IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 FIRST APPEAL NO. 19 OF 1998

1) United India Insurance Company,
Nizamabad.

2) United India Insurance Company,
Nanded. ..Appellants
(Ori.Res.Nos.2 and 3)

Versus

1) Shewantabai W/o.Gangaram Rodekar
Age: 32 years, Occu.: Labour.

2) Sainath S/o. Gangaram Rodekar
Age: 4 years, minor.

3) Anjanabai D/o. Gangaram Rodekar
Age: 10 years.

4) Anusayabai D/o. Gangaram Rodekar
Age: 6 years.

5) Ranjanabai D/o. Gangaram Rodekar
Age: 1 year. ..Respondents
(Original claimant
Nos.1 to 5)

All above Respondent Nos.2 to 5 are under
Guardianship of Respondent No.1.
R/o.At.Post.Singanapur, Tq.Bhokar, Dist.Nanded.

6) G. Anjaya S/o. G. Bhumaya
Age: 24 years, Occu.: Business.
R/o. Nizamabad, A.P.

7) Bapurao Pandurang Shinde
Age: Major, Occ.: Agri.
R/o. Koregaon, Police Patil, Tq.Biloli. ..Respondents/
(Original
Respondents
Nos.1 & 4.

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Advocate for Appellant : Shri D.V.Soman
Advocate for Respondent No.1 : Shri D.Y.Nandedkar
Advocate for Respondent No.7 : Shri U.B.Bilolikar
Respondents Nos.2 to 5 are served
Respondent No.6 Deleted

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WITH
CROSS OBJECTION (ST) NO.6997 OF 2005
IN FA/19/1998

1) Shewantabai W/o.Gangaram Rodekar
Age: 50 years, Occu.: Labour.

2) Sainath S/o. Gangaram Rodekar
Age: 18 years, minor.

3) Anjanabai D/o. Gangaram Rodekar
Age: 25 years.

4) Anusayabai D/o. Gangaram Rodekar
Age: 21 years.

All r/o. Singnapur, Tq.Bhokar,
District Nanded.

5) Ranjanabai D/o. Gangaram Rodekar
(died) ..Cross Objection Petitioner
(Original claimants)

Versus

1) United India Insurance Company,
Nizamabad.

2) United India Insurance Company,
Nanded. ..R.No.1 & 2 appellants

3) G. Anjaya S/o. G. Bhumaya
Age: 39 years, Occu.: Business.
R/o. Nizamabad, Tq.Nizamabad.

4) Bapurao Pandurang Shinde
Age: 45 years, Occ.: Agri.
R/o. Koregaon, Police Patil, Tq.Biloli. ..R.No.6 & 7 in FA
..Respondents

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Advocate for Petitioner : Shri D.Y.Nandedkar
Advocate for Respondent No.1 & 2 : Shri D.V.Soman
Advocate for Respondent No.4 : Shri U.B.Bilolikar
Respondent No.3 is deleted

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CORAM : P.R.BORA, J.

DATE: 27th September, 2018

ORAL JUDGMENT:-

1. The Insurance Company has filed the present appeal challenging the Judgment and award passed by the Motor Accident Claims Tribunal, Nanded in Motor Accident Claim Petition No.106 of 1990 decided on 12.12.1994.

2. Heard Shri Soman, learned Counsel appearing for the appellant Insurance Company and Shri Nandedkar, learned Counsel appearing for respondents i.e. Original claimants. The only objection raised in the present appeal is that the Tribunal has grossly erred in putting liability on the Insurance Company of the Tractor of paying compensation jointly and severally alongwith owner and insurer of another

vehicle involved in the accident i.e. Truck.

3. It is not in dispute that two vehicles were involved in the alleged accident; one was the Tractor and another was the Truck. The learned Tribunal, after having assessed the evidence on record, has recorded a finding that the accident in question occurred because of the composite negligence of the drivers of both the vehicles. It was the case of the claimants before the Tribunal that both these vehicles i.e. Tractor and Truck were insured with the appellant Insurance Company. It was however, subsequently revealed that the cover note, which was produced on record by the claimants demonstrating the same to be the cover note of insurance pertaining to the Tractor was not of the said Tractor, but was pertaining to some another vehicle i.e. Scooter. In the circumstances, the review petition was filed by the appellant Insurance Company praying for reviewing the earlier order and exonerating the Insurance Company from the liability of paying the compensation of its share.

