<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY,</u>

<u>BENCH AT AURANGABAD</u>

FIRST APPEAL NO. 1842 OF 2011

WITH

FIRST APEAL NO. 1843 OF 2011

AND

FIRST APPAL NO. 1846 OF 2011

New India Assurance Co. Ltd.
Through Branch Manager,
Swatantray Chowk, Sangamner,
District; Ahmednagar,
Through its authorized signatory,
Mr. Sanjiv Ramrao Gaisamudre,
Age; 50 yrs, Occupation; Service,
Senior Divisional Manager,
New India Assurance Co. Ltd.,
Resident ; Aurangabad. **<u>APPELLANT</u>**
(Original Respondent No. 3)

<u>VERSUS</u>

1) Hirabai Nanasaheb Nikam,
Age; 64 years,
Occupation; Agril & household,
Resident of; Mangalapur,
Taluka; Sangamner,
District; Ahmednagar.

2) Ramniwas Bishndi Kanwas,
Age; 45 years,
Occupation; Business (Owner),
Resident of; Post Kakelay,
Taluka; & District; Jodhpur,
State of Rajasthan.

3) Madaram Bhagwanram Kumawat,
Age; 38 years, Occupation; Driver,

Resident of; Baff., Tqluka; Faldebdi,
District; Jodhpur (State of Rajasthan) **RESPONDENTS**
(Original Claimant &
Respondent No. 1 & 2)

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Shri. Dhananjay P. Deshpande, Advocate for Appellants
Shri. Shinde S.K., Advocate for Respondent No. 1.
Respondent Nos. 2 and 3 served.

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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 11.9.2018

Date of Pronouncing Judgment : 26.9.2018

J U D G M E N T :

These three appeals are preferred by respondent no. 3 the New India Assurance Company Ltd., against the judgment and award passed by the Motor Accident Claims Tribunal at Sangamner, (Hereinafter referred to as "MACT") in MACP No. 230 of 2008, MACP No. 229 of 2008 and MACP No. 228 of 2008 respectively. In MACP No. 230 of 2008 for the accidental death of Onkarnath s/o Nanasaheb Nikam age 19 years, compensation of Rs. 4,36,968/- with interest at the rate of 7.5% per annum from the date of petition was awarded and against that award First Appeal No. 1843 of 2011 is preferred. In MACP No. 229 of 2008 for the accidental death of Ku. Archana d/o Nanasaheb Nikam age 22 years compensation of Rs. 4,63,716/- with interest at the rate of 7.5% per annum and against that award First Appeal No. 1842 of 2018 is preferred. In MACP No.

228 of 2008 for the accidental death of Nilesh s/o Nanasaheb Nikam age 10 years, compensation of Rs. 4,10,220/- with interest at the rate of 7.5 % per annum was awarded and against this award First Appeal No. 1846 of 2011 is preferred.

2. The original respondent no. 3 has challenged the correctness of these awards on the ground of grant of exorbitant compensation on account of application of wrong multiplier and deduction of erroneous amount on account of self expenses of the deceased.

3. As these three appeals arise out of awards passed by one and the same Tribunal in respect of one and same motor vehicle accident dated 30.9.2008, these appeals are disposed of by this common judgment.

4. Heard, Shri. Dhananjay P. Deshpande, learned counsel for appellant and Shri S.K. Shinde, learned counsel for respondents/claimants.

5. The learned counsel for appellants submits that the claim petition was filed only by mother of deceased children, who was of the age 62 years. Therefore, in case of death of 10 years old boy the multiplier of “6” was appropriate and not “15” as applied by

the Tribunal. Similarly, in case of one daughter of the age 22 years and one son of age 19 year, the multiplier of “6” should have been applied, as age of their mother claimant is 62 years. He submits that the multiplier is to be selected not on the basis of age of the deceased but on the basis of age of the parents, which is higher than the deceased. He placed reliance on **the United India Insurance Company Ltd. And Ors. Vs. Sobha Amarsingh Rajput and ors,** reported in **(2016) ACC 407 (Bombay) and Prashant and Ors. Vs Hariprakashsingh and Ors.** reported in **[2010 (1) MhLJ 968**, wherein it is ruled that the multiplier is to be selected on the basis of age of the parents and not on the basis of age of the deceased, when the Claim is filed by parents of bachelor deceased son or daughter.

