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

**FIRST APPEAL NO. 4288 OF 2017**

New India Insurance Company Ltd
Through Branch Manager,
Branch Shrirampur, Taluka Shrirampur,
District Ahmednagar. ..Appellant

**VERSUS**

1. Chandrakant Gangadhar Kandalkar,
   Age: 39 years, Occu: Agriculture,

2. Sau. Suvarna Chandrakant Kandalkar,
   Age: 34 years, Occu: Household,

   Both R/o. Bhairavnathnagar, Shrirampur,
   Tal. Shrirampur, Dist. Aurangabad.

3. The Principal,
   Model English School,
   Dashmeshnagar, Shrirampur,
   District Ahmednagar. ..Respondents

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Mr. Mohit Deshmukh h/f Mr. S.G. Chapalgaonkar, Advocate for Appellant.
Mr. Rahul A. Tambe, Advocate for Respondent Nos. 1 & 2.
Mr. Pravin S. Dighe, Advocate for Respondent No.3.

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**CORAM : A.M. DHAVALE, J.**
**DATE : 13th AUGUST, 2018**

**ORAL JUDGMENT:**

1. The Insurance Company has filed this appeal challenging the judgment and order dated 26.11.2015 in Motor Accident Claim Petition No. 15 of 2012 delivered by the learned Member of the Tribunal at Shrirampur whereby, the claimants were awarded compensation of Rs. 5,00,000/- payable by the owner with order of pay and recover against the insurer for death of a 15 year old child.

2. As per the record on 06.01.2012, the deceased Jalindar was proceeding on his bicycle, when school bus bearing No. MH-17-T-5855 belonging to respondent no.1 gave dash to him, as a result he died. The vehicle was insured with respondent no.2. The learned Trial Judge found that the vehicle was plied on road without valid permit and therefore the insurance company was not liable. Relying on the judgment in case of ***Kishan Gopal and Anr Vs. Lala and***

***Ors, 2014(3) Mh.L.J. 560***, he awarded compensation of Rs. 5,00,000/- payable by respondent no.1. There was order for pay and recover against respondent no.2. Hence this appeal.

3. The learned Advocate Shri Mohit Deshmukh holding for Shri Chapalgaonkar argued that the appeal was filed on two grounds, there was fundamental breach of policy and therefore there could not have been order of pay and recover against the insurance company. He submits that in view of the subsequent judgments, the appellant does not press this grounds. He challenges the quantum and submits that the present case cannot be compared with the facts in *Kishan Gopal's* case (Supra) and therefore grant of compensation of Rs. 5,00,000/- was on higher side. The deceased was studying in $5^{th}$ Std in a village. There is no proper evidence about his age. Considering the facts, the grant of compensation should be reduced. The learned Advocate Shri Rahul

Tambe supports the impugned judgment. He submits that the deceased was only child of his parents and was having bright future. Therefore, the learned Trial Judge has properly considered the facts and had awarded compensation, which is a reasonable compensation and it calls for no interference.

4. The points for my determination and findings thereon are as follows:

| Nos. | Points | Findings |
|---|---|---|
| 1 | Whether the Trial Judge has awarded excessive compensation? | ...In the affirmative. |
| 2 | What Order? | The appeal is partly allowed. Compensation is reduced to Rs. 3,30,000/- with interest @ 9%. |

5. Loss of a life cannot be computed in terms of money. It is always difficult to determine the quantum of compensation in case of death of a person. In the judgment in the case of ***Smt. Sarla Verma Vs. Delhi Transport Corporation, (2009) 6 SCC 121*** and

***National Insurance Company Limited Vs. Pranay Sethi, (2017) 16 SCC 680*** the apex Court has issued guidelines to bring equality in the grant of compensation. Still, there are grey areas like grant of compensation to the children.

6. As held in ***Megh Singh Vs. State of Punjab, 2003 Cr.L.J. 4329 SC***, there cannot be any precedent on the question of facts. No two cases are having similar facts, therefore merely because in *Kishan Gopal's* case, the Apex Court has awarded compensation of Rs. 5,00,000/-, the same cannot be followed in cases of all minor children. There are several judgments of Apex Court giving different amount of compensation in case of death of children.

7. The difficulty starts with assumption of income of the deceased. The Second Schedule provides for assumption of income of Rs. 15,000/- p.a., but it has been prescribed long back and there are no proper

changes in the schedule according to the changes in the economical status and devaluation of rupee.

8. There are also grey area about deductions towards personal expenses. Normally, when unmarried person dies as per *Sarla Verma* and *Pranay Sethi*'s case, the age of the deceased is taken into consideration for selecting multiplying factor and 50% deductions are made on the ground that unmarried person would eventually get married and he would be spending substantial amount on his spouse and children whereas, his parents would not last for long.

9. However, in some cases no personal deductions are made in respect of the children. It is well settled that in cases of applications under Section 166 of Motor Vehicles Act, 1988 the principles laid down under Section 163-A could be applied. The Schedule II applicable to applications

under Section 163-A is also full of mistakes. In case of non-earning person it shows that his income should be taken at Rs. 15,000/- p.a. The chart shows that when a person is having a income of 12,000/-, he should get Rs. 2,40,000/- and a person having income of Rs. 18,000/- should get Rs. 3,60,000/-. It is not clear whether, this income is to be considered after deducting 1/3rd amount towards personal expenses as prescribed. In such case, a person having income of Rs. 15,000/- would get around Rs. 3,00,000/- with nominal damages towards conventional heads like Loss of Estate Rs. 2500/-, Funeral Expenses Rs. 2000/- and Medical Expenses maximum Rs. 15,000/-.

10. The Schedule under Section 163-A prescribes uniform deduction of 1/3rd towards personal expenses irrespective of number of dependents. In case of minor, normally there would be only two dependents, father and mother. It is necessary that Schedule II should be suitably amended, so as to bring uniformity

for grant of compensation in case of death of minor children.

11. Coming to *Kishan Gopal's* case, the child was 10 years old, but at the time of accident, he was working on the tractor in the field. There are some cases where apex Court has awarded higher compensation in case of brilliant children. In the present case, the child was aged around 15 years and was studying in 5th Std. Considering all the aspects, in my opinion, the compensation of Rs. 3,00,000/- for Loss of Income and Rs. 15,000/- for Loss of Estate and Rs. 15,000/- for Funeral Expenses would meet the ends of justice. The compensation awarded by the learned Trial Judge is on much higher side. Hence the order:

**ORDER**

(a) The appeal is partly allowed.

(b) The order dated 26.11.2015 passed by the learned Member of the Tribunal at Shrirampur is modified. The compensation is reduced to Rs. 3,30,000/- (inclusive of NFL) with interest at the rate of 9% with proportionate costs.

(c) It is reported that claimants have received 50% of the amount. The balance amount as per this judgment shall be paid to the claimants and remaining amount shall be refunded to the appellant-insurance company.

(d) An award amounting to decree be drawn up accordingly.

(e) The amount payable to the claimants shall be remitted to their bank account on furnishing necessary application and details and documents of the account.

[**A.M. DHAVALE**]
**JUDGE**

Mujaheed