IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4054 OF 2017

Shriram General Insurance Co. Ltd.,
Regd. Office :E. RIICO Industrial Area
Sitapura, Jaipur,302022(Rajasthan)
and Divisional Office at Aurangabad
through its Authorized Officer ...Appellant
[Original Resp.no.3]

VERSUS

1] Smt. Parigha Dnyandeo Borse,
age 35 years, occ. Household,

2] Ravi s/o Dnyandeo Borse,
age 18 years, occ. Education,

3] Sunita d/o Dnyandeo Borse,
age 19 years, occ. Minor,
Education,

4] Tanuja d/o Dnyandeo Borse,
age 14 years, occ. Education,

5] Radha d/o Chandrabhan Borse,
age 65 years, occ. Nil,

6] Sau. Sitabai Radhy Borse,
age 50 years, occ. Nil,
Petitioner no.4 is minor and
U/g of their real mother
i.e. petitioner no.1

All R/o Sudam Badam Barde
Ghumandev, Tq. Shrirampur,
District Ahmednagar,

7] Raffiq Ahmed s/o Dalbir Ahmed
age Major, occ. Driver,
R/o A-15 Doslanagar Kanpur,
Haryana,

8] Daljit Janam Singh, Major
Business, Model Town,
Tahsil Town Gurgaon Haryana ...Respondents

[Nos. 1 to 6 orig. petitioner; Nos. 7 and 8 Orig. Resp.nos. 1 & 2] [Appeal against Resp.nos.6 & 8 dismissed/deleted vide order dated 26.2.2018]

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Mr. V.N.Upadhye, advocate for Appellant
Mr. R.A.Tambe, advocate for Respondent nos.1 to 5

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CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING THE JUDGMENT : 04.10.2018
DATE OF PRONOUNCEMENT OF JUDGMENT : 12.10.2018

J U D G M E N T :

This appeal is directed against the judgment and award, passed by the Motor Accident Claims Tribunal, Shrirampur, in Motor Accident Claim Petition No. 362 of 2010, awarding compensation of Rs.20,08,944/- with interest at the rate of nine per cent per annum from the date of application till realization of the amount of compensation.

2. Respondent nos. 1 to 6 are original claimants and respondent nos. 7 and 8 are original driver and owner of offending truck No. HR-55/E-4954.

3. Facts, in nut shell, are that when deceased Dnyandeo Borse was proceeding towards Pravara High School, Tisgaon by his motor cycle on 3.9.2010, that time near Thete Wasti the offending truck gave dash to the motor cycle of the deceased resulting into his death on the spot. The accident occurred due to rash and negligent driving by the driver of the offending truck. Therefore, the claimants filed claim petition against the driver, owner and insurance company.

4. Heard Shri V.N.Upadhye, learned counsel for the appellant and Shri R.A.Tambe, learned counsel for respondent nos.1 to 5.

5. Learned counsel for the appellant submits that on the date of accident the driver of the offending truck was holding driving license valid for driving heavy motor vehicles otherwise than the goods vehicle. Therefore, the owner of offending vehicle has committed breach of condition of the policy of the insurance.

His next submission is that, multiplier of 16 was wrongly applied by the Tribunal and it should be 15. He submits that judgment of **"Smt. Sarla Verma and Ors. Vs Delhi Transport Corporation and Anr." [AIR 2009 SC 3104]** and **"National Insurance Company Limited vs Pranay Sethi" [2018 (3) Mh.L.J. 70]** are not applicable in the case at hand, as those judgments were delivered by the Apex Court after the decision of Tribunal.

6. Learned counsel for respondent nos.1 to 5 submits that after going through the license, the Court can ascertain that it was valid driving license for driving the offending truck on the date of accident. Learned counsel for the respondents prays for enhancement of compensation, as the Tribunal did not consider future prospects of the deceased and under conventional heads meager compensation is awarded. He has also requested to transmit the compensation amount to the Tribunal for its withdrawal.

7. In the case at hand, limited issue is to be decided whether on the date of accident, driver of the offending vehicle was holding effective and valid driving license to drive the offending truck. The copy of the driving license of the driver of the offending truck is placed on record (Exh.42). After going though this driving license, it emerges that it was valid from 18.3.2009 to 17.3.2012 and the driver was authorized to drive heavy transport vehicle. Therefore, bare glance at driving license of the driver of the offending truck makes it clear that on the date of accident, which occurred on 3.9.2010, the driver of the offending vehicle was holding effective and valid driving license to drive the offending truck. I do not find any substance in the objection raised by the learned counsel for the insurance company.

