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

FIRST APPEAL NO.2756 OF 2009

The New India Assurance Company Ltd.,
A subsidiary of the General Insurance Corporation of India
And a company incorporated under the Companies Act
Having its Divisional Office at Adalat Road, Aurangabad
Through its Senior Divisional Manager
Shri Vishwas s/o. Bansi Gaikwad
Age : 52 years. .. Appellant
(Original Respondent No.3.)

Versus

1. Jayashree w/o Suresh Dhawale
Age : 25 years, Occu : Household,
R/o. Sangmeshwar Gavan, Tq. Jafarabad,
Dist. Jalna

2. Sumeet Suresh Dhawale
Age : 8 years, Minor, Occu : Student,
R/o. As above resp. No.1

3. Chetan Suresh Dhawale
Age : 5 years, Minor, Occu : Nil,
R/o. As above resp. No.1

4. Vithal Roduba Dhawale
Age : 45 years, Occu : Nil,
R/o. As above Resp. No.1

5. Shaikh Kalim s/o. Shaikh Abdul
Age : Major, Occu : Driver,
R/o. Wadala, Tq. Jaferabad, Dist. Jalna.

6. Ilyaskhan Osmankhan Pathan,
Age : Major, Occu : Owner of vehicle,
R/o.Kalegaon, Tq. Jaferabad, Dist.Jalna.

7. Shaikh Hakim Shaikh Mohammed
Age : Major, Occu : Agri,

R/o. Sipora Bazar, Tq. Bhokardan,
Dist. Jalna … Respondents
(Respt Nos.1 to 4 Org. Claimans and Respt Nos.5 to 7 Orig.Respt Nos.1, 2 & 4)

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Advocate for Appellant : Shri Ajit B. Kadethankar
Advocate for Respondents No.1 to 4: Shri C.V. Thombre, Shri J.J. Patil
Respondent Nos.5 to 7 - Served

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

ORAL JUDGMENT :-

1. The Judgment and Award passed in Motor Accident Claim Petition No.221 of 2007 by Motor Accident Claims Tribunal at Jalna on 02.07.2009 is challenged in the present appeal by respondent no.3 therein, with which, the offending vehicle was insured. The aforesaid claim petition was filed by present respondent nos.1 to 4 claiming compensation on account of the death of one Suresh Dhawale alleging the same to have been caused in a vehicular accident happened on 05.09.2007 having involvement of a jeep bearing registration No. MH-21 -3556 owned by present respondent no.6 and insured with the appellant- Insurance Company. It was the contention of respondent nos.1 to 4, who are hereinafter referred to as the claimants, that the alleged accident happened because of the sole negligence on part of the driver of the jeep. Deceased Suresh

was proceeding on his motorcycle and was alleged to be dashed by the offending jeep. As stated in the petition, age of deceased Suresh was 32 years and his income was claimed Rs.15,000/- per month. The compensation of Rs.10,00,000/- was claimed by the claimants.

2. The appellant – Insurance Company resisted the petition by filing its detailed written-statement. The learned Tribunal, after having assessed the oral and documentary evidence brought on record before it, held the deceased to have contributed occurrence of the alleged accident by his negligence and determined the proportion of his negligence to the extent of 20%. The Tribunal awarded the total compensation of Rs.8,25,500/- and made the owner and insurer of the offending jeep liable to pay 80% amount of the said compensation to the claimants. Aggrieved by, the Insurance Company has preferred the present appeal.

3. Shri Kadethankar, learned Counsel appearing for the appellant – Insurance Company assailed the impugned judgment mainly on the ground of quantum and also on the point of negligence. The learned Counsel submitted that, in absence of any cogent and sufficient evidence, the Tribunal could not have held the income of the deceased to the tune of Rs.6000/- per month. The

learned Counsel submitted that, the income of the deceased was stated to be mainly from the agriculture lands. The learned Counsel submitted that, there is nothing on record to show that, after the death of deceased Suresh the agriculture lands are not in cultivation. The learned Counsel submitted that, in the circumstances, except the loss in the form of supervisory charges, nothing more was liable to be granted to the claimants. The learned Counsel further submitted that, the Tribunal has wrongly applied the multiplier of 17, whereas in view of the Judgment delivered by the Hon'ble Apex Court in the case of ***Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,*** reported in *(2009) 6 SCC 121*, it should be 16. The learned Counsel further submitted that, the alleged accident was head on collusion and in such circumstances, negligence on part of deceased Suresh also must have been held in equal proportion. The learned Counsel, in the circumstances, prayed for modification in the impugned Judgment and Award accordingly and allow the appeal filed by the appellant – Insurance Company to the aforesaid extent.

4. Shri Thombre, learned Counsel appearing for the original claimants supported the impugned judgment and award. The learned Counsel submitted that, in fact, the Tribunal has not awarded the just amount towards the non-pecuniary damages. The learned

counsel submitted that, even future prospects of the deceased were not considered. In the circumstances, the learned Counsel prayed for dismissal of the appeal.

5. After having gone through the impugned Judgment and the evidence on record, apparently, it does not appear to me that, there is any scope for causing any interference in the impugned Judgment and Award. Even if the contention of the learned counsel appearing for the appellant – Insurance Company is accepted that, in absence of any cogent evidence as about the agriculture income of the deceased, the Tribunal could not have held the income of the deceased notionally to the tune of Rs.6000/- per month and the loss could have been only to the extent of supervisory charges since the agriculture land was still under cultivation, the fact remains that the Tribunal did not consider the future prospects of the deceased. In the circumstances, it appears to me that, if the future prospects are considered, the amount of compensation possibly may remain the same as has been determined by the Tribunal. Insofar as the aspect of negligence is concerned, it does not appear to me that, the Tribunal has committed any error in determining the proportion of negligence. So, on that count also, I do not see any infirmity in the impugned judgment and order.

6. For the reasons stated above, I do not see any merit in the present appeal. The appeal therefore fails. Hence the following order.

ORDER

(i) The appeal is dismissed, however, without any order as to the costs.

(ii) The amount deposited by the appellant – Insurance Company in this Court is permitted to be withdrawn by the original claimants in terms of the award, if already not withdrawn.

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

(P.R. BORA, J.)

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