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

FIRST APPEAL NO. 2523 OF 2018

ICICI Lombard General Insurance
Company Ltd, Through its Manager
Alaknanda Complex, Adalat Road,
Aurangabad .. **Appellant**

(Orig. Resp. No.3)

Versus

1) Kamal Machindra Bhendkar
Age : 48 years, Occu : Household,
R/o. Pravarasangam, Tq. Newasa,
Dist. Ahmednagar.

2) Govind Kashinath Pehere
Age : Major, Occu : Service,
R/o. Near Dnyaneshwar Mahavidyalaya,
Newasa, Tq. Newasa, Dist. Ahmednagar.

3) Raosaheb Asru Waghulkar
Age : Major, Occu : Driver,
R/o. Khalwadi, Newasa Kd.,
Tq. Newasa, Dist. Ahmednagar

.. **Respondents**
(Resp. No.1 Orig. Claimant & Resp.
Nos.2 & 3 Orig. Resp. Nos.1 & 2)

Advocate for Appellant : Shri A.G. Choudhari;
Advocate for Respondent No.1 : Shri R.B. Deshpande;
Advocate for Respondents No.2 & 3 : Shri V.B. Jagtap.
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CORAM : P.R. BORA, J.
Dated: October 05, 2018

ORAL JUDGMENT :

1. The Insurance Company has preferred the present appeal challenging the Judgment and Award passed by the Motor Accident Claims Tribunal at Newasa in Motor Accident Claim Petition No.81 of 2015 decided on 19.06.2017.

2. Respondent No.1, who is hereinafter referred to as the claimant, had filed the aforesaid claim petition claiming compensation on account of the death of her son namely Somnath Machindra Bhendkar in a vehicular accident happened on 31.07.2015 having involvement of the Maruti Car bearing Registration No. MH-17-AJ-6985 owned by respondent no.2 and insured with the appellant – Insurance Company.

3. It was the case of the claimant that, on 31st July, 2015 deceased Somnath along with one Vishnu

Limbore had been to Shrirampur and while returning from Shirampur to his native village Pravarasangam, Taluka Newasa the offending Maruti Car gave a dash to their motorcycle and in the accident so happened, deceased Somnath died on the spot. It was alleged by the claimant that, the accident happened because of the negligence on part of respondent no.3, who was the driver of the offending Maruti Car. As stated in the petition, deceased Somnath was aged about 24 years on the date of accident and was earning around Rs.20,000/- per month. The claimant had, therefore, claimed the compensation of Rs.Six Lakhs jointly and severally from the owner and insurer of the offending Maruti Car.

4. The petition was resisted by the owner as well as insurer i.e. present respondents no.2 and 3 by filing their written statements. The Insurance Company had also raised the defence of the breach of the terms of policy and conditions by the insured thereby exonerating the Insurance Company from its liability to indemnify him.

5. In order to substantiate the contentions raised in the petition, claimant herself deposed before the Tribunal and also placed on record all relevant police papers pertaining to the accident in question. The respondents did not adduce any documentary or oral evidence. The learned Tribunal, after having assessed the oral as well as documentary evidence brought on record before it, held the claimant entitled for the total compensation of Rs.12,33,000/- jointly and severally from the owner and insurer of the Maruti Car along with the interest at the rate of 9% per annum from the date of filing of the petition till its realization. Aggrieved by, the Insurance Company has preferred the present appeal.

6. Shri Abhijeet Chaudhari the learned Counsel appearing for the appellant – Insurance Company assailed the impugned Judgment on several grounds. The learned Counsel submitted that, the Tribunal has arbitrarily determined the amount of compensation without having regard to the evidence on record. The learned Counsel further submitted that, the Tribunal has further grossly erred in holding the future

prospectus of the deceased at the rate of 100% while determining the amount of dependency compensation. The learned Counsel further submitted that, the Tribunal has also erred in awarding an exorbitant amount of Rs.2,25,000/- towards non-pecuniary damages. The learned Counsel further submitted that, in absence of any evidence brought on record by the claimant, the income of deceased Somnath could not have been held by the Tribunal more than Rs.6,000/- per month i.e. by applying the criteria of notional income and the compensation must have been calculated on the said amount. The learned Counsel, therefore, prayed for appropriately modifying the Award.