8. To ascertain what would be the appropriate multiplier, I have to take into consideration the age of the deceased on the date of accident. Except postmortem notes (Exh.41), no other document is placed on record by the

claimants. The postmortem notes show that on the date of death, the deceased was 40 years of old. Therefore, in view of the case of **Smt. Sarla Verma and Ors. Vs Delhi Transport Corporation** (supra), which is approved by Larger Bench in **National Insurance Company Limited vs Pranay Sethi** (supra), for the age 36 to 40 years multiplier of 15 is applicable. Thus, in the case at hand, multiplier of 15 is applicable.

9. Salary slip of deceased (Exh.34) proved by Popat Wayal (PW 2) Head Master of the School, shows that in the month of August, 2010, total salary of deceased was 13,826/- per month. Only professional tax of Rs.200/- is deducted and no income tax or other taxes are deducted from that salary. Therefore, monthly income of the deceased can safely be assessed as Rs.13826-200=13626/-.

10. In view of guidelines settled by the Apex Court in **National Insurance Company Limited vs Pranay Sethi** (supra), deceased being in permanent

job, between age of 40 to 50, 30 per cent amount shall be added in his monthly income. Thus, monthly income of deceased is assessed as Rs.13626+4087=17713/-. Thus, annual income of the deceased is assessed as Rs.17713x12=212556/-. Claimants being six dependents in the family of deceased, in view of **Smt. Sarla Verma and Ors. Vs Delhi Transport Corporation** (supra), which is approved by Larger Bench in **National Insurance Company Limited vs Pranay Sethi** (supra), 1/4th amount is to be deducted towards personal expenses of the deceased, which is assessed as 53139/-. Thus total annual income of the deceased is assessed as Rs.212556-53139=159417/-. After applying multiplier of 15, loss of dependency is assessed as Rs.159417x15=2391255/-. In addition to this as per guidelines fixed in the case of **National Insurance Company Limited vs Pranay Sethi** (supra), under the conventional head, compensation of Rs.40000/- is to be awarded for loss of consortium, Rs.15000/- for loss of estate and Rs.15000/- for funeral expenses. Thus the claimants are entitled for following total compensation under different heads.

Loss of dependency	:	Rs. 2391255/-
Loss of consortium	:	Rs. 40000/-
Loss of estate	:	Rs. 15000/-
Funeral expenses	:	Rs. 15000/-
Total	:	Rs. 2461255/-

(Rs. Twenty Four Lac Sixty One Thousand Two Hundred Fifty Five only)

11. This compensation amount shall be inclusive of no fault liability amount awarded under Section 140 of the Motor Vehicles Act. The claimants are also entitled to interest on this amount at the rate of nine per cent per annum from the date of filing of petition till realization of the compensation amount. In view of the judgment in the case of **Jitendra Khimshankar Trivedi and others vs Kasam Daud Kumbhar and others [2015 (4) SCC 237]**, even in absence of Cross-objection, the court can enhance the compensation as just and fair. Therefore, though appeal filed by the insurance company deserves to be dismissed, the award is to

be modified to enhance the compensation to the extent of Rs. 24,61,255/-.

12. Accordingly, First Appeal No. 4054 of 2017 is dismissed.

However, the award passed by the Motor Accident Claims Tribunal, Shrirampur in Motor Accident Claim Petition No. 362 of 2010 is modified to enhance the compensation to the extent of Rs.24,61,255/- inclusive of no fault liability compensation with interest at the rate of nine per cent per annum, from the date of filing of petition till realization of the compensation amount.

Original respondent nos. 1 to 3 are jointly and severally liable to pay this amount to the original claimants. Parties to bear their respective costs of the appeal. Deficit court fee, if any due, be recovered from the claimants as per rules.

The award be modified in aforesaid terms.

The compensation amount deposited in this appeal in Motor Accident Claim Petition No. 362 of 2010 be transmitted to the Motor Accident Claims

Tribunal, Shrirampur for its payment in accordance with modified award.

[**SUNIL K.KOTWAL, J.**]

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