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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 665 OF 2019

United India Insurance Co. Ltd.,
Pune Regional Office,
through its Divisional Office,
Janata Shopping Centre,
Navi Peth, Solapur.

... Appellant

Versus

1. Mr. Shriniwas Ramayya Kamtam
Age:- 40 years, Occ:- Business.
2. Mr. Chandramogali Ramayya Kamtam
Age:- 36 years, Occ:- Business.
Both R/o:- 1231, New Pachha Peth,
Solapur.
3. Mr. Mohamad Hassan Md. Khajasab
Age:- Major, Occ:- Business.
R/o:- 3/2/12, Pansal Taleem,
Bidar, Dist:- Bidar,
Karnataka.

... Respondents

**WITH
CIVIL APPLICATION NO. 3766 OF 2019**

1. Mr. Shriniwas Ramayya Kamtam
Age:- 49 years, Occ:- Business.
2. Mr. Chandramogali Ramayya Kamtam
Age:- 45 years, Occ:- Business.
Both R/o:- 1231, New Pachha Peth,
Solapur.

... Applicants

Versus

1. United India Insurance Co. Ltd.,
Pune Regional Office,
through its Divisional Office,
Janata Shopping Centre,
Navi Peth, Solapur.

2. Mr. Mohamad Hassan Md. Khajasab
Age:- Major, Occ:- Business.
R/o:- 3/2/12, Pansal Taleem,
Bidar, Dist:- Bidar,
Karnataka.

... Respondents

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Mr. Amol Gatne for the Appellant.
Mr. R.S. Alange for the Respondent Nos.1 and 2 and the Applicants in CAF/
3766/2019.

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CORAM : R.D. DHANUKA, J.

RESERVED ON : 4th FEBRUARY, 2020

PRONOUNCED ON : 19th MAY, 2020

JUDGMENT :

. By this First Appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellant (original opponent no.2) has impugned the judgment and award dated 3rd December, 2015 passed by the Motor Accident Claim Tribunal, Solapur (hereinafter referred to as 'M.A.C.T., Solapur' for short) in M.A.C.P. No. 258 of 2010 awarding compensation of Rs.8,96,550/- together with interest @ 7.5% p.a. from the date of application till actual realization of the entire amount against the respondent no.3, jointly and severally. By consent of the appellant and the respondent nos. 1 and 2, this First Appeal is heard finally at the admission stage. Some of the relevant facts for the purpose of deciding this First Appeal are as under:-

2] Respondent nos. 1 and 2 are the sons of Rukminibai Ramayya Kamtam. It was the case of the respondent nos. 1 and 2 that the said

Mrs. Rukminibai had gone to Andhra Pradesh with her relatives. They were returning on 16th April, 2010 in Tavera Jeep bearing registration No. MH-13-AC-1013 and were travelling on Solapur-Hydrabad highway. When they came near Mayura Hotel in Humnabad at about 4:40 p.m., the said vehicle Tavera was stopped for nature's call by the passengers. When the said Mrs. Rukminibai was returning to Jeep, which was parked by the side of the road and was about to board the Jeep from back side, one Omni Car bearing registration No. AP-37-IH-2456 came from back side in high speed and was driving in zigzag manner and the driver of the offending vehicle lost his control over the said vehicle and gave dash to the said Tavera Jeep. The said Mrs. Rukminibai received severe injuries and was taken to Government Hospital, Humnabad but succumbed to the injuries.

3] It was the case of the respondent nos. 1 and 2 that the said accident had taken place only due to the negligence on the part of the said driver of the offending vehicle. The respondent no. 3 herein is the owner of the said Tavera Jeep and it was insured with the appellant on the date of the accident. The respondent nos. 1 and 2 filed a claim application for compensation under Section 166 of the Motor Vehicles Act, 1988 before the M.A.C.T., Solapur bearing M.A.C.P. No. 258 of 2010 *inter-alia* praying for compensation in sum of Rs.10,00,000/- from the appellant and the respondent no. 3, jointly and severally with interest @ 12% p.a. from the date of application till actual realization of entire amount.

4] The respondent no.3 herein did not appear before the Tribunal and did not file any written statement. The matter proceeded against him *ex-parte*. The appellant filed its written statement and denied that the said accident had taken place due to the negligence on the part of the driver of the Tavera Jeep. The appellant also contended that there was a breach of the terms of policy committed by the driver of the offending vehicle. The driver of the offending vehicle was not holding a valid and effective driving licence and thus appellant was not liable to pay any amount of compensation.

5] The Tribunal framed 5 issues for determination. The respondent nos. 1 and 2 examined son of the deceased who filed his affidavit in lieu of examination-in-chief. There was no cross-objection of the said witness by the respondent no.3 herein. The appellant however cross-examined the said witness. The said witness admitted that he had not witnessed the accident and had no personal knowledge about the said accident. It was not the case of the appellant that the accident had taken place due to the negligence of the said deceased. The witness examined by the respondent nos. 1 and 2 produced certified copies of FIR, Spot Panchanama, AA form, etc. Those documents were marked as exhibits