4. It was the contention of the appellant Insurance Company before the Tribunal in the review application that

since the Tractor was not insured with it and only the Truck was insured with it, it may not be saddled with the liability of paying entire compensation and be held responsible for payment of only 50% of the said compensation, which may fall to the share of the owner and the insurer of the Truck. The learned Tribunal rejected the review application holding that when it was the case of composite negligence, the entire amount of compensation was recoverable from either of the tort-feasor.

5. In the present appeal, the same contention has reiterated by the learned Counsel of the Insurance Company that when the Tractor was not insured with the appellant Insurance Company, the Insurance Company can be held liable to pay only half of the compensation as has been determined by the Tribunal. The contention so raised is liable to be rejected. In fact, in the review petition, the Tribunal has very rightly observed that when the accident was result of composite negligence, both the vehicles i.e. tort-feasors are jointly and severally liable to pay the compensation. It is well settled that in the cases of composite negligence, it is the choice of the claimants from

which tort-feasor, the amount of compensation is to be recovered.

6. As has been held by the Hon'ble Apex Court in the case of ***T.O.Anthony Vs. Karvarnan [2008 (5) Mh.L.J. 7]*** *"Where a person suffers an injury or the death as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured or suffered death on account of composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured or to the legal heirs of the deceased for payment of the entire damages – compensation and the claimant has the choice of proceeding against all or any of them."* The Hon'ble Apex Court has further held that *"In such a case, the injured or the legal heirs of the deceased, as the case may be, need not to establish the extent of responsibility of each wrongdoer separately, nor it is necessary for the Court to determine the extent of liability of each wrongdoer separately."* In view of the law laid down as aforesaid, I see no merit in the appeal filed by the Insurance Company. The appeal, therefore, fails and deserves to be dismissed.

7. The original claimants have filed Cross-objection seeking enhancement in the amount of compensation. The claimants had claimed the compensation of Rs.1,50,000/-.

The Tribunal has awarded compensation of Rs.1,18,000/-. It is the contention of the claimants that the Tribunal must have held the income of deceased to the tune of Rs.1,500/- per month since sufficient evidence was adduced by the claimants in that regard. It is also contended that the Tribunal has applied the multiplier of 15 whereas in view of the Judgment delivered by Hon'ble Apex Court in ***Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another [(2009) 6 Supreme Court Cases 121]***, it ought to have been 16. It is further contended that the non-pecuniary damages, are also inadequately awarded by the Tribunal. The learned Counsel submitted that in view of the Judgment of the Hon'ble Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others [(2007) 16 Supreme Court Cases 680],*** the claimants are entitled for the compensation of Rs.70,000/- towards non-pecuniary damages.

8. On perusal of the impugned Judgment and the evidence on record, I do not see any reason for causing any interference in the finding recorded by the Tribunal as about the monthly income of the deceased. However, the multiplier applied of 15 is incorrect and it must have

been 16. The contention as about the non-pecuniary damages also deserves consideration.

9. Applying the multiplier of 16, the amount of dependency compensation comes to Rs.1,15,200/-. In addition to the aforesaid amount, the claimants are entitled to receive a sum of Rs.70,000/- towards the non-pecuniary damages as laid down by the Hon'ble Apex Court in the case of ***Pranay Sethi and others*** (supra). The claimants are, thus, found entitle for the total compensation of Rs.1,85,200/-. In the facts and circumstances of the case, it appears to me that this would be the just and fair compensation payable to the claimants inclusive of no fault liability compensation. The amount of compensation, thus, stands enhanced by Rs.67,200/-. For the reasons stated above, the following order is passed:-

ORDER

I) First Appeal No.19 of 1998 is dismissed with costs.

II) Cross-Objection (Stamp) No.6997 of 2005 is partly allowed.

III) The amount of compensation is enhanced by Rs.67,200/-. The owner and insurer of the offending Truck i.e. original respondent Nos.1 and 2 shall jointly or severally pay the enhanced amount of compensation with interest thereon @ 9% p.a. from the date of filing of the appeal till its realization.

IV) The deficit Court fee, if any, be recovered from the claimants.

V) The modified award be prepared accordingly.

(**P.R.BORA**)
JUDGE

SPT