IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4437 OF 2016
WITH
CIVIL APPLICATION NO. 11579 OF 2018

The Reliance General Insurance
Company Limited, Corporate Office,
Indo Region, Electrical Ltd.
570 Rectifier House, 1st Floor,
Naigum Cross Road, Next to Royal
Industries Estate, Wadala, Mumbai. **Appellant**.

Versus

1. Sanjivani Sudamrao Shep
Age : 55 yrs, occu.: household

2. Shivprasad Sudamrao Shep
Age : 33 yrs, occu.: agri.,

3. Srikrishna Sudamrao Shep
Age : 30 yrs, occu.: service

4. Purushottam Sudamrao Shep
Age : 27 yrs, occu.: education

5. Dnyaneshwar Sudamrao Shep
Age : 23 yrs, occu.: education.

All r/o Shepwadi, Tal. Ambajogai,
District Beed.

6. Surendra Kumar Sh.Bhagwan
Singh
Age : major, occu.: business
R/o RZ 17, Sainik Enclave
Parta-2, Near CRPF Camp,
Jharoda Nazafgarh, New Delhi. **Respondents**.

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Mr. S.G. Chapalgaonkar, Advocate for the appellant.
Mr. Shrikishan S. Shinde, Advocate for respondent Nos.1 to 5.

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CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 14 March 2019.

Judgment pronounced on : 25 March 2019.

JUDGMENT.

. This appeal is directed by the Insurance Company of offending truck bearing registration No. HR-69-D-3374 against the judgment and award passed by the Motor Accident Claims Tribunal (hereinafter referred to as "Tribunal"), Ambejogai in Motor Accident Claim Petition No. 96/2010 whereas compensation of Rs.15,51,424/- was awarded by the Tribunal.

2. Respondent Nos.1 to 5 are the original claimants and respondent No.6 is owner of the offending truck. Hereinafter the parties are referred in accordance with their original status in the proceeding as "claimants", "Insurance Company" and "owner".

3. The facts leading to institution of this appeal are that on 15.03.2010 deceased Sudamrao Manaji Shep, who was Police-

sub-Inspector, was riding the motorcycle bearing registration No.MH-23-K-3296 by Beed – Jalna road and Constable Narayan Kokate was the pillion rider. When they were proceeding by Sathe Squre, that time offending truck came from the backside and gave dash to that motorcycle, dragged it upto the distance of 15 ft. resulting into the death of deceased Sudamrao and pillion rider Narayan. As the accident occurred due to rash and negligent driving by the driving of offending truck, the claimants filed claim petition under Section 166 of the Motor Vehicles Act before the Tribunal.

4. Owner of the offending vehicle did not file written statement. Only Insurance Company of the truck filed written statement (Exh.16) and denied its liability on the ground that the accident occurred due to rash and negligent driving of the motorcycle by deceased.

5. On behalf of the claimants, Sanjivani Shep (PW-1) stepped in witness box. In addition to this, Senior Clerk Ramesh Motibone (PW-2) was examined to prove monthly income of the deceased. No witness is examined by the Insurance Company. After considering the oral and documentary evidence placed on

record, the learned Tribunal held that the accident occurred due to rash and negligent driving by the driver of offending truck. In the result, compensation of Rs. 15,51,424/- was awarded and joint and several liability was fastened against the owner of offending truck and its insurer.

6. Heard Mr. S.G. Chapalgaonkar, learned Counsel for the Insurance Company and Mr. Shrikishan Shinde, learned Counsel for the claimants.

7. Learned Counsel for the Insurance Company submits that on 15.03.2010 the accident occurred when the deceased abruptly tried to cross the road on the spot of the accident. He submits that there was contributory negligence on the part of the deceased, and therefore, only 50% liability to pay compensation can be fastened against the Insurance Company.

