IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 FIRST APPEAL NO.615 OF 2005

. United India Insurance Co. Ltd.,
Through its Divisional Manager,
Osmanpura, Aurangabad. ..Appellant
(Orig. Resp. No.3)

VERSUS

1. Smt.Sabar w/o. Sajjansingh Burad
Age: 48 years. Occu.: Household,
R/o. Plot No.6, Shriniketan Colony,
Behind Hotel Amarprit, Aurangabad.

2. Sandeep s/o Sajjansingh Burad
Age: 27 years, Occu.: Education,
R/o. As above.

3. Summet s/o. Sajjansingh Burad
Age: 26 years, Occu.: Education,
R/o. As above.

4. Ismail Khan s/o. Nazeer Ahmed Khan
Age: Major, Occu.: Service R/o. Shameer
Mohalla, Murbagal,
Dist.Kolar, Karnataka.

5. K.B.Afsar Pasha S/o. Sabajan
Age: Major, Occu.: Business,
R/o. Vijay Nagar, Baugarpat,
Kolar, Karnataka State.

6. M/s. Anil Chemical Industries Ltd.,
Parola, Tq.Paithan, Dist.Aurangabad.

7. The Oriental Insurance Co. Ltd.,
Through Its Divisional Manager,
Adalat Road, Aurangabad. ..Respondents
(Resp. No.1 to 3 Orig. Claimant)

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Advocate for Petitioner : Shri S.G.Chapalgaonkar
Advocate for Respondent Nos.1 & 2 : Shri A.S.Bajaj
Advocate for Respondent No.7 : Shri R.F.Totala

Respondent Nos.3, 5 & 6 are served.

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WITH
X-OBJECTION (STAMP) NO.15991 OF 2005
IN FA/615/2005

1. Smt.Sabar w/o. Sajjansingh Burad
   Age: 42 years. Occu.: Household,
   R/o. Plot No.6, Shriniketan Colony,
   Behind Hotel Amarprit, Aurangabad.

2. Sandeep s/o Sajjansingh Burad
   Age: 21 years, Occu.: Education,
   R/o. As above.

3. Summet s/o. Sajjansingh Burad
   Age: 19 years, Occu.: Education,
   R/o. As above. ..Appellants
   (Orig. Claimants)

VERSUS

1. Ismail Khan s/o. Nazeer Ahmed Khan
   Age: Major, Occu.: Business,
   R/o. Shameer Mohalla, Murbagal,
   Tq. & Dist.Kolar (Karnataka)

2. K.B.Afasar Pasha S/o. Sabajan
   Age: Major, Occu.: Business,
   R/o. Vijaynagar, Baugarpat,
   Kolar (Karnataka).

3. United India Insurance Company Ltd.,
   Doddapet, Kolar (Karnataka)
   To be served through
   United India Insurance Co. Aurangabad.

4. M/s. Anil Chemical Industries Ltd.,
   Parola, Tq.Paithan, Dist.Aurangabad.

5. The Oriental Insurance Company Ltd.,
   Divisional Office, Adalat Road,
   Aurangabad, through its
   Divisional Manager ..Respondents
   (Orig. defendants)

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Advocate for Appellants : Shri A.S.Bajaj

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WITH
CIVIL APPLICATION NO.1098 OF 2006
IN FA/615/2005

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CORAM : P.R.BORA, J.
DATE: 7th March, 2019

JUDGMENT:-

1. The Judgment and award passed in Motor Accident Claim Petition No.453 of 1999, by the Motor Accident Claims Tribunal at Aurangabad on 13.12.2004, is challenged in the present appeal by United India Insurance Company Ltd., which was respondent No.3 in the said petition.