7. Shri Deshpande, the learned Counsel appearing for the claimant supported the impugned Judgment and Award. Learned Counsel submitted that, in fact the Tribunal has held the income of the deceased on a very conservative side. Learned Counsel submitted that, the claimant has brought on record sufficient evidence so as to show that, the deceased was earning around Rs.20,000/- per month. The learned Counsel further

submitted that, having regard to the young age of deceased Somnath, no fault can be found if the Tribunal has considered the future prospectus of the deceased Somanth at 100% of his existing income. The learned Counsel further pointed out that, in fact the Tribunal has erred in applying the multiplier of 14, whereas it must have been of 18.

8. The learned Counsel relying upon the recent Judgment of the Hon'ble Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 Supreme Court Cases 680** submitted that, the relevant factor while selecting the multiplier is the age of the deceased and not the age of the claimant. The learned Counsel in the circumstances prayed for adequate enhancement in the amount of compensation as has been determined by the Tribunal. The learned Counsel submitted that, this Court in its power can enhance the amount of compensation though claimant has not preferred any separate appeal therefor.

9. I have given due consideration to the submissions made by the learned Counsel appearing for the respective

parties. I have also perused the impugned Judgment and the other material placed on record.

10. The learned Counsel for claimant has placed on record for perusal of the Court the copies of the evidence adduced in the matter as well as the copy of the Inquest Panchanama and post mortem report.

11. Insofar as the income of deceased Somnath is concerned, the discussion made and the conclusion recorded by the Tribunal holding the income of deceased Somnath to the tune of Rs.6,000/- per month, I do not see any reason for causing any interference. Though it was submitted by the learned Counsel appearing for the claimant that, from the evidence on record, the Tribunal must have held the income of deceased more than Rs.6,000/-, I am not convinced with the submissions so made by the learned Counsel. Further submission as was made by the learned Counsel appearing for the appellant – Insurance Company was in respect of the future prospectus of the deceased, considered by the Tribunal while assessing the amount of dependency compensation. Perusal of the Judgment

reveales that, Tribunal has added the 100% existing income of the deceased Somnath in his proved salary income of Rs.6,000/- while assessing the amount of dependency compensation. The decision of the Tribunal to this extent apparently is unsustainable. Admittedly, deceased Somnath was in a private employment and as such, in view of the law laid down by the Hon'ble Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others** (cited supra), the future prospectus of the deceased could not have been at the rate of more than his 40% of the existing income. If the income of deceased Somnath is considered to be Rs.6,000/- per month as has been held by the Tribunal, the Tribunal at the most could have added a sum of Rs.2400/- in the said amount for determining the amount of dependency compensation. Adding the said amount, the income of deceased Somnath was liable to be held as Rs.8,400/- per month (6000+2400) i.e. annually Rs.1,00,800/-. It cannot be further disputed that, deceased being a bachelor and the claimant was the only dependent on the income of the deceased, ½ of the said amount was liable to be deducted towards the personal expenses of the deceased and dependency compensation has to be calculated on ½ of the amount, which comes to Rs.50,400/-. The Tribunal has applied the multiplier of 14 having regard to the age of the claimant. In view of the Judgment in the case of **National Insurance Company Limited Vs. Pranay Sethi** (cited supra) the relevant will be the age of the deceased and it should be the basis for applying the multiplier. Considering the age of deceased Somnath, the appropriate multiplier in the present case will be of 18. By applying the said multiplier, the amount of dependency compensation comes to Rs.9,07,200/-. In the said amount, the non-pecuniary damages are liable to be added, which are quantified to Rs.70,000/-. Adding the said amount, the total amount of compensation comes to Rs.9,77,200/-. In the facts and circumstances of the case, it appears to me that, this would be the just and fair compensation payable to the claimant in the present case.

12. For the reasons stated above, I deem it appropriate to modify the impugned Award to the aforesaid extent. Hence, the following order.

ORDER

(i) The Award passed in Motor Accident Claim Petition No.81 of 2015 is modified to the extent of the amount of compensation.

(ii) The claimant is held entitled for the total compensation of Rs.9,77,200/- instead of Rs.12,33,000/-.

(iii) The claimant will be entitled for aforesaid amount with interest accrued thereon 9% per annum from the date of filing of the claim petition till the date of deposit of the amount by the Insurance Company in this Court.

(iv) The Award be modified accordingly.

(v) It would be open for the claimant to withdraw the said amount, if already not withdrawn by the claimant.

(vi) The balance amount be refunded to the appellant – Insurance Company.

. The appeal stands allowed in the aforesaid terms.

(vii) Pending Civil Application, if any, stands disposed of.

(P.R. BORA, J.)

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