6. In reply, learned counsel for respondents/ claimants submits that the multiplier is to be selected only on the basis of age of the deceased and the age of parents of the deceased is irrelevant. He placed reliance on **Subesingh and another Vs Shyamsingh and Others** reported in [(**2018) 3 Supreme Court Cases 18**], wherein, three judges bench of the Supreme Court ruled that multiplier should depend upon the age of the deceased and not on the age of dependents.

7. In view of law settled by the Apex Court in **Subesingh**

Vs. Shyamsingh (Supra), as well as in **Smt. Sarla Varma Vs Delhi Transport Corporation [2009 (5) Mh. L.J. (SC) 775]**, the multiplier is to be selected only on the basis of age of the deceased. This multiplier system is also approved by the Larger Bench of the Supreme Court in **National Insurance Company Vs. Pranay Sethi [2018 (3) Mh.L.J. 70**].

8. Therefore, in case of death of the Archana and Onkarnath who are above the age of 15 but below the age of 25, multiplier of "18" will be applicable. As these both deceased were bachelor, from their notional income 50% amount is to be deducted towards personal and living expenses. However, as ruled by the Larger Bench of the Apex Court in **Pranay Sethi case (Supra)**, if the age of deceased is below 15 years, then multiplier of "15" will be applicable. And the assessment as indicated in the Second Schedule subject to correction as pointed out in Column -6 of the table in **Smt. Sarla Varma (Supra)** would be followed. Therefore, in MACP No. 228 of 2008 as the age of deceased was 10 years, multiplier of "15" would be applicable.

9. In MACP No. 230 of 2008 the deceased Onkarnath was 19 years old at the time of death, he was taking education in the 11th Standard in the School of Nashik City and he was brilliant in his studies. According to claimant, Onkarnath used to earn by working

after his Collage hours. In cross-examination of the Claimant, nothing could be elicited to disbelieve this version. Otherwise also, considering the young age of Onkarnath and this able bodied personality his notional income can be assessed as 5,000/- per month. In addition to this, 40% income is to be added under the head of loss of future prospectous. Thus, monthly income of Onkarnath can be assessed Rs. 5,000/- + 2,000/- = Rs. 7,000/-. Out of this income 50% amount is deducted towards personal expenses. Thus, his contribution to the family is assessed as Rs. 3,500/-. His annual income is assessed as Rs. 3,500 x 12 = Rs. 42,000/-. After applying multiplier of “18” the loss of dependency is calculated as Rs. 42,000/- x 18 = 7,56,000/-. In addition to this as per ratio of **Pranay Sethi (Supra)** under conventional head compensation of Rs. 15,000/- for loss of estate and Rs. 15,000/- for funeral expenses is to be awarded. Thus, for the death of Onkarnath compensation of Rs. 7,56,000/- + 30,000/- = 7,86,000/-, would be appropriate.

10. Similar calculations will be in MACP No. 229 of 2008 in case of death of Ku. Archana, who was 22 years old and taking education in 2nd year Law College.

11. In case of death of Nilesh s/o Nanasaheb Nikam, age 10 years, in MACP No. 228 of 2008, Reasonable and just compensation under the head of loss of dependency is to be calculated taking into

consideration Schedule 2 of Section 163-A of the Motor Vehicles Act, 1988 subject to certain modification. Under Schedule 2 of Section 163-A of the Act, notional income of non-earning person is Rs.15,000/- per annum and 1/3rd amount is to be deducted towards self-expenditure of the deceased. However, this aspect is also considered by the Supreme Court in the case of **"Kishan Gopal and another vs Lala and others" [2014 (3) Mh.L.J. 530]**. After considering the verdict of the Supreme Court in **"Lata Wadhwa vs State of Bihar" [(2001) 8 SCC 197]**, the Supreme Court observed that, "the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/-".

12. In case of death of 10 years old boy his notional income was assessed by the Apex Court as Rs. 30,000/- per annum and after applying multiplier of "15" the loss of dependency was calculated as Rs. 4,50,000/-. Applying same principle in MACP No. 228 of 2008. The notional income of deceased Nilesh Nikam is assessed as Rs. 30,000/- per annum. As per IInd Schedule to Section 163-A of M.V. Act, 1/3rd amount is deducted towards personal

expenses. Thus, the contribution of Nilesh to the family is assessed as Rs. 30,000/- – Rs. 10,000/- = Rs. 20,000/- per annum. After applying multiplier of '15' the loss of dependency is assessed as Rs. 20,000 x 15 = Rs. 3,00,000/-. In addition to this, as per ratio of "**Pranay Sethi**" (Supra) under conventional head, compensation of Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses are to be awarded. Thus, the Claimant is entitled to total compensation of Rs. 3,30,000/- with interest thereon at the rate of 9% per annum from the date of filing of petition till its realization.

