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

FIRST APPEAL NO.2707 OF 2018

ICICI Lombard General Insurance
Company Ltd, Through its Manager
Alaknanda Complex, Adalat Road,
Aurangabad .. **Appellant**
(Orig. Resp. No.3)

Versus

1) Manisha Vishnu Limbore
Age : 30 years, Occu : Household

2) Vanita Vishnu Limbore
Age : 10 years, Occu : Education,

3) Rushikesh Vishnu Limbore
Age : 7 years, Occu : Education

4) Mukesh Vishnu Limbore
Age : 5 years, Occu : Education

5) Laxmibai Pannulal Limbore
Age : 69 years, Occu : Nil,
Respondent No.2 to 4 under guardianship
of Resp. No.1 Mother
All R/o. Toka (Pravarasangam), Tq. Newasa,
Dist. Ahmednagar.

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

7) Raosaheb Asru Waghulkar
Age : Major, Occu : Driver,
R/o. Khalwadi, Newasa Kd.,
Tq. Newasa, Dist. Ahmednagar .. **Respondents**
(Resp. No.1 to 5 orig. claimants &
Resp. 6 & 7 ori. Resp. No.1 & 2)

Advocate for Appellant : Shri A.G. Choudhari ;
Advocate for Respondent Nos.1 to 5 : Shri R.B. Deshpande;
Advocate for Respondents No.6 & 7 : Shri V.B. Jagtap.

...

CORAM : P.R. BORA, J.
Dated: October 05, 2018

ORAL JUDGMENT :

1. The Insurance Company has preferred the present appeal against the Judgment and order passed by the Motor Accident Claims Tribunal at Newasa in Motor Accident Claim Petition No.80 of 2015 decided on 19.06.2017.

2. Respondent Nos.1 to 5, who are hereinafter referred to as the claimants, had filed the aforesaid claim petition claiming compensation on account of death of Vishnu Pannulal Limbore alleging the same to have been caused in a vehicular accident happened on 31.07.2015 having involvement of the Maruti Car bearing Registration No.MH-17-AJ-6985, owned by present respondent no.6 and insured with the appellant – Insurance Company.

3. It was the case of the claimants that, deceased Vishnu while was returning on his motorcycle from Shrirampur

to Pravarasangam along with his friend Somnath, his motorcycle was dashed by the aforesaid Maruti Car and in the accident so happened, Vishnu as well as Somnath both suffered the death. The claimants had alleged that, accident in question happened because of the sole negligence of the driver of the offending Maruti Car. As stated in the petition, the age of deceased Vishnu was 34 years and his income was stated to be Rs.20,000/- per month. The claimants had, therefore, claimed the compensation of Rs.12,00,000/- jointly and severally from the owner and insurer of Maruti Car.

4. The owner and insurer of the Maruti Car resisted the claim petition by filing their respective written - statements. The Insurance Company has also raised the defence of breach of policy conditions by the insured. The age and income of the deceased was also disputed by both the respondents. In order to prove the contentions raised in the claim petition, one of the claimants deposed before the Tribunal and certified copies of the police papers were placed on record. None of the respondents adduced any oral or documentary evidence. The learned

Tribunal, after having assessed the oral and documentary evidence brought on record before it, held the claimants entitled for the total compensation of Rs.24,86,200/- jointly and severally from the owner and insurer of the offending Maruti Car i.e. the present appellant and present respondent No.6. Aggrieved by, the Insurance Company has preferred the present appeal on various grounds.

5. Shri Choudhari the learned Counsel appearing for the appellant – Insurance Company submitted that, in absence of any cogent and sufficient evidence or any document as about the income of deceased Vishnu, the Tribunal could not have held the income of deceased Vishnu to the tune of Rs.8,000/- per month. The learned Counsel further submitted that, in absence of any further evidence, there was no reason for the Tribunal to hold the future prospectus of deceased Vishnu by adding 50% of his income in his existing income. The learned Counsel further submitted that, having regard to the number of dependents on the income of deceased Vishnu, the Tribunal must have deducted $1/4^{th}$ of the total income of deceased Vishnu towards

his personal expenses, whereas it has deducted 1/5 of his said income. Learned Counsel further submitted that, the Tribunal has also grossly erred in awarding the non-pecuniary damages to the tune of Rs.6,25,000/-. The learned Counsel on all above grounds submitted that the Award impugned in the present appeal needs to be adequately modified.

