IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

FIRST APPEAL NO.412 OF 2014
WITH
CIVIL APPLICATION (F) NO. 3995 OF 2016

Divisional Manager,
National Insurance Co. Ltd.,
Paul Commercial Complex, Nagpur
Through its Regional Manager,
Mangalam Arcade, Dharampeth
Extn., Nagpur ..APPELLANT

VERSUS

1. Smt. Kokila Ambadasji Sakharwade, aged 47 years, Occ: Household,

2. Ku. Preeti Ambadasji Sakharwade, Aged about 22 years, Occ: Student,

3. Ku. Swati Ambadasji Sakharwade, Aged 24 years, Occ: Student,

4. Maheresh Ambadasji Sakharwade, Aged about 20 years, Occ: Student, All R/o Meherashray, Gurudeo Nagar, Mouza, Tq. Tiwasa, distt. Amravati.

5. Abdul Saleem Abdul Jalil, Aged Adult, Occ: Driver, R/o. Kurum, Tq. Murtisapur, Dist. Akola.

6. Ramkripal Chotelal Yadav, Aged Major, Occ: Owner of Car, R/o. Ahuja Nagar, Jaripatka Nagpur. ..RESPONDENTS

Mr C.A. Anthony, Advocate for appellant;
Mr S.A. Mohta, Advocate for respondent Nos. 1 to 4

CORAM : N.W. SAMBRE, J.

DATE : 13th APRIL, 2017

ORAL ORDER :

In Motor Accident Claim Petition No. 476 of 2009 preferred by claimants based on accident dated 24th August, 2009 and in view of death of Ambadas Laxmanrao Sakharwade.

2. The issues came to be framed at Exhibit-23 which reads thus :

	ISSUES	FINDINGS
1.	Whether the deceased Ambadas Sakharwade died as a result of the Accidental injuries ?	Yes
2.	Whether the accident dated 24/8/2009 occurred due to rash and negligent driving of the Indica Car bearing registration no.MH-31/CR-2847 by the respondent No.1 and/ or Bajaj Boxer No.MH-27/N-676.	Due to Indica Car bearing registration No.MH-31/CR-2847 by the respondent No.1
3.	Whether it is proved by the the respondent No.3 that there is breach of conditions of the Insurance Policy.	No

4.	Whether the Petitioners are entitled to get compensation? If yes, what and from whom?	Yes. As stated below.

3. The factual matrix which deals with the issue of compensation is as under:

On 24th August, 2009 deceased Ambadas while riding motor cycle met with an accident with Car bearing registration No. MH-31-CR-2847 on Nagpur Amravati road near Tiwsa police station. Crime No. 137 of 2009 for the offence punishable under Sections 279, 304-A of the Indian Penal Code came to be registered against the Car owner.

4. Deceased Ambadas, Graduate Senior Teacher in Zilla Parishad School, Karla, Panchayat Samiti Chandur Railway, was drawing salary of Rs.30,000/- per month. The claimants are, his widow, daughters and son. The compensation of Rs.50,00,000/- was claimed, against which, the tribunal has awarded amount of Rs.29,37,320/- and directed the insurance company to pay the same. As such, present appeal.

5. Mr. Anthony, learned Counsel for the appellant-insurance company would urge that the

Court must interpret the documentary evidence, particularly police papers so as to infer contributory negligence on the part of deceased Ambadas. So as to substantiate his contention, he would rely upon the judgment of the Apex Court in the case of ***T.O. Anthony vs Karvarnan and others*** reported in ***2008(3) T.A.C. 193(SC)*** so as to submit that proportionate deduction in the compensation based on the contributory negligence on the part of deceased is required to be appreciated.

6. The next contention of learned Counsel for the appellant is, the tribunal has committed error by adding 15% to the last salary drawn by the deceased Ambadas, when such facility is not available to the employees of Zilla Parishad being State agency. In addition to above, his submission is, the excess income of Ambadas is considered for the purpose of awarding compensation. He would then urge that professional tax was not deducted and multiplier, particularly having regard to the age of Ambadas being 55 years and 3 months is 9 and not 11.

7. Per contra, learned Counsel for the respondents-claimants concedes on two issues; (a) the applicability of multiplier to be 9 and not 11 and (b) wrong addition of 15% to the last salary drawn by the deceased for the purpose of calculation of annual income of deceased for calculating total compensation.