2. Present respondent Nos.1 to 3 had filed the aforesaid claim petition claiming compensation on account of death of one Sajjansingh Burad alleging the same to have been caused because of the injuries caused to deceased Sajjansingh in a vehicular accident happened on 23.05.1999, having involvement of a Tempo Traveller bearing Registration No.MH20 E-9222 and Truck bearing Registration No.KA-07-837. The Tempo Traveller was owned by present respondent No.6 and insured with the present respondent No.7, whereas the Truck was owned by respondent No.5 and insured with the appellant Insurance

Company. Present respondent Nos.1 to 3 are hereinafter referred to as the claimants.

3. In the aforesaid claim petition, it was the contention of the claimants that the alleged accident happened because of rash and negligent driving of the driver of the offending Truck. As stated in the petition, the age of deceased Sajjansingh on the date of accident was 44 years and his annual income at the relevant time was around Rs.1,50,000/- per annum. Deceased Sajjansingh was stated to be a Chartered Accountant. The claimants had therefore claimed the compensation of Rs.58,32,477/- jointly and severally from the respondents. It was also the contention of the claimants that after getting injured in the vehicular accident on 23.05.1999, deceased Sajjansingh was given highest treatment by them and huge expenses were incurred on his treatment.

4. The appellant Insurance Company as well as respondent No.7 Insurance Company both had resisted the claim petition on various grounds. The appellant Insurance Company has raised a plea of contributory negligence whereas respondent No.7 Insurance Company has denied any negligence on part of the driver of the Tempo Traveller, the vehicle insured with it. In order

to substantiate their claim, claimant No.1 deposed before the Court and one more witness was examined on behalf of the claimants. The Officer of the appellant Insurance Company also deposed before the Court in order to prove the defence raised by it. No evidence was adduced by respondent No.7 Insurance Company or on behalf of any other respondent.

5. The learned Tribunal, after having assessed the oral as well as documentary evidence brought on record before it, awarded the compensation of Rs.11,00,000/- to the claimants jointly and severally from respondent Nos.1 to 3 in the said claim petition i.e. by the present appellant and present respondent Nos.4 and 5. The claim petition was dismissed against respondent Nos.4, 5 i.e. respondent Nos. 6 and 7 in the present appeal. Aggrieved thereby, original respondent No.3 has preferred the present appeal. The original claimants have preferred Cross-Objection No.15991 of 2005 in the present appeal seeking enhancement in the amount of compensation. Civil Application No.1098 of 2006 is filed by respondent No.7, claiming refund of the amount of Rs.25,000/- deposited by it in this Court. The said application is being considered along with the present appeal.

6. Shri S.G.Chapalgaonkar, learned Counsel appearing for the

appellant Insurance Company assailed the impugned Judgment on various grounds. The learned Counsel submitted that the issue as about the negligence, which has resulted in occurrence of the alleged accident, has not been correctly decided by the Tribunal. The learned Counsel submitted that from the evidence on record, it could have been inferred by the learned Tribunal that drivers of both the vehicles were responsible in causing the alleged accident. The learned Counsel submitted that one witness was also examined by the appellant Insurance Company to substantiate the plea raised by it, however, only on the ground that the driver of Tempo Traveller also suffered death in the alleged accident, a conclusion was recorded by the Tribunal that the alleged accident happened because of sole negligence of the driver of the offending Truck.

7. The learned Counsel taking me through the contents of spot panchanama submitted that the situation on the spot clearly reveals negligence on part of the drivers of both the vehicles, but the Tribunal has failed in appreciating the said evidence. The learned Counsel submitted that from the situation on the spot and the manner in which the accident is stated to have happened, while lodging the First Information Report (FIR) in the matter, there remains no doubt that it was head on

collision and as such the Tribunal must have held the drivers of both the vehicles responsible for the occurrence of the alleged accident in equal proportion.