8. His next contention is that at the time of death the deceased was 56 years of old person and he was about to retire within next two years, and therefore, split multiplier should have been applied by the Tribunal. His next contention is that while ascertaining monthly income of the deceased the Tribunal did not deduct income tax from the gross pay of the deceased. He has

pointed out that under non-pecuniary conventional heads the Tribunal awarded exorbitant compensation than permissible. He placed reliance on the case of **"Oriental Insurance Company Ltd. Vs Premlata Shukla and others", [(2009) 1 SCC (Cri.) 204]** to substantiate his contention that if the contents of document have been proved, it cannot be relied upon partly. The document is to be relied on as a whole. He also placed reliance on the judgment of the Single Judge of this Court in the case of **"Chhaya Dilip Tamte Vs Suresh Gurusidappa Karanje and others", 2015 ACJ 1470**, wherein the theory of split multiplier was applied by this Court.

9. In reply, learned Counsel for the claimants supported judgment passed by Tribunal on the ground that in view of law settled by the Apex Court in the Case of **"Sarla Varma & Ors Vs. Delhi Transport Corp. & Anr.", (AIR 2009 SC 3104)** the theory of split multiplier is not applicable and considering the age of deceased as 56 years, the multiplier of "9" was rightly applied by the Tribunal. Relying on the judgment of Larger Bench of the Apex Court in the case of **"National Insurance Co. Ltd. Vs. Pranay Sethi", (AIR 2017 SC 5157)**, he submits

that as the deceased was 56 years Government employee, there should be addition of 15% of actual salary in the income of deceased towards future prospects. He prayed for enhancement of compensation. He has also pointed out that the deceased was not income tax payee, and therefore, there cannot be deduction of income tax from his gross salary.

10. Regarding contributory negligence of the deceased, contention of the learned Counsel for the claimants is that in sister Motor Accident Claim Petition the Tribunal held that the truck driver was responsible for the occurrence of the accident and the said finding is binding on the Insurance Company.

11. No doubt, so far as the contributory negligence of the deceased is concerned, though the claimants have placed reliance on the judgment in sister M.A.C.P. No.64/2010, it is suffice to say that in that case the issue of contributory negligence did not arise for consideration for the simple reason that the deceased Narayan Kokate was third party as he was pillion rider on the motorcycle of the deceased in that case. Therefore, the judgment passed in M.A.C.P. No.64/2010 needs no consideration to determine whether the accident occurred due to contributory

negligence of the deceased or not.

12. Otherwise also, after going through the evidence placed on record and police papers, it emerges that on behalf of the claimants Sanjeevani Shep (PW-1) categorically deposed before the Tribunal that the accident occurred only due to rash and negligent driving by the driver of offending truck, who gave dash to the motorcycle of deceased from its backside. Though in the cross-examination of Sanjeevani (PW-1) it was tried to suggest that the deceased abruptly tried to cross the road, the said suggestion was specifically denied by this witness. In her cross-examination nothing could be elicited to prove that the accident occurred due to contributory negligence of the deceased. On the other hand, contention of Sanjeevani (PW-1) regarding total negligence on the part of truck driver is corroborated by the recitals of F.I.R. (Exh.28) and spot panchnama (Exh.29). The recitals of F.I.R. (Exh.28) indicate that at the time of accident deceased was riding his motorcycle by the left side of the offending truck and that time due to rash and negligent driving by the driver of the truck, it gave dash to the motorcycle of the deceased and dragged the motorcycle upto the distance of 10 to 15

ft. F.I.R. (Exh.28) shows that left wheel of the truck passed over the head of deceased resulting into his instant death on the spot. Even the spot panchnama (Exh.29) shows that left wheel of the truck passed over the head of deceased and at the time of preparation of spot panchnama the dead body of deceased was lying near the left rear wheel of the truck. This situation of the dead body and truck on the spot of the accident corroborates the version of Sanjeevani (PW-1) that the accident occurred due to rash and negligent driving by the driver of the truck.

13. On the other hand, it cannot be ignored that though opportunity was available to the Insurance Company, it did not examine driver of the offending truck to prove that the accident occurred when the deceased suddenly tried to cross the road in front of the offending truck. In absence of evidence of the driver of offending truck, Insurance Company cannot prove contributory negligence of the deceased for occurrence of the above-said motor vehicular accident. Therefore, after careful scanning of the evidence placed on record, I am fully satisfied that the accident occurred only due to rash and negligent driving by the driver of offending truck and there was no contributory negligence on the

part of deceased.

14. Undisputedly, on the date of the accident the truck was insured with appellant / Insurance Company. In view of the above finding the Insurance Company and owner of the truck are jointly and severally liable to pay compensation to the dependents of the deceased.

