IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 FIRST APPEAL NO.876 OF 2012

Bajaj Allianz General Insurance Co. Ltd.
Through it's Branch Manager,
2nd Floor, Rajendra Chamber,
Adalat Road, Aurangabad. … Appellant.

VERSUS

1. Shaikh Wahab Shaikh Kassam Manyar
Age : 49 years, Occu.: Labour,

2. Raziabee Shaikh Wahab Manyar,
Age : 46 years, Occu.: Household,

3. Vijay S/o Shaligram Sarda,
Age : Major, Occu.: Business,
R/o. Sanjay Mill Compund,
Nandurbar, Tq. & Dist. Nandurbar. … Respondents.

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Mr. S.G. Chapalgaonkar, Advocate for Appellant.
Mr. Shrikant Patil, Advocate for Respondents No. 1 and 2.

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CORAM : V.L. ACHLIYA, J.

DATED : 25th JULY, 2018

JUDGMENT:-

1. By consent of the parties, appeal is taken up for final hearing at the stage of admission.

2. Heard the learned counsel for the appellant and respondents no. 1 and 2. Respondent No.3 though served, absent.

3. Being aggrieved and dissatisfied with the order dated 06.02.2012, passed by Motor Accident Claims Tribunal, Shahada, Dist. Dhule in M.A. C.P. No.243/2007, the appellant (original respondent no.2) – Insurance Company has filed this appeal. Before adverting to deal with the submissions advanced, it is useful to refer few facts leading to filing of application under section 163-A of Motor Vehcle Act, 1988.

4. On 02.03.2007, deceased Irffan son of respondents no.1 and 2 was proceeding on motorcycle bearing registration No.Mh-39-E-1192 as a pillion rider, which was owned by respondent no.3 and insured with appellant – Insurance Company. At the time of accident, Aadib Shaikh Usman Shaikh – informant was riding the motorcycle. While they were proceeding from Nandurbar towards Shahada. One Tata Sumo came behind and gave dash to motorcycle. On receiving dash, the motorcycle fell down to the right side of the road, which resulted in causing injury to Irfan as well as informant. The Tata sumo car which gave dash did not stop after giving dash to motorcycle and the driver of the car flee away with his vehicle. The deceased was taken to Government Hospital, Nandurbar where he succumbed to injuries and declared as dead. On the basis of complaint lodged by Aadib Shaikh Usman Shaikh – informant, the offence under sections 304-A, 427 of I.P.C. came to be registered against unknown driver of

Sumo car. Police visited the spot of incident and recorded spot panchanama. Dead body of deceased was referred for postmortem to Civil Hospital at Nandurbar. After conducting postmortem the autopsy surgeon opined that the deceased died on account of "cardio respiratory arrest due to hemorrhagic shock, due to head injury, due to road traffic accident".

5. On account of accidental death of deceased in motor vehicle accident, the respondents no.1 and 2 i.e. claimants filed application under section 163-A of Motor Vehicles Act, 1988 (For short, 'the Act') seeking compensation of Rs.4,50,000/- as against the appellant – Insurance Company and the respondent no.3 – the owner of the motorcycle. Respondent No.3 – owner though served failed to contest the claim of the petitioners. The appellant – Insurance Company contested the claim. On behalf of the claimants, the respondent no.1 stepped into the witness box. The appellant – Insurance Company examined Neeraj Dilip Shivangikar, Senior Executive Officer Claims (Legal). On due consideration of rival pleadings, oral and documentary evidence and the submissions advanced, the Tribunal has allowed the application of claimants and awarded the compensation of Rs.4,12,000/- with interest at the rate of 9% from the date of petition. Being aggrieved, appellant no.2 (Insurance Company) has preferred this appeal under section 173 of the Act.

6. From the written statement filed by the appellant – Insurance Company, it appears that the appellant – Insurance Company has disputed its liability with contention that the application is not maintainable under section 163-A of the Act. According to the appellant -Insurance Company, the deceased died on account of dash given by unknown vehicle and therefore the case falls within the meaning of hit and run case and the remedy lies elsewhere to claim. The appellant – Insurance Company also disputed their liability with the contention that there was a breach of policy condition and the person driving the motorcycle was not holding the valid license to drive the motorcycle.

7. Since the application was made under section 163-A of the Act, the claimants are not required to plead or establish that the death of deceased was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles. A full fledged trial is not contemplated in deciding such application.

8. Mr. Chapalgaonkar, learned counsel for the appellant fairly conceded that as the application filed by the claimant being under section 163-A of the Act, the scope of challenge to the judgment and order passed by the Tribunal is very limited. He submits that the oral and documentary evidence adduced in the

case is sufficient to establish that the deceased died in a motor vehicle accident occurred on 02.03.2007 and the motorcycle on which the deceased was proceeding was insured with the appellant in the name of respondent no.3. Learned counsel for the appellant confines his argument to correctness of the judgment and order passed by the Tribunal as to quantum of compensation awarded and more particularly the selection of multiplier and the quantum of deduction made towards personal expenses of deceased. He submits that as the deceased was bachelor and the claimants are the parents of the deceased in the age group of 45 to 50 years, the Tribunal ought to have applied the multiplier of 13 instead of 17 considering the age of the deceased. It is further contended that the Tribunal also erred in deducting the income towards personal expenses to the extent of 1/3rd only. He submits that the deduction on account of personal expenses of deceased ought to have been considered to the extent of 50% of the monthly income. In support of submission advanced, the learned counsel has referred and relied upon the decision of the Apex Court in the Case of ***MG. Dir., Bangalore Metropolitan Tpt. Corp. Vs. Sarojamma & Anr.*** Reported in ***2008 (5) SCC 142***.