13. Thus, after reconsidering the applicability of appropriate multiplier and assessing the appropriate notional income of the deceased, it is evident that the compensation awarded by learned Tribunal in MACP No. 228 of 2008 awarding compensation of Rs. 4,10,220/- is not correct and proper. Therefore, First Appeal No. 1846 of 2011 preferred against award passed in MACP 228 of 2008 deserves to be partly allowed to modify the award granting compensation of Rs. 3,30,000/- with interest thereon at the rate of 9% per annum from the date of filing of application till its realization. First Appeal No. 1846 of 2011 is allowed in above said terms. The award passed by Tribunal in MACP No. 228 of 2008 be modified accordingly. Parties shall bear respective costs of the appeal. Excess payment if received by Claimant be recovered by Appellant.

14. In MACP No. 229 of 2008 the Tribunal awarded total

compensation of Rs. 4,63,297/- to the Claimant. However, as observed above, in para 9 and 10 of this judgment, the claimant is entitled to total compensation of Rs. 7,86,000/- compensation with interest at the rate of 9% from the date of filing of petition till its realization. In these appeals, no Cross Objection is filed by Claimant. However, in "**Jitendra Khimshankar Trivedi and others vs Kasam Daud Kumbhar and others" [2015 DGLS (SC) 128]**, the Apex Court observed that

> "3. The tribunal has awarded Rs.2,24,000/- as against the same, claimants have not filed any appeal. As against the award passed by the tribunal when the claimants have not filed any appeal, the question arises whether the income of the deceased could be increased and compensation could be enhanced. In terms of Section 168 of the Motor Vehicles Act, the courts/tribunals are to pass awards determining the amount of compensation as to be fair and reasonable and accepted by the legal standards. The power of the courts in awarding reasonable compensation was emphasized by this Court in Nagappa vs Gurudayal Singh & Ors. [3], Oriental Insurance Company Ltd. Vs Mohd. Nasir & Anr. [4], and Ningamma & Anr. Vs United India Insurance Company Ltd. [5]. As against the award passed by the tribunal even though the claimants have not filed any appeal, as it is obligatory on the part of courts/tribunals to award just and reasonable compensation, it is

appropriate to increase the compensation”.

15. Therefore, First Appeal No. 1842 of 2011 preferred against the award passed by Tribunal in MACP No. 229 of 2008 deserves to be dismissed. However, in view of law settled by the Apex Court, the award passed in MACP 229 of 2008 is to be modified to award compensation of Rs. 7,86,000/- (including No Fault Liability) to the Claimant with interest thereon at the rate of 9% per annum from the date of filing of petition till its realization. Accordingly First Appeal No. 1842 of 2011 is dismissed. However, award passed in MACP No. 229 of 2008 be modified in above said terms. Deficit Court fees be recovered from Claimant by the Tribunal.

16. In MACP No. 230 of 2008, compensation of Rs. 4,36,968/- is awarded by the Tribunal. However, as observed in paragraph No. 9 of the Judgment, Claimant is entitled to total compensation of Rs. 7,86,000/- with interest at the rate of 9% per annum from the date of filing of application till its realization. Therefore, First Appeal No. 1843 of 2011 preferred against award passed in MACP No. 230 of 2008 deserves to be dismissed but the award passed by the Tribunal deserves to be modified to grant compensation of Rs. 7,86,000/- (including No Fault Liability) to the claimant with interest thereon at the rate of 9% per annum from the date of filing of petition till its realization. Accordingly, First Appeal

No. 1843 of 2011 is dismissed. Award passed by in MACP No. 230 of 2008 be modified in above said terms. In all Appeals, compensation deposited in this Court be transmitted to the Tribunal, Sangamner. Claimant is entitled to withdraw the amount in accordance with the award. Excess amount deposited by the insurance company be refunded to it. Parties to bear respective costs of the appeal. Tribunal to recover deficit Court fees from the Claimant.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/