15. Undisputedly, at the time of death deceased was 56 years old person. Therefore, in view of the verdict of the Apex Court in the case of **"Sarla Varma"** (supra), multiplier of "9" is applicable in the case at hand.

16. Though learned Counsel for the Insurance Company placed reliance on the case of **"Chhaya Tamte"** (supra), where Single Judge of this Court has considered the theory of split multiplier, it cannot be ignored that judgment of **"Sarla Varma"** (supra) holds the field and it is upheld by larger Bench of the Apex Court in the case of **"Pranay Sethi"** (supra) regarding applicability of proper multiplier considering the age of deceased or victim. In the case of **"Sarla Varma"** (supra) though the deceased was a Government employee, the theory of split multiplier was not considered by the Apex Court, and therefore, I

have no hesitation to hold that the ratio of the case of **"Chhaya Tamte"** (supra) cannot be considered to apply split multiplier as contended by learned counsel for the Insurance Company.

17. By examining Senior Clerk Ramesh Motibone (PW-2) from the Office of Superintendent of Police, the claimants have duly proved the pay certificate (Exh.37) of the deceased, which shows that the gross salary of the deceased in the month of February 2010 was Rs. 19,742/- per month. This pay certificate also makes it clear that washing allowance of Rs.100/-, conveyance allowance of Rs.75/- was paid to the deceased and professional tax of Rs. 200/- was deducted from the gross salary of the deceased. This pay certificate as well as pay bill (Exh.37) shows that the deceased was not income tax payee. Therefore, from the gross salary of the deceased income tax cannot be deducted.

18. However, the washing allowance and conveyance allowance being personal allowances of the deceased, these allowances are to be deducted from the gross salary alongwith professional tax of Rs.200/-. Thus, after deducting the amount of Rs. 375/- from the gross salary of Rs.19,742/-, monthly income of

the deceased comes to Rs.19,367/-. In view of the verdict of larger Bench of the Apex Court in the case of **"Pranay Sethi"** (supra) as the deceased was between 50 to 60 years, 15% addition in actual salary is to be made towards future prospects. Thus, monthly income of the deceased comes to Rs.22,272/-. Thus, his annual income would Rs.2,67,264/-.

19. As observed by the Tribunal, out of five claimants, claimant Nos.2 and 3 have separate source of income and they cannot be considered as the dependents. Therefore, considering three dependents in the family of deceased, one-third income has to be deducted from the monthly income of deceased towards his personal expenses. After deducting this one-third amount, the annual income of the deceased comes to Rs.1,78,176/-. After applying the multiplier of "9" the loss of dependency comes to Rs.16,03,584/-.

20. In addition to this, as ruled by the Apex Court in the case of Pranay Sethi (supra), under conventional heads, the claimants are entitled to following compensation :-

Loss of consortium	:-	Rs. 40,000/-
Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	Rs. 15,000/-

21. Thus, the claimants are entitled to total compensation under the following heads.

Loss of dependency	:-	Rs.16,03,584/-
Loss of consortium	:-	Rs. 40,000/-
Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	Rs. 15,000/-
Total	:-	Rs. 16,73,584/-

22. However, the Tribunal has awarded total compensation of Rs.15,51,424/- and by filing cross objection in this appeal the claimants have not claimed enhancement of the awarded compensation of Rs. 15,51,424/-. In absence of cross objection, compensation awarded by the Tribunal cannot be enhanced in the appeal filed by Insurance Company in view of the judgment in the case of **"Ranjana Prakash and others Vs. Divisional Manager and another" [2012 AIR SCW 848]**. Therefore, this appeal preferred by the Insurance Company challenging the quantum of compensation awarded by the Tribunal, deserves to be dismissed.

23. Accordingly First Appeal No.4437 of 2016 is dismissed. Parties to bear their respective costs of the appeal.

24. The original claimant Nos.1, 4 and 5 are permitted to

withdraw the compensation amount with accrued interest thereon deposited by the appellant / Insurance Company in this Court.

25. Pending Civil Application No.11579 of 2018 is disposed of.

(SUNIL K. KOTWAL)
JUDGE

vdd/