9. Mr. Shrikant Patil, learned counsel for respondents no.1 and 2 supported the judgment and order passed by the Tribunal. He submits that in view of the decisions rendered by the Apex

Court in the case of ***Sarla Verma and oothers vs. Delhi Transport Corporation and another (2009) 6 SCC 121*** and ***National Insurance Company Limited vs. Pranay Sethi and others 2017 (16) SCC 680*** as well as ***Ramrao Lala Borse and another vs. New India Assurance Company Limited and another (2018) 3 SCC 204***, the legal position has been crystalised as regards to selection of the multiplier as well as the deduction from the income of the deceased while computing the compensation by the Tribunal. He has submitted that for selecting the multiplier, the age of the deceased alone to be taken into consideration and not the age of the claimants / dependents. He further submits that as application being made under section 163-A of the Act, the Tribunal is confined to make the deduction in terms of statutory deduction i.e. 1/3rd of income of deceased towards own expenses as provided in second schedule of the Act. It is further submitted that in terms of structured formula provided under second schedule of the Act, the Tribunal have no discretion as deduction from the income of deceased towards personal expenses.

10. On due consideration of the submissions advanced in the light of the rival pleadings, oral and documentary evidence adduced by the parties and the ambit and scope of section 163-A of the Act, I am of the view that there is no merit in the appeal filed by the appellant.

11. The challenge raised in the appeal as to the quantum of compensation assessed and awarded by the Tribunal is without basis. The age and income of the deceased has not been disputed. Although the claimant has not produced documentary evidence as to the exact age of the deceased on the date of incident, but the inquest panchanama and postmortem report spell out that at the time of accident the deceased was 23 years old. Considering the age of the deceased as 25 years, the tribunal has selected the multiplier of 17 in terms of second schedule of the said Act. Although the claimants have claimed that the deceased was working as a tractor mechanic and earning Rs.3,300/- per month, the Tribunal has notionally considered the income of deceased as Rs.3,000/- per month in absence of documentary proof. By considering the monthly income of deceased as Rs.3,000/- the yearly income has been assessed as Rs.36,000/-. After deducting the amount towards personal expenses of deceased by 1/3rd in terms of second schedule of the Act, the yearly contribution of deceased to claimants worked out to Rs.24,000/- and accordingly the compensation has been assessed as Rs.4,08,000/- (Rs.24,000 X 17 = Rs. 4,08,000/-). The Tribunal has awarded Rs.2,000/- towards funeral expenses and Rs.2,000/- towards transportation of dead body and thereby assessed the total compensation payable as Rs.4,12,000/-. Thus, compensation as assessed by the Tribunal is in consonance and in

strictly terms of structured formula provided under section 163-A of the Act. In that view, there is no scope to interfere with the judgment and order passed by the Tribunal.

12. The contention of the learned counsel for the appellant that looking to the fact that the deceased was bachelor and the claimants are in the age group of 45 to 50 years, the multiplier of 13 ought to have been applied cannot be accepted in terms of formula provided for determination of compensation under Section 163-A of the Act. The second schedule of the Act specifically provides that while selecting the multiplier, the age of the victim is to be taken into consideration. Apart from this, the Apex Court in the case of ***Sarla Verma and oothers vs. Delhi Transport Corporation and another*** (supra) has held that, the principles relating to determination of liability and quantum of compensation are different for claims made under section 163-A of the Act and claims under section 166 of the said Act. The application seeking compensation made under section 163-A of the Act, needs to be considered and decided in terms of compensation to be assessed on the basis of structured formula given in second schedule of the Act. It is further held that while determining the compensation, the age of the deceased and not the claimants is to be considered for the purpose of selecting the multiplier.

13. In the decision rendered by five Judges Bench of the Apex Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and others*** (supra), after taking survey of all the previous decisions of the Apex Court as to selection of the multiplier it is specifically held that the age of the deceased should be the basis for selecting the multiplier. Similarly, in the case of ***Ramrao Lala Borse and another vs. New India Assurance Company Limited and another*** (supra), the Apex Court has over ruled the decision of this Court in the case of ***New India Assurance Company vs. Ramrao Lala Borse and another 2016 ACJ 2791 Bombay*** and held that, the age of deceased and not the age of the claimants to be considered in selection of the multiplier.

14. Thus, in the light of the legal position dismissed above the contention of the learned counsel for the appellant that the Tribunal has erred in selecting the multiplier of 17 based upon the age of the deceased cannot be accepted. Since the claim made by the claimants being under Section 163-A of the Act and the compensation to assess on the basis of specific formula provided under second schedule of the said Act, no fault can be found with the judgment and order passed by the Tribunal. In the result, the appeal is found to be devoid of merit and substance therein and liable to be dismissed. Accordingly, the appeal is dismissed.

15. The amount, if any, deposited and lying invested in a fixed deposit with this Court or the Tribunal then same be paid to respondents no. 1 and 2 i.e. original claimants in equal proportion by transferring the amount in their respective Savings Bank accounts on furnishing particulars of their Savings Bank accounts.

16. First Appeal stands dismissed and disposed of in above terms.

(V.L. ACHLIYA)
JUDGE

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