned counsel appearing for the respondents i.e. original claimants supported the impugned judgment and award. The learned Counsel submitted that the Tribunal has not committed any error in applying the multiplier of 17. The learned counsel relying upon the judgment of the Kerala High Court in the case of **Annamkutty Vs. Manager, United India Insurance Co. Ltd., 2013 CJ (Ker) 829** submitted that the law now stands settled that age of the deceased is only relevant for selection of multiplier while determining

the amount of dependency compensation. The learned counsel submitted that in the judgment of Kerala High Court the judgment of the Hon'ble Apex Court in the case of **Reshma Kumari & Ors vs Madan Mohan & Anr, reported in (2013) 9 SCC 65** has been referred and relied upon, wherein the the Hon'ble Apex court has clearly held that the age of the dependents has no nexus with the computation of compensation and in determining amount of compensation in accident claims the age of the deceased is the only relevant factor.

6) The learned Counsel further submitted that along with the parents since two minor sisters of the deceased were also depending upon his income the Tribunal has not committed any error in deducting only $1/3^{rd}$ of his total income towards personal expenses. The learned Counsel further submitted that the Tribunal has, on the contrary, erred in not considering the future prospects of the deceased while assessing the amount of compensation. The learned Counsel submitted that having regard to the age of the deceased 50% of his annual income must have been added as incremental enhancement. The learned Counsel submitted that in the facts as above even if the this court inclines to reduce the amount of compensation either on account of application of multiplier or deduction towards the personal expenses, since the amount of compensation requires to be enhanced considering the future prospects of the deceased, ultimately there may not be change in the

amount of compensation as determined by the tribunal. The learned Counsel, therefore, prayed for maintaining the impugned judgment and award without causing any interference therein.

7) Shri Bora, learned Counsel appearing for the respondent No.8 Insurance Company supported the impugned judgment and award.

8) After having considered the submissions advanced by the learned Counsel appearing for the respective parties and on perusal of the impugned judgment, the first issue which falls for my consideration is, whether the multiplier applied by the Tribunal of 17 while determining the amount of compensation can be held proper. Age of the deceased was admittedly 22 years and the age of his parents is in between 45 to 50 years. Considering the age of the deceased, the Tribunal has applied the multiplier of 17 while determining the amount dependency compensation. As has been held by the Division Bench of this Court in the case of **New India Assurance Company Limited Vs. Ramrao Lala Borse** (supra), in the case where deceased is a bachelor in selection of multiplier the age of the parents of the deceased will be relevant. In the case of **United Insurance Company Ltd. Vs. Sobha Amarsingh Rajput** (supra), the learned single Judge of this Court, after having considered almost all the previous judgments on the issue, has held that when the parents are dependents, the relevant factor for

assessing the amount of compensation, the age of the parents will only be relevant and not the age of their bachelor son or daughter. The learned single Judge in her judgment has distinguished the judgment of the Hon'ble Apex Court in the case of **Reshma Kumari** (supra) also on which the reliance was placed by the learned Counsel for the original claimants. The learned single Judge placing reliance on the decision of the Hon'ble Supreme Court in the case of K.S.R.T.C. Vs. Susamma Thomas (1994(1) KLT 67 (SC) and in the case of UP State Road Transport Corporation Vs. Trilok Chandra (1996(2) KLT 218 (SC) has held that the choice of the multiplier would depend on the age of the deceased or the age of the claimants whichever is higher and in case of the death of a bachelor it would be certainly on the basis of the average age of the parents and not of the age of the deceased bachelor.

9) In the instant matter the learned Tribunal has held the income of the deceased to the tune of Rs.36,000/- and deducting 1/3rd of the said annual income has calculated the amount of compensation by applying the multiplier of 17, which comes to Rs.4,08,000/-. In addition to the aforesaid compensation, the Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses, Rs.25,000/- for pains and agony and Rs.25,000/- for loss of love and affection. The Tribunal has, thus, held the claimants entitled for the total compensation of Rs.4,63,000/- inclusive of No Fault Liability amount.

10) In view of the discussion made herein above and having regard to the law laid down in the judgments discussed herein above in regard to the application of multiplier, incremental enhancement for future prospects and deduction towards the personal expenses of the deceased bachelor the amount of compensation will have to be redetermined.

11) In so far as income of deceased is concerned, there is no dispute that it was around Rs.3,000/- per month i.e. Rs.36,000/- p.a. Age of the deceased was admittedly 22 years on the date of accident. Having regard to the age of the deceased, 50% of his total income will have to be added by way of incremental enhancement in his existing annual income towards future prospects. Nationally, the same will be thus, Rs.54,000/- (36,000 + 18,000) and on the basis of this income the compensation will have to be determined. In view of the fact that the deceased was a bachelor, 1/2 of his total income will have to be deducted towards his personal expenses. Though it was sought to be canvassed by the learned Counsel for the claimants that the minor sisters of the deceased are also depending upon him. I am not convinced with the submission so made. Admittedly, the parents of respondent Nos. 3 & 4 are alive. It is not the case of the claimants that claimant No.1 i.e. father of the deceased does not have any income or earning source. In the circumstances, it is difficult to accept that

respondent Nos. 3 & 4 were depending upon the income of the deceased. In the circumstances, for assessing the amount of dependency compensation 1/2 of the total income of the deceased can only be considered as a multiplicand. As noted herein above, considering the age of the parents after deduction the same will be Rs.27,000/-. As elaborately discussed herein above, the appropriate multiplier in the present case will be of 11. By applying the said multiplier the amount of dependency compensation comes to Rs.2,97,000/-.

12) As noted herein above, the Tribunal has awarded the compensation of Rs.55,000/- towards non-pecuniary damages. The compensation so awarded is apparently inadequate and therefore, needs to be appropriately enhanced. Taking into account that the alleged accident had happened in the year, 1997, I deem it appropriate to enhance the amount of compensation towards non-pecuniary damages by Rs.50,000/- in addition to the amount of Rs.55,000/- already awarded by the Tribunal. The applicants are, thus, held entitled to the total compensation of Rs.4,02,000/- inclusive of No Fault Liability compensation (Rs.2,97,000 + Rs.1,05,000/-). In the circumstances of the case, it appears to me that this would be the just and fair compensation payable to the claimants. The impugned award be accordingly modified. Save and except the decrease in the amount of compensation from Rs.4,63,000/- to Rs.4,02,000/-, the remaining part

of the award is maintained as it is. The amount of compensation if any deposited by the Insurance Company before this Court or before the Tribunal shall be remitted in favour of the claimants in accordance with the modified award. The amount deposited by the Insurance Company if fails short to satisfy the modified award, the balance amount shall be deposited by the Insurance Company before the Tribunal within two months from the date of this order. Amount deposited if is in excess than payable to the claimants according to the modified award, the excess amount shall be refunded to the appellant Insurance Company with interest if any accrued thereon. The appeal stands allowed in the aforesaid terms.

(P. R. BORA)
JUDGE