8. The learned Counsel further submitted that the Tribunal has also erred in determining the amount of compensation. The learned Counsel submitted that merely relying on the income tax returns of the last year, the Tribunal has held the said income to be the income of the deceased and has awarded the compensation. The learned Counsel further submitted that without assigning any reason, the Tribunal has deviated from resorting to the multiplier method. The learned Counsel submitted that the Tribunal has thus awarded a huge amount of compensation though there was no such evidence on record. The learned Counsel submitted that the Tribunal has also failed in appreciating that the original claimant Nos.2 and 3 were the major sons of deceased Sajjansingh and as such could not have been held as the dependents on the income of the deceased. The learned Counsel, in the circumstances, has prayed for setting aside the impugned Judgment and award.

9. Shri A.S.Bajaj, learned Counsel appearing for original claimants resisted the submissions advanced on behalf of the

appellant Insurance Company. The learned Counsel submitted that the compensation awarded by the Tribunal is in fact unjust and inadequate and that is the reason the claimants have filed cross-objection seeking enhancement in the amount of compensation. The learned Counsel submitted that while determining the amount of compensation, the Tribunal has not considered the future prospects of deceased Sajjansingh. It is further submitted that deceased Sajjansingh was a highly qualified person holding degree of Chartered Accountant and was having a very promising career ahead. According to the learned Counsel , in the circumstances, the Tribunal must have awarded much more compensation than awarded by it.

10. Shri R.F.Totala, learned Counsel appearing for respondent No.7 supported the impugned Judgment and award. The learned Counsel submitted that the Tribunal has rightly recorded a finding that the alleged accident happened only because of rash and negligent driving of the driver of the offending Truck. The learned Counsel, in the circumstances, prayed for dismissal of the appeal and to allow the civil application filed by respondent No.7 Insurance Company.

11. I have given due consideration to the submissions

advanced by the learned Counsel appearing for the parties. I have also perused the impugned Judgment and the evidence adduced before the Tribunal as well as the other material available on record. It is not in dispute that the alleged accident happened on Aurangabad – Paithan Road near village Georai Tanda. It is further not in dispute that deceased Sajjansingh was travelling by Tempo Traveller bearing Registration No.MH20 E-9222. It is further not in dispute that another vehicle involved in the alleged accident was a Truck bearing Registration No.KA-07 -837. It is further not in dispute that that Police prosecuted only the driver of the offending Truck in connection with the alleged accident. As noted herein above, it is asserted on behalf of the appellant Insurance Company that 100% negligence was not liable to be attributed on part of the driver of the offending Truck meaning thereby that some negligence must have been attributed on the driver of the Tempo Traveller. As noted herein above, my attention was invited by learned Counsel appearing for the appellant Insurance Company towards contents of the spot panchanama. According to the learned Counsel, the averments in the spot panchanama clearly reveal the negligence on the part of drivers of both the vehicles. As against it, as noted earlier, respondent No.7 Insurance Company has denied the allegations made by the appellant Insurance Company and has supported the impugned Judgment and award. Material on record reveals that in order to substantiate the contentions raised in the claim petition, claimant No.1 first deposed before the Court and claimant No.3 – Sumeet also subsequently deposed. However, since both these witnesses had admittedly not seen the alleged accident, their evidence as about the negligence in accordance of the alleged accident was carrying a little evidential value. Even the witness examined by the appellant Insurance Company also cannot be said to be the material witness in so far as the aspect of negligence is concerned. The question arises as to on the basis of which evidence, negligence issue was liable to be decided. The answer is obviously on the basis of the spot panchanama.

12. I have carefully perused the spot panchnama, which is at Exh.69. It reveals that the road on which the alleged accident happened was 17 feet wide and was also having 5 feet Kaccha road on its both sides. The spot panchanama also demonstrates that the Tempo Traveller and the Truck were found standing at a distance of 150 feet from each other. Spot panchanama also shows that both the vehicles had suffered damages to their front sides, though, heavy damages were of-course on right side of each of the aforesaid vehicles. The sport panchanama also

reflects that the front middle portion of the Tempo Traveller was also got pressed inside and right side head lights were broken. Steering was also bent. The offending Truck was also to have been found pressed in the middle front and both the side glasses were found broken. It has also been specifically observed in the spot panchanama that no tyre marks were found on either side of the road evidencing that none of the vehicles had applied the breaks so as to avoid the accident in question.

