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

FIRST APPEAL NO.1183 OF 2006

1. Rubabbi w/o Sayyed Pasha,
Age : 48 years, Occu : Household,

2. Sayyed Pasha s/o. Khudbuddin,
Age: 48 years, Occu : Agril,

Both R/o. Bhisewagholi,
Tq. & Dist. Latur .. **Appellants**
(Orig. Claimants)

Versus

1. Lalaben D.Oz,
Age : Major, Occu : Business,
R/o. Flat No.4, Building No.1,
Ground Floor Sector No.6 C.B.D.
Konkan Bhawan New Bombay,
Dist. Thane

2. Ajmer s/o. Amin Pathan
Age : 30 years, Occu : Driver,
R/o. Bhisewagholi, Tq. Latur

3. The New India Assurance Co. Ltd.,
(A subsidiary of the General Insurance
Corporation of India, Mumbai Regional,
Office, D. Branch Office, at Latur) .. **Respondents**
(Orig. Opponents)

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Shri S.S. Manale, Advocate for appellants
Respondents No.1 & 2 : Served
Shri S.G. Chapalgaonkar, Advocate for Respondent No.3

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CORAM : P.R. BORA, J.
Dated: January 24, 2019

ORAL JUDGMENT :

1. The original claimants in Motor Accident Claim Petition No.174 of 2003 decided by the Motor Accident Claims Tribunal at Latur (hereinafter referred to as the 'Tribunal') on 13.01.2006 have preferred the present appeal seeking enhancement in the amount of compensation as has been awarded by the said Tribunal.

2. The appellants, who are hereinafter referred to as the claimants, had filed the aforesaid claim petition claiming compensation on account of the death of their son namely Illahi alleging the same to have been caused in a motor accident happened on 31.03.2003 having involvement of a truck bearing Registration No.MH-04-P-3431 owned by present respondent no.1 and insured with present respondent no.3. It was the contention of the claimants that, the alleged accident had happened because of the negligence of the driver of the said truck. The claimants had, therefore, claimed the compensation of Rs.Four lakhs from the driver, owner and insurer of the said

truck. As stated in the claim petition, age of deceased Illahi was 20 years on the date of accident and he was earning around Rs.3000/- per month by way of his salary. The learned Tribunal holding the salary of deceased Illahi to the tune of Rs.3000/- and holding his age to be 25 years awarded compensation of Rs.2,48,000/- inclusive of the NFL compensation. Aggrieved by, the claimants had preferred the present appeal seeking enhancement in the amount of compensation.

3. Shri Manale, learned Counsel appearing for the appellants - claimants submitted that, the Tribunal has not considered the future prospects of deceased Illahi and has also not awarded the appropriate compensation towards the non – pecuniary damages. The learned Counsel further submitted that, the Tribunal has also erred in applying the multiplier of 10 while assessing the amount of compensation. The learned Counsel, in the circumstances, has prayed for adequate enhancement in the amount of compensation.

4. Shri S.G. Chapalgaonkar, learned Counsel appearing

for the respondent- Insurance Company supported the impugned Judgment and Award. The learned Counsel pointed out that, the income of deceased Illahi as has been held by the Tribunal to the tune of Rs.3,000/- is without any evidence therefor. The learned Counsel submitted that, even if the income of deceased Illahi would have been determined by the Tribunal by applying the criteria of notional income, it could not have been more than Rs.2,000/- per month. The learned Counsel, insofar as non-consideration of future prospects by the Tribunal, conceded for its consideration in view of the subsequent judicial pronouncements. The learned Counsel also fairly conceded for proper application of multiplier and submitted for appropriate orders.

5. I have given due consideration to the submissions made by the learned Counsel appearing for the parties. I have perused the impugned Judgment and the Award and the evidence on record. Though according to the claimants the age of deceased Illahi was 20 years, but the same has been held by the Tribunal to be 25 years as has been mentioned in the

post mortem report, however, it may not have any material bearing insofar as the selection of multiplier is concerned. As per the judgment delivered by the Hon'ble Apex Court in the case of **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. (2009) 6 SCC 121** the appropriate multiplier while assessing the amount of compensation in respect of the death of a person falling in the age group of 20 to 25 years would be of 18. In the present matter, the Tribunal has applied the multiplier of 10. The amount of compensation would be, thus, liable to be enhanced by applying the multiplier of 18. Similarly, the Tribunal has not considered the aspect of future prospects of deceased Illahi while assessing the amount of compensation. In view of the Judgment of the Hon'ble Apex Court in the case of **Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.** (cited supra) as well as in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and Ors., (2017) 16 SCC 680** even though the deceased was self-employed or can be said to be in a private employment, his future prospects have to be considered. As laid down in the case of **National Insurance Company Ltd. Vs. Pranay Sethi** (cited supra), 40% of the existing income of the deceased would liable to be added into his existing income while assessing the amount of compensation payable to his legal heirs. On that count also, the amount of compensation would certainly liable to be enhanced. The amount granted by the Tribunal by way of non-pecuniary damages also needs to be enhanced in view of the Judgment delivered by the Hon'ble Apex Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi** (cited supra).

6. If the aforesaid aspects are considered, the compensation payable to the appellants – claimants can be determined as follows :

. Holding the income of deceased Illahi to the tune of Rs.3,000/- per month, his annual income comes to Rs.36,000/-. 40% of it will have to be added towards his future prospects while assessing the amount of compensation. Adding such amount of Rs.14,400/-, his annual income would be Rs.50,400/-. Since deceased Illahi was bachelor, ½ of the said income would liable to be deducted towards his personal and living expenses. Deducting the said amount, the dependency of the claimants can be assessed by applying the multiplier of 18. Deducting ½ of his total income, the amount remains of Rs.25,200/- and if it is multiplied by 18, the dependency compensation payable to the appellants comes to Rs.4,53,600/-. The appellants-claimants are also entitled for the compensation of Rs.70,000/- towards non-pecuniary damages (Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral and Rs.40,000/- towards consortium to the parents). Thus, the total amount of compensation payable to the claimants comes to Rs.5,23,600/-. In the facts and circumstances of the case, it appears to me that, this would be the just and fair compensation payable to the claimants. In the result, the following order is passed.

ORDER

(i) The appellants-claimants are held entitled for the enhanced compensation of Rs.2,75,600/-.

(ii) The respondents are jointly and severally liable to pay the enhanced amount of compensation to the appellants-claimants together with the interest thereon at the rate of Rs.9% per annum from the date of filing of the appeal till its realization.

(iii) The Award be modified accordingly.

(iv) Deficit Court fee, if any, be recovered from the appellants – claimants.

(v) Appeal stands allowed in the aforesaid terms.

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

(**P.R. BORA, J.**)

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