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

FIRST APPEAL NO.1402 OF 2012

1. Arjun S/o. Nivruti Shelar
   Age : 68 years, Occu : Nil,

2. Subhadrabai W/o. Arjun Shelar
   Age : 65 years, Occu : Nil,

3. Namdeo S/o. Arjun Shelar
   Age : 25 years, Occu : Nil,

All R/o. Chondi, Tal. Jamkhed,
Dist. Ahmednagar .. **Appellants**
(Orig. Claimants)

<u>Versus</u>

1. Vikrant S/o. Vasantrao Kadam
   Age : Major, Occu : Agri,
   R/o. Kenjal, Tal. Wai, Dist. Satara

2. Vilas S/o. Anandrao Kadam
   Age : Major, Occu : Agri,
   R/o. Kenjal, Tal. Wai, Dist. Satara

3. The New India Assurance Company Ltd.
   Divisional Manager, Amber Plaza Building,
   Near Hotel Ashoka, Sarjepura, Ahmednagar,
   Tal. Ahmednagar, Dist. Ahmednagar .. **Respondents**
   (Orig. Opponents)

…...

Shri H.U. Dhage, Advocate for appellants ;
Respondents No.1 & 2 – Served ;
Shri A.S. Usmanpurkar, Advocate for Respondent No.3.

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CORAM : P.R. BORA, J.
Dated: February 05, 2019

ORAL JUDGMENT :

1. Heard Shri Dhage, learned Counsel appearing for the appellants and Shri Usmanpurkar, learned Counsel appearing for the respondent – Insurance Company.

2. The original claimants have preferred the present appeal seeking enhancement in the amount of compensation awarded to them by the Motor Accident Claims Tribunal at Ahmednagar (hereinafter referred to as the 'Tribunal') in Motor Accident Claim Petition No.442 of 2005 decided on 29.09.2011. It was the contention of the appellants, who are hereinafter referred to as the claimants, that the age of deceased Dnyandeo was 22 years on the date of accident i.e. on 26.06.2005 and he was working as a driver and earning around Rs.4,000/- per month. The claimants had, therefore, claimed the compensation of Rs.4,00,000/- from the owner, driver and insurer of the offending motorcycle. The Tribunal, after having considered the evidence on record, has awarded the compensation to the tune of Rs.1,40,000/-. The learned Counsel submitted that, three

major mistakes are committed by the Tribunal while computing the amount of compensation. The learned Counsel submitted that, the Tribunal has applied the multiplier depending on the age of the claimants i.e. parents of the deceased. The learned Counsel submitted that, in view of the Judgment of the Hon'ble Apex Court in the case of **Sarla Verma & Ors. v. Delhi Transport Corporation & Anr. (2009) 6 SCC 121**, the multiplier must have been having regard to the age of the deceased. The learned Counsel further submitted that, the Tribunal has not awarded a single pai towards the future prospects of the deceased. The learned Counsel further submitted that, the Tribunal has awarded inadequate compensation towards the non-pecuniary damages. The learned Counsel submitted that, on all these grounds, the amount of compensation needs to be adequately enhanced.

3. Shri Usmanpurkar, learned Counsel appearing for the respondent – Insurance Company supported the impugned Judgment and Award. The learned Counsel submitted that, in absence of any pleading as about the future prospects, the Tribunal has rightly not considered the said aspect and as such,

no fault can be found in the Judgment and order passed by the Tribunal and now no new case can be made out by the appellants in the appeal. The learned Counsel further submitted that, according to the law prevailing at the relevant time, the Reference Court has rightly applied the multiplier of 5 and as such, there appears no reason to cause any interference in the amount of compensation awarded. The learned Counsel, therefore, prayed for dismissal of the appeal.

4. I have duly considered the submissions advanced by the learned Counsel appearing for the parties. I perused the impugned Judgment and Award. It is not in dispute that, deceased Dnyandeo was aged about 22 years at the time of the accident. The Tribunal has held his income to the tune of Rs.3,000/- per month. Though it was sought to be contended by the learned Counsel for the appellants that, the Tribunal must have held the income of the deceased to the tune of Rs.4,000/- per month, I am not convinced with the submission so made. It does not appear to me that, the Tribunal has committed any error in holding the income of deceased Dnyandeo to the tune of Rs.3000/- per month. However, it appears to me that, the

Tribunal must have considered the future prospects of the deceased and accordingly must have determined the amount of compensation payable to the dependents of deceased Dnyandeo. The said aspect does not seem to have been considered.

5. In view of the law laid down by the Hon'ble Apex Court in the case of **Sarla Verma** (cited supra) and in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and Ors., (2017) 16 SCC 680**, though deceased Dnyandeo was in a private employment or can be said to be self-employed, 40% of his existing income was liable to be added in his annual income so as to assess the dependency compensation payable to his legal heirs or dependents. To that extent, the modification in the Award is required.

6. Similarly, the Tribunal while assessing the amount of compensation, has applied the multiplier of 5 depending upon the age of the parents. In view of the law laid down in the case of **Sarla Verma** (cited supra), the multiplier has to be applied depending upon the age of the deceased. In the present case, the said multiplier would be of 18 having regard to the age of

deceased Dnyandeo. Under that head also, the amount of compensation needs to be adequately enhanced.

7. Similarly, the compensation as has been awarded by the Reference Court for non-pecuniary damages must be in tune with the law laid down in the aforesaid two cases i.e. in the case of **Sarla Verma** and **Pranay Sethi**. I, therefore, deem it appropriate to enhance the amount of compensation in the following manner.

8. The income of the deceased as held by the Tribunal to the tune of Rs.3,000/- per month comes to Rs.36,000/- per annum. 40% of it will have to be added in his said income so as to determine his prospective income for the purpose of assessing the amount of compensation, which comes to Rs.50,400/-. In view of the fact that, deceased Dnyandeo was a bachelor, ½ of the said amount will have to be deducted towards his personal expenses. Deducting the said amount, the amount remains of Rs.25,200/-. Applying the multiplier of 18 to the said amount, dependency compensation comes to Rs.4,53,600/-. In addition to the aforesaid amount, appellants are also entitled to receive

non-pecuniary damages to the tune of Rs.70,000/-. Adding the said amount, the appellants are held to be entitled for the total compensation of Rs.5,23,600/-. In the facts and circumstances of the case, it appears to me that, this would be the just and fair amount of compensation payable to the appellants- claimants. In the result, the following order is passed.

ORDER

(i) The appellants – claimants are held entitled to the total compensation of Rs.5,23,600/-. The amount of compensation is thus enhanced by Rs.3,83,600/-.

(ii) The respondents shall pay the aforesaid amount of enhanced compensation to the appellants – claimants with interest thereon at the rate of 9% per annum from the date of filing of the present appeal till its realization.

(iii) The appeal stands allowed in the aforesaid terms.

(iv) Award be prepared accordingly.

(v) Pending Civil Application, if any, stands disposed of.

(P.R. BORA, J.)

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