13. After having scrutinized the contents as aforesaid revealing from the spot panchnama, it is difficult to agree with the conclusion recorded by the Tribunal that the alleged accident happened because of sole negligence of driver of the offending Truck. The damage to the front portion of the Tempo Traveller indicates that to some extent it was a case of head on collision. Considering the damages caused to the Tempo Traveller and the Truck, it can also be reasonably inferred that none of the drivers has attempted to avoid the accident. There is further reason to believe that no attempt was made by either of the drivers to apply the breaks for avoiding the alleged accident. Having regard to the condition of the offending vehicles and considering the situation at the spot of occurrence as is revealing from the spot panchnama, it can be reasonably inferred that the drivers of

both the vehicles were responsible in occurrence of the alleged accident. From the evidence on record, however, it is quite evident that more negligence is liable to be attributed on the part of the driver of the offending Truck. At the same time, no such conclusion can be recorded that there was no negligence on the part of the deceased driver of the Tempo Traveller. Of-course, as I stated earlier, the greater negligence is on part of the driver of the offending Truck. From the evidence on record, I hold the negligence on part of the driver of the Truck to the extent of 70% and on part of the driver of the Tempo Traveller to the extent of 30%.

14. The next question which falls for consideration is quantum of compensation. According to the appellant Insurance Company, the compensation awarded by the Tribunal is on the higher side, whereas the claimants by filing cross-objection have sought enhancement in the amount of compensation awarded by the Tribunal. The Tribunal has awarded the compensation of Rs.11,00,000. The discussion made by the Tribunal in this regard shows that the Tribunal has held the income of the deceased Sajjansingh to the tune of Rs.10,000/- per month and without applying the multiplier method, the Tribunal has held the claimants entitled to the compensation of Rs.10,00,000/- under

the head of dependency. The Tribunal has also held the claimants entitled for a sum of Rs.1,50,000/- towards the medical expenses incurred by the claimants on the treatment of deceased Sajjansingh. The Tribunal has awarded the compensation of Rs.40,000/- to the widow of the deceased towards loss of consortium and the compensation of Rs.10,000/- to the sons of deceased Sajjansingh for loss of love and affection.

15. It is not in dispute that deceased Sajjansingh was a Chartered Accountant. His income tax returns are placed on record. The evidence on record shows that deceased Sajjansingh was initially working with a Company by name Flexo Films. In the said Company, deceased was stated to be drawing the salary of Rs.1,45,000/- per annum. As stated by the claimant No.1 – Smt.Sabar, deceased Sajjansingh left the employment with Flexo Films and started private practice. According to the claimants, the income of deceased Sajjansingh on the date of accident was around Rs.2,50,000/- per annum. Though, there are three years' income returns placed on record by the claimants, one of them is of the period when deceased Sajjansingh was in service. In another two income tax returns, one is for the assessment year of 1997-1998 and the other is for the assessment year 1999-2000. In the assessment year 1997-1998, gross income of the

deceased shown to the tune of Rs.1,41,938/- and the taxable income is shown as Rs.1,32,210/-, whereas the income tax returns of 1999-2000, the gross income is shown from the business to the tune of Rs.1,40,600/-.

16. From the evidence on record, there may not be any difficulty in arriving at the conclusion that at the relevant time, the income of deceased Sajjansingh was around Rs.10,000/- per month as held by the Tribunal and at the time of his death, deceased Sajjansingh was aged about 49 years. Having regard to the age of deceased Sajjansingh, 25% of his existing income was liable to be added in his income towards the future prospects for the purpose of assessment of amount of compensation payable to his legal heirs. After notionally adding 25% of the amount as aforesaid towards future prospects, the income of deceased Sajjansingh for the purpose of assessing dependency compensation comes to Rs.1,50,000/- (Rs.10,000 X 12 = Rs.1,20,000/- + 25% of it = Rs.1,50,000/-).

