IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 FIRST APPEAL NO. 628 OF 2002
WITH CA/4070/2002 IN FA/628/2002

...

. The Oriental Insurance Co.Ltd.,
through Branch Office, Jalna Road,
Beed, Tq. And Dist.Aurangabad. ..Appellant

VERSUS

1. Namdeo s/o.Bapurao Kale
Age: 30 years, Occu.: Agri.,
R/o.Talwada, Tq.Gevrai, Dist.Beed.

2. Narhari s/o.Bhagwan Udan
Age: Major, Occu.: Agri. and
business, r/o, Ghansawangi,
Dist.Jalna.

3. The United India Insurance Co.Ltd.,
Branch Office at Gandhi Chowk,
Jalna, Tq. & Dist.Jalna, through
Branch Manager, Subhash Road, Beed,
Tq. & Dist.Beed. ..Respondents.

...

Advocate for Appellant : Mr.Anil A Joshi
Advocate for Respondent No.1 : Mr.S.S.Dargad h/f. Mr.S.G.Chapalgaonkar
Advocate for Respondent No.3 : Mr.S.V.Kulkarni

...

CORAM : M.S.SONAK, J.
DATE : 8th FEBRUARY, 2018

ORAL JUDGMENT:-

1) The learned counsel for the parties points out that the connected matter i.e. First Appeal No.693 of 2001 has been allowed by this Court by its order dated 8.1.2016, which reads as follows:-

> *"**ORAL JUDGMENT:***
>
> *1. The appeal is filed by one insurance company of the offending vehicle to challenge the judgment and Award of claim petition No.148 of 1996 which was pending before the Claims Tribunal, Beed. Both the sides are heard.*
>
> *2. The main grievance of the Appellant is that when the offending vehicle was insured at the relevant time with two insurance companies but for no reason the Tribunal has fastened the liability only on the Appellant Insurance Company and no liability is fastened on the other Insurance Company, Respondent No.7 United India Insurance Company Ltd. The submissions made and the record show that the vehicle was insured at the relevant time, on the date of the accident,*

with both the insurance companies. In view of this circumstance, this Court holds that both the Insurance Companies need to share the responsibility equally to pay the compensation. So, the Judgment and Award is modified accordingly, to make both the insurance companies equally liable to pay the compensation.

3. Appeal is allowed. Award is to be prepared accordingly.

Sd/-
[T. V. NALAWADE, J.]"

2) Since, the same point arises in this appeal, this appeal is also allowed by adopting the aforesaid reasoning. This means that the Judgment and award of the Tribunal in this appeal is modified and the appellant as well as respondent No.3 i.e. The United India Insurance Co.Ltd., are made liable equally to pay the amount of compensation to respondent No.1 i.e. original claimant.

3) At this stage, the learned counsel Mr.S.S.Dargad, who holds for Mr.S.G.Chapalgaonkar learned counsel,

submits that there are certain errors, which are apparent on the face of record, which may be ordered to be corrected in this appeal. He relied upon the decision of this Court in the case of *The State of Maharashtra Vs. Kamaladevi Kailashchandra Kaushal [**2017 (3) Bom.C.R., 675**]* to submit that even in the appeal made by the Insurance Company, this Court is obliged to determine the just compensation, even though, the claimant may not have preferred any separate appeal or cross-objection. In this case, it cannot be said that there is an error apparent on the face of record as stated by the learned counsel. No doubt, the issue of multiplier has to be considered on the basis of the age of the victim. However, in this case, though the age of the victim was 25 years, the Tribunal in the impugned order, after noting that normally the multiplier in such a situation would be 17, has given reasons as to why the multiplier of 15 is adopted. Besides, unlike in the ***Kamaladevi Kailashchandra Kaushal*** (supra) which was a case of death of ex-serviceman and whose widow and children were placed in several financial predicaments, there is no material on record to extend the same discretion in favour of the respondent No.1. It is to be noted that this is a case of injury and there is no explanation coming that respondent No.1 is seriously aggrieved and filed no appeal or cross-objection. Accordingly, the contention of the learned counsel for respondent No.1 cannot be accepted.

4) The appeal is accordingly allowed in the aforesaid terms.

5) There shall be no order as to costs.

6) If the compensation amount is deposited by the appellant, the respondent No.1 shall be at liberty to withdraw the same unconditionally. The respondent No.3 will however, reimburse the appellant to the extent of

50% of the liability within a period of four weeks from the date of demand coupled with proof that it is the appellant which has paid the entire compensation amount to respondent No.1 in terms of the impugned award prior to its modification.

7) Civil Application does not survive and accordingly it is disposed of.

[M.S.SONAK, J.]