IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (STAMP) NO.5576 OF 2015
WITH
CIVIL APPLICATION NO.2782 OF 2015
AND
CIVIL APPLICATION NO.2783 OF 2015

United India Insurance Company Ltd.,
Fort, Mumbai .... Appellant
V/s.
Sindhu Gajanan Thakare and Ors. .... Respondents

ALONG WITH

CIVIL APPLICATION (STAMP) NO.23765 OF 2018
IN
FIRST APPEAL (STAMP) NO.5576 OF 2015

Sindhu Gajanan Thakare and Ors. .... Applicants
In the matter between
United India Insurance Company Ltd.,
Fort, Mumbai .... Appellant
V/s.
Sindhu Gajanan Thakare and Ors. .... Respondents

Mr. Rahul Mehta, I/by M/s. KMC Legal Venture, for the Appellant-Insurance Company in FA(St.)/5576/2015.

Mr. V.B. Ghorpade for the Respondents in FA(St.)/5576/2015 and for the Applicants in CAF(St.)/23765/2018.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 17TH OCTOBER, 2018.

P.C. :

1. Civil Application No.2782 of 2015 is filed for condonation of delay in preferring the First Appeal.

2. Learned Counsel for the Respondents has no objection in allowing the said Civil Application. Hence, for the reasons stated in the Civil Application, as sufficient cause is made out, the delay of 14 days in preferring the First Appeal is condoned. Civil Application is allowed.

3. By consent, the First Appeal is taken up for hearing forthwith.

4. Heard Mr. Mehta, learned counsel for the Appellant-Insurance Company and Mr. Ghorpade, learned counsel for the Respondents.

5. This Appeal is preferred by the Appellant-Insurance Company, challenging the 'Judgment and Award' dated 31st October 2014, passed by the Motor Accident Claims Tribunal, Mumbai in Claim Application No.1313 of 2011, thereby awarding the compensation of Rs.12,94,000/- to the Respondents-Claimant Nos.1 to 3, with interest @ 7.5% p.a. from the date of presentation of the application till entire realization of the amount.

6. The only ground on which the Appeal is preferred is that, the Tribunal has deducted 1/3rd of the amount towards the personal and living expenses of the 'Deceased', which, according to learned counsel for the Appellant-Insurance Company should be only 50%. The Tribunal has, in this respect, considered the age of the 'Deceased' to be 26 years and

the fact that, at the time of the accident, he was unmarried. The Tribunal has also considered the ratio laid down in the Judgment of the Hon'ble Apex Court in the case of *Sarla Verma and Ors. Vs. Delhi Transport Corporation and Anr., 2009 ACJ 1298 (SC)*, wherein, it was held that,

> *"As the Defendants are only three in numbers; therefore, 1/3rd deduction should be made towards personal and living expenses of the 'Deceased'."*

7. According to learned counsel for the Respondents-Claimants, therefore, having regard to the Judgment of the Hon'ble Apex Court in the case of *Sarla Verma and Ors. (Supra)*, the Tribunal has rightly deducted 1/3rd amount towards personal and living expenses of the 'Deceased'. In this respect, the reliance is placed on the observations made in paragraph No.15 thereof and which are quoted with approval in the latest decision of the *National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 ACJ 2700*. Those observations are as follows :-

> *"Where the family of the bachelor is large and dependent on the income of the 'Deceased', as in a case where he has a widowed mother and a large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to 1/3rd and contribution to the family will be taken as 2/3rd."*

8. According to learned counsel for the Respondents, in this case, the

mother is a widow, dependent on the income of the 'Deceased' and there were two other younger brothers of the 'Deceased', dependent on his income and, therefore, the Tribunal has rightly deducted 1/3rd amount towards his personal and living expenses.

9. However, in this respect, learned counsel for the Appellant-Insurance Company has rightly relied upon the preceding observations made by the Hon'ble Apex Court in the case of *Sarla Verma (Supra)*, which are as follows :-

> *"(15). Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the*

bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, s in a case where he has a widowed mother and a large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to 1/3rd and contribution to the family will be taken as 2/3rd.'

10. These observations, thus, make it clear that, normal rule is of 50% deduction in the case of an unmarried son. It is also clarified that, in the absence of evidence to the contrary, brothers and sisters will not be considered as dependents. Here in the case, the title in the Appeal Memo goes to show that, both the brothers of the 'Deceased' are major and, therefore, they cannot be called as dependent on the income of the 'Deceased'.

11. In view thereof, even applying the ratio laid down by the Hon'ble Apex Court in the case of *Sarla Verma (Supra)*, it has to be held that, the Tribunal should have deducted 50% of the amount towards the personal and living expenses of the 'Deceased'. If it is calculated to that extent, the modification is warranted in the impugned 'Judgment and Award' of the Tribunal.

12. If it is so modified, then, considering the income of the 'Deceased' of 'Rs.6,000/- per month + Rs.3,000/- towards future prospects', it comes to

'Rs.9,000/-', divided by 50%, comes to 'Rs.4,500/- per month', multiplied by '12' comes to 'Rs.54,000/- per annum', with the 'Multiplier of 17', it comes to Rs.9,18,000/- + Rs.70,000/- towards conventional heads, the total comes to "Rs.9,88,000/-". Thus, the total amount of compensation, to which the Respondents-Claimants are entitled, comes to "Rs.9,88,000/-".

13. Accordingly, the impugned 'Judgment and Award' of the Tribunal is modified and Respondents-Claimants are held entitled to the amount of compensation of Rs.9,88,000/-, with interest @ 7.5% per annum thereon from the date of application till realization of the entire amount.

14. The excess amount deposited by the Appellant-Insurance Company be refunded to them, along with the proportionate interest accrued thereon.

15. The amount of Rs.25,000/- deposited by the Appellant-Insurance Company in this Court as a statutory deposit, be transferred to the concerned Tribunal and the Appellant-Insurance Company is permitted to withdraw the same.

16. Appeal, along with Civil Applications thereto, stands disposed off in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]