IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1120 OF 2015
WITH
CIVIL APPLICATION NO.3888 OF 2016

The New India Assurance Co. Ltd.
Mumbai Regional Office No.1
new India Bhavan, 111200
34/38, Nyayamurthi G. N. Vaidya Marg,
Fort, Mumbai 400 023 … Appellant.

-vs-

1. Vijaya Balasubramaniam
   Age 60 years, Occ. Housewife
   Mother of the deceased

2. K. S. Balasubramaniam
   Age 65 years, Occ. Retired
   Father of the deceased,
   Both resident of 16/86,
   Vanmali Garodia Nagar,
   Ghatkopar

3. Arif Jaweed Ahmed
   Owner of the vehicle
   No.MH-06-AF-2632
   Aplad-Murad Nanjira,
   Dist Raigad

4. Shaema Javed Arif

   Appeal Stands dismissed against
   (R-4 vide order dated 20/04/2017) … Respondents.

Shri Shrikant M. Dange, Advocate for appellant.
Shri Subhash Chaubal, Advocate with Ms Shaila Taware, Advocate for respondent Nos.1 and 2.

CORAM : A. S CHANDURKAR, J.
DATE : December 06, 2018

Oral Judgment :

This appeal under section 173 of the Motor Vehicles Act, 1988 (for short, the said Act) has been preferred by the Insurer as it is aggrieved by the judgment dated 05/01/2015 passed by the Claims Tribunal, Mumbai. By that judgment the Claim Petition filed under Section 166 of the said Act has been partly allowed and the Insurer as well as the owner of the vehicle have been directed to pay amount of Rs.26,42,000/- with interest at the rate of 7.5% per annum towards compensation to the claimant.

2. The only ground of challenge sought to be raised by the appellant is that the Claims Tribunal was not legally justified in deducting 1/3rd amount for the expenses of the deceased while calculating the annual dependency. Relying upon the decisions in ***Sarla Verma and ors. vs. Delhi Transport Corporation and anr. (2009) 6 SCC 121, Reshma Kumari and ors. vs. Madan Mohan and anr. (2013) 9 SCC 65*** and ***National Insurance Company Limited vs. Pranay Sethi and ors. AIR 2017 SC 5157,*** Shri S. M. Dange, learned counsel for the appellant submits that it is now settled law that where the deceased was unmarried, the deduction towards personal and living expenses of the deceased have to be taken at 50%. It is thus submitted that by deducting only 1/3rd amount towards that head, excess

compensation stands awarded to the claimants. Except this contention no other contention is sought to be raised.

3. Shri S. Chaubal, learned counsel for the claimants while supporting the impugned award submitted that the deduction as made is in accordance with law and same does not require any modification. It is further submitted that the Claims Tribunal ought to have applied the multiplier of 11 by taking into consideration the age of the deceased. For that purpose learned counsel relied upon decision in ***Munna Lal Jain and anr vs. Vipin Kumar Sharma and ors. 2015 ACJ 1985***.

In reply it is submitted by the learned counsel for the appellant that in absence of any cross-objection being filed by the claimants for applying a higher multiplier, said contention cannot be permitted to be urged.

4. The following point arises for determination :

> *" Whether the Claims tribunal was legally correct in permitting deduction of 1/3rd amount towards personal expenses ? "*

5. After hearing the learned counsel and after perusing the records of the case, the point for determination has be answered in favour of the appellant. The Claims Tribunal in paragraph 14 of its judgment has

deducted 1/3rd amount towards personal expenses of the deceased. The legal position in this regard stands settled in the light of the recent decision of the Honourable Supreme Court in ***Pranay Sethi and ors.*** (Supra). While reiterating the earlier view as regards the deduction on account of personal expenses of the deceased who was a bachelor, it has been held that the same should be normally 50% of the income of the deceased. In the light of this settled legal position it is clear that the Claims Tribunal was not legally justified in deducting only 1/3rd amount towards personal expenses of the deceased.

6. As regards the submission made on behalf of the claimants that a wrong multiplier has been applied by the Claims Tribunal, in absence of any cross-objection seeking application of a higher multiplier, that contention cannot be accepted.

7. In the light of aforesaid it is held that the Claims Tribunal ought to have directed deduction of 50% amount from the income of the deceased towards personal expenses. Thus while calculating the amount of compensation on that basis the following figures emerge :

i)	Total income per annum :	Rs.6,74,360/-
ii)	After deducting 50% towards personal expenses the amount comes :	Rs.327180/-

Iii)	After deducting Rs.80,000/- towards Income Tax the amounts comes :	Rs.2,57,180/-
iv)	Applying the multiplier of 7, the compensation payable will be :	Rs.18,00,260/-
v)	After taking into consideration the other amounts awarded as per paragraph 16 of the impugned judgment, the total compensation payable is :	Rs.18,55,260/-

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8. In the light of aforesaid adjudication the following order is passed:

(1) The judgment of the Claims Tribunal dated 05/01/2015 in Claim Application No.1228 of 2008 is partly modified. It is held that the owner as well as the Insurer are liable to jointly and severally pay an amount of Rs.18,55,260/- to the claimants with 7% interest per annum from the date of presentation of the Claim Application till realization.

(2) By order dated 18/07/2017 this Court had permitted the claimants to withdraw 75%of the amount deposited on furnishing usual undertaking.

(3) In the light of aforesaid adjudication it would be open for the owner as well as Insurer to take such steps as are permissible in law to recover any excess amount if paid to the claimants. The remaining amount with interest lying in deposit shall be refunded to the appellant.

(4) The First Appeal is partly allowed in aforesaid terms. No costs.

(5) Pending Civil Application is also disposed of.

(A. S. CHANDURKAR, J.)