6. Shri Deshpande the learned Counsel appearing for the original claimants supported the impugned Judgment and Award.

7. I have given due consideration to the submissions advanced by the learned Counsel appearing for the respective parties. The first objection as has been raised by the appellant – Insurance Company is as about the income of Rs.8,000/- as has been held by the Tribunal as the monthly income of deceased Vishnu. It was vehemently argued by the learned Counsel that, without there being any documentary evidence, the Tribunal at the most could have held the income of deceased Vishnu by applying the criteria of notional income to the tune of

Rs.6,000/- per month.

8. I have carefully gone through the evidence on record. PW-1 Manisha Vishnu Limbore deposed before the Tribunal that, deceased Vishnu was carrying on the business of fishing. In the FIR as well as in other documents, it has specifically come on record that, in relation to the said business of fishing only he had been to Shrirampur. Considering the age of deceased Vishnu, the number of dependents on his income and in absence of any contrary evidence on record, it does not appear to me that, the Tribunal has committed any error in holding the income of deceased Vishnu at the rate of Rs.8,000/- per month. The Tribunal has further added 50% of the said income while assessing the dependency compensation and has assessed the dependency compensation on the amount of Rs.12,000/-. Here the Tribunal of course has committed an error in adding 50% of the total income of deceased Vishnu while considering his future prospectus. Admittedly, deceased Vishnu was carrying on a private business. 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, (2017) 16 Supreme Court Cases 680 the Tribunal could not have added more than 40% of his total income by way of his future prospectus to that extent the modification appears necessary.

9. If the income of deceased Vishnu is considered to be Rs.8,000/- per month, by adding 40% of the said income, his income for the purpose of assessing the dependency compensation will have to be held Rs.11,200/- i.e. Rs.8,000/- + Rs.3200/-, which annually comes to Rs.1,34,400/-. The Tribunal has further committed an error in deducting 1/5th of the amount towards the personal expenses of deceased Vishnu. Having regard to the law laid down in the case of **Sarla Verma Vs. DTC, (2009) 6 SCC 121,** which has been reiterated in the case of **National Insurance Company Limited Vs. Pranay Sethi** (supra), considering the number of dependents on the income of deceased Vishnu, ¼ of his total income was liable to be deducted from his total income while calculating the amount of dependency compensation. By deducting the said amount, it

comes to Rs.1,00,800/-. Having regard to the age of deceased Vishnu, 16 is the appropriate multiplier. Applying the said multiplier, compensation amount comes to Rs.16,12,800/-. In the aforesaid amount, the amount of Rs.70,000/- is liable to be added towards non-pecuniary damages. Adding the said, the total amount of compensation comes to Rs.16,82,800/-. In the facts and circumstances of the case, the claimants are entitled for the total compensation for the aforesaid amount. The Award, therefore, needs to be modified accordingly. In the result, the following order is passed.

ORDER

(i) The Award passed in Motor Accident Claim Petition No.80 of 2015 is modified to the extent of the amount of compensation.

(ii) The claimants are held entitled for the total compensation of Rs.16,82,800/- jointly and severally from the appellant and respondent no.6 together with interest thereon at the rate of 9% per annum from the date of filing the claim petition till the date of deposit of the amount of compensation by the Insurance Company in this Court.

(iii) It would be open for the claimants to withdraw the amount of compensation as aforesaid from the deposited amount.

(iv) Balance amount be refunded to the appellant – Insurance Company.

(v) 50% of the aforesaid compensation amount be invested in three equal shares in the names of respondent nos.2 to 4 in any Nationalized Bank for the period till these respondents attain the age of majority.

(vi) The amount of Rs.2,50,000/- be remitted in favour of respondent No.5 Laxmibai Pannulal Limbore and the balance amount shall be paid to respondent No.1 Manisha Vishnu Limbore with interest accrued thereon.

(vii) Award be modified accordingly.

. The appeal stands allowed in the aforesaid terms.

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

(**P.R. BORA, J.**)

ggp