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

**FIRST APPEAL NO.3325 OF 2016**
**WITH**
**CIVIL APPLICATION NO.12419 OF 2016**

L & T General Insurance Company Limited,
Through its Manager / Authorized Signatory,
VIth Floor, City 2, Plot No.177,
CST Road, Kalina, Santacruz,
Mumbai

= **APPELLANT**
**(ORIG.RESP.NO.2)**

**VERSUS**

1. Ushabai Maruti Aher,
Age: 32 years, Occu.:Household,

2. Maya Maruti Aher,
Age: 13 years, Occu.: Education,

3. Gaya Maruti Aher,
Age: 11 years, Occu.:Education,

4. Laxmi Maruti Aher,
Age: 9 years, Occu.:Education,

5. Natasha Maruti Aher,
Age: 7 years, Occu.:Education

6. Anjali Maruti Aher,
Age: 5 years, Occu.:Education

(Resp.No.2 to 6 since minors,
U/G of their Mother Ushabai
Maruti Aher)

7. Anjana Sopan Aher,
Age: 54 years, Occu.Household,

8. Sopan Jaywant Aher,
Age: 59 years, Occu.:Nil,

All R/o. Mhaisgaon, Taluka Rahuri,

District Ahmednagar

9. Vijay Logistics Private Limited,
House No.42, VPO, Sundana,
District Rohtak, Haryana State
- 124 001

**= RESPONDENTS**
**(Resp.Nos. 1 to 8 – Orig. Claimants)**
**(Resp.No. 9 Orig. Resp.No.1)**

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Shri Mandar Deshmukh, Advocate holding for Shri. S.G. Chapalgaon, Advocate for appellant;

Shri. A.S. Gandhi, Advocate for Respondent Nos. 1 to 8;

Respondent No.9 served.

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**CORAM : P.R. BORA, J.**
**DATED : 28th SEPTEMBER, 2018.**

**ORAL JUDGMENT:-**

1. Heard finally with the consent of learned counsel for the parties.

2. The appellant-insurance company has filed the present appeal challenging the Judgment and Award passed in MACP No.712/2012 by Motor Accident Claims Tribunal at Ahmednagar on 21st March, 2016.

3. It is informed that the appellant insurance company has deposited the entire amount

under the Award.

4. Present Respondent Nos.1 to 8 had filed the aforesaid claim petition claiming compensation on account of death of Maruti alleging the same to have been caused in a vehicular accident happened on 6.9.2012 having involvement of Container bearing registration No.MH-46-B-8763 owned by Respondent No.9 and insured with appellant insurance company. The claimants had claimed the compensation of Rs.10,50,000/-. Age of deceased Maruti was stated to be 30 years and his income was claimed to Rs. Rs.8,000/- per month. In order to substantiate the contentions raised in the petition, one of the claimants testified before the court as well as one more witness was examined to prove income of the deceased and no evidence was adduced on behalf of the respondents. The owner as well as insurer of the offending vehicle both had resisted the claim petition by filing their respective written statements raising several grounds in exception to the contentions raised in the claim petition. The learned Tribunal after having considered the oral as well as documentary

evidence on record, awarded compensation of Rs. 24,43,400/- to the claimants jointly and severally from the owner and insurer of the offending vehicle. Aggrieved by, the insurance company has preferred the present appeal.

5. Shri Chapalgaonkar, learned counsel appearing for the appellant – insurance company criticized the impugned judgment mainly on two aspects. First, that the Tribunal has grossly erred in holding the income of the deceased Maruti to the tune of Rs. 8,000/- per month. The learned counsel submitted that the evidence which was adduced in support of the said contention was not dependable. In absence of any documentary evidence placed on record, the Tribunal must have held the income of deceased Maruti by applying the criterion of notional income. The learned counsel further submitted that the tribunal has also erred in adding 50% of the existing income of deceased by way of future prospects while determining the amount of dependency compensation. The learned counsel submitted that the law is now well settled that in so far as private employments are

concerned, the future prospects for the persons falling in the age group below 40, cannot be more thatn 40% of the existing salary. The learned counsel further submitted that unreasonable compensation has been awarded by the Tribunal towards non-pecuniary damages. The learned counsel pointed out that total amount of Rs.4,25,000/- has been awarded by the tribunal by way of non-pecuniary damages whereas according to the law settled by the Hon'ble Apex court in the case of *National Insurance Company Ltd. Vs. Pranay Sethi and Ors. - (2017) 16 SCC 680*, the said amount cannot be exceeded to Rs.70,000/-. The learned counsel, in the circumstances, prayed for modifying the Award accordingly.

6. Shri Gandhi, learned counsel appearing for the respondents original claimants supported the impugned Judgment and Award. The learned counsel however not disputed that in view of the recent judgment of the Hon'ble Apex Court, in the case of Pranay Sethi (cited supra) compensation granted under the head of non-pecuniary damages may be liable to be reduced. The learned counsel,

therefore, prayed for passing appropriate orders.

7. I have given due consideration to the submissions made by the learned counsel appearing for the parties. I have also perused the impugned Judgment and Award as well as the evidence on record. Though it was sought to be contended by the learned counsel appearing for the appellant insurance company that the Tribunal has committed an error in holding the income of the deceased to the tune of Rs.8,000/- per month, after having gone through the evidence on record, it does not appear to me that any fault can be found with the finding recorded by the tribunal. So far as the income of the deceased Maruti is concerned, nothing contrary is brought on record so as to disbelieve the evidence of the Claimants in that regard.

8. There is, however, substance in the further contention, raised by the learned counsel that the future prospects, as are calculated by the Tribunal, by adding 50% of the existing income, cannot be sustained. In view of the law now settled by the Hon'ble Apex court in the case of

<u>*Pranay Sethi (cited supra)*</u>, the amount towards future prospects of a person serving in private employment and who is below the age of 40 years, cannot be more than 40% of his existing income. In the instant matter thus amount of Rs.3200/- was liable to be included in the existing monthly income of the deceased. Such amount comes to Rs.11,200/- per month i.e Rs.1,34,400/- per annum. Having regard to the number of dependents, 1/5$^{th}$ of the said amount was liable to be deducted towards the personal expenses of the deceased. Having deducted the said amount, the dependency compensation comes to Rs.1,07,520/-. Considering age of the deceased, the appropriate multiplier would be of 17 and by applying the said multiplier, the dependency compensation comes to Rs.18,27,840/-. In the said amount, Rs.70,000/- will have to be added towards the non-pecuniary damages.

9. The respondents i.e. original claimants are thus found entitled for the total compensation of Rs. 18,97,840/-. In the facts and circumstances, this would be the just and fair

compensation payable to the original claimants. The impugned Award needs to be modified to the aforesaid extent. Except the decrease in the amount of compensation from Rs.24,43,400/- to Rs.18,97,840/- the other part of the Award is maintained as it is. The balance amount be refunded to the insurance company along with the interest accrued thereon

10. The appeal stands partly allowed in the aforesaid terms. Pending civil application stands disposed of.

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

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