17. Though, it was sought to be contended that none of the son of deceased Sajjansingh was depending on his income, the material on record reveals that at the relevant time, claimant No.3 – Sumeet was taking education and was aged about 19

years. The claimant No.2 - Sandeep was of-course of the age of 21 years, though it was stated that he was taking education at the relevant time. The number of dependents on the income of deceased Sajjansingh thus was not less than two persons. In the circumstances, 1/3rd of his income was liable to be deducted towards his personal and living expenses. After deducting the said amount, the net amount of Rs.1,00,000/- can be said to be available to be spent on welfare of the family members of deceased Sajjansingh. Considering the age of deceased Sajjansingh, appropriate multiplier in the case was 13 and by applying the said multiplier, amount of dependency compensation comes to Rs.13,00,000/-. In addition to the amount of compensation, the claimants are also entitled to receive the amount of Rs.1,50,000/- towards the expenses incurred by them on the treatment of deceased Sajjansingh. I need not to make any more discussion on this issue. The Tribunal has elaborately considered the medicine and hospital bills and has then recorded a finding holding the claimants entitled to a sum of Rs.1,50,000/- towards medical expenses. In so far as, non-pecuniary damages are concerned, in view of the law laid down in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Ors. [(2017) 16 SCC 680],*** I hold the claimants entitled for a sum of Rs.70,000/- towards the loss of consortium, loss of love and affection and funeral expenses. The claimants are thus entitled for total compensation of Rs.15,20,000/-. In the facts and circumstances of the case, it appears to me that this would be just and fair compensation payable to the legal heirs of the deceased Sajjansingh. In view of the finding recorded on the aspect of negligence, 70% of the aforesaid amount of compensation shall be payable jointly and severally from the driver, owner and insurer of the offending Truck, whereas, 30% amount shall be payable jointly and severally from the owner and the insurer of the offending Tempo Traveller.

18. The appellant Insurance Company is thus held liable to pay 70% of the total amount of compensation enhanced by this Court to the tune of Rs.15,20,000/-, which comes to Rs.10,64,000/-. The appellant Insurance Company has already paid an amount of Rs.25,000/- to the claimants towards 'no fault liability' compensation. Balance amount of Rs.10,39,000/- is to be paid by the appellant Insurance Company to the claimants with interest thereon @ 6% p.a. from the date of filing of the claim petition till its realization. The material on record reveals that the appellant Insurance Company has deposited the amount of compensation in this Court as per the impugned award. If the amount deposited by the appellant Insurance Company is more

than the amount liable to be paid by it to the claimants in view of the award modified by this Court, the claimants shall be remitted the said amount from out of the amount deposited by the appellant Insurance Company in this Court and the balance amount, if any be refunded to the appellant Insurance Company with interest accrued thereon. In case the amount deposited by the appellant Insurance Company is less than the amount payable by it to the claimants, the appellant Insurance Company shall deposit the said amount in this Court within a period of 12 weeks from the date of this order.

19. As held herein above, respondent No.7 – Oriental Insurance Company is liable to pay 30% of the total amount of compensation, which comes to Rs.4,56,000/-. Out of the said amount, the said Insurance Company has paid Rs.25,000/- towards 'no fault liability' compensation. Respondent No.7 Insurance Company, therefore, shall pay the remaining amount of compensation to the tune of Rs.4,31,000/- to the claimants with interest thereon @ 6% p.a. from the date of filing of the petition till its realization. Respondent No.7 Insurance Company shall deposit the said amount of compensation either before the Motor Accident Claims Tribunal, Aurangabad or in this Court. On depositing the said amount, the same shall be remitted to the

original claimants in terms of award.

20. Modified award be prepared accordingly.

21. First Appeal No.615 of 2005, Cross-Objection (Stamp) No.15991 of 2005 and Civil application No.1098 of 2006 stand disposed of in the aforesaid terms.

(P.R.BORA)
JUDGE

SPT