<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY</u>
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.283 OF 2015
<u>ALONG WITH</u>
CIVIL APPLICATION NO.417 OF 2018

The New India Assurance Co. Ltd., Mumbai .... Appellant
V/s.
Alka Prakash Metange and Ors. .... Respondents

Mr. Devendranath S. Joshi for the Appellant-Insurance Company.

Mr. T.J. Mendon for Respondent Nos.1 to 5.

CORAM : <u>DR. SHALINI PHANSALKAR-JOSHI, J.</u>

DATE : <u>17TH OCTOBER, 2018.</u>

<u>P.C.</u> :

1. Heard Mr. Joshi, learned counsel for the Appellant-Insurance Company, and Mr. Mendon, learned counsel for Respondent Nos.1 to 5.

2. Civil Application No.417 of 2018 is for restoration of the First Appeal, which came to be dismissed for non-filing of the paper-book within the stipulated time.

3. Considering that the Appeal was already admitted and on technical ground, it should not get dismissed, the Appeal is restored to its original file.

4. Civil Application is allowed in the above terms.

5. This Appeal can be disposed off today itself, as it raises a very short point for consideration, which pertains to the 'pay and recovery' order passed by the Tribunal against the Appellant-Insurance Company, directing it to deposit the amount of compensation within one month from the date of the order, but, at the same time, granting permission to recover it from the owner of the offending vehicle.

6. Another ground taken up in this Appeal is that, $1/10^{th}$ of the amount is deducted as personal and living expenses of the 'Deceased'. After deducting the said amount of personal and living expenses, the contribution to the family is determined as Rs.81,000/- (-) Rs.8,100/- = Rs.72,900/- per annum.

7. According to learned counsel for the Appellant-Insurance Company, even as per the Judgments of the Hon'ble Apex Court in the case of *Sarla Verma Vs. Delhi Transport Corporation, 2009 ACJ 1298 (SC)*, and in the case of *National Insurance Co. Ltd. Vs. Pranay Sethi and Others, 2017 ACJ 2700*, the deduction can be, at the most, to the extent of $1/4^{th}$ of the total income and hence, the deduction made at the rate of $1/10^{th}$ of the amount towards personal and living expenses of the 'Deceased' is not proper and correct. Further, it is submitted that, even

the 'Multiplier' of ‘15’, which is applied by the Tribunal, is not correct, considering that the age of the 'Deceased' was 43 years and also considering that the future prospects are also not awarded by the Tribunal; therefore, as per the Judgment of the Hon'ble Apex Court in the case of *Sarla Verma (Supra)*, it should be ‘14’.

8. Considering that the income of the 'Deceased', which is held by the Tribunal, as only Rs.81,000/- per annum and the difference in the 'Multiplier' is hardly of ‘1’, this Court does not find any reason to interfere in the amount of compensation, which is ultimately awarded by the Tribunal.

9. Therefore, Appeal holds no merits; hence, stands dismissed.

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

[DR. SHALINI PHANSALKAR-JOSHI, J.]