8. So far as other issues are concerned, he submits that the salary certificate of deceased is considered and taken into account and professional tax was already deducted by the tribunal from the compensation payable. He would urge that it was not the case of insurance company before the tribunal that there was contributory negligence on the part of deceased Ambadas. He would then urge that no evidence whatsoever is brought on record by the instance company to substantiate its claim.

9. Having considered the rival submissions and having scanned the judgment delivered in Motor Accident Claim Petition No.476 of 2009, it is

required to be noted that the tribunal, upon interpretation of the evidence brought before it has framed issues and while answering issue No.2, has recorded findings that the accident in question was caused because of rash and negligent driving of four wheeler Car bearing registration No.MH-31/CR-2847. For recording such findings, the tribunal has analyzed the evidence brought before it in the form of police papers and oral evidence of claimant. Admittedly, neither insurance company nor the vehicle owner has examined any witness to rebut the same.

10. In view of above, the contentions of the insurance company that there has to be findings on the issue of contributory negligence and there should be deduction to the extent of 25% under the same head, in my opinion, does not hold any substance and as such, said contentions are rejected.

11. Apart from above, it is required to be noted that it was not in dispute that deceased

Ambadas was serving as teacher. His salary certificate is produced at Exhibit-48, which depicts that for August-2009 for period of 24 days, he has drawn salary of Rs.19,532/-, which fact is taken into account by the tribunal for the purpose of calculating total compensation. Once Exhibit-48 was proved and taken into consideration by the tribunal, I hardly see any reason to infer that per day income of the deceased was Rs.813-83 ps. and his monthly monthly was Rs.25,2228-73 ps. The tribunal, therefore, has rightly calculated monthly income of deceased Ambadas as Rs.25,229/- and Rs.3,02,748/- per annum.

12. Learned Counsel for the appellant has raised the issue as regards incorrect addition of 15% in the income of deceased, particularly when the deceased was between the age group 50-60 years is not permissible. Learned Counsel has relied upon the judgment of the Apex Court in the matter of ***Santosh Devi vs National Insurance Co. Ltd. & ors*** reported in ***2012(5) Mh.L.J. 527***, particularly paragraph-14 so as to submit that in case the

deceased was in the employment of State or its agencies, such addition cannot be permissible as the State is taking appropriate care, as he was not fixed salaried employee and depending upon the rise in the cost of living, appropriate changes are made in the salary of such employees. The said contention if examined, in the light of judgment of Apex Court in the matter of ***Santosh Devi*** (supra), it is required to be noted that the tribunal has committed error by adding 15% to the annual income of the deceased i.e. Rs.3,02,748/- per annum. Addition of 15% i.e. Rs.45,412/- and drawing annual income of Rs.3,48,160/-, in my opinion, is error committed by the tribunal. The said amount, in my opinion, is required to be considered to its principal i.e. Rs.3,02,748/- which is without 15% addition thereon.

13. So far as other contention qua applicability of wrong multiplier is concerned, as learned Counsel for the claimants has already conceded that correct multiplier is 9 in view of the judgment of Apex Court in the matter of ***Smt.***

Sarla Verma and others vs. Delhi Transport Corporation and another reported in ***2009(2) T.A.C. 677 (SC),*** the said amount is required to be re-calculated.

14. With the above observations, in my opinion, the award dated 21st August, 2013 delivered by the Motor Accident Claims Tribunal, Amravati in Motor Accident Claim Petition No.476 of 2009 needs to be modified as under:

(a) For the purpose of calculating the compensation, annual income of the deceased is to be considered as Rs.3,02,748/-.

(b) In view of ***Smt. Sarla Verma's*** case, cited supra, multiplier should be 9 and not 11.

15. With above modification to the award delivered by the learned tribunal, in my opinion, the first appeal can be disposed of by allowing the same partly. First Appeal is partly allowed.

16. After appeal period is over, the claimants will be entitled to withdraw amount in the backdrop of above referred calculations as are ordered and balance amount be refunded to the insurance company.

17. In view of above, civil application for withdrawal of amount stands disposed of.

(N.W. SAMBRE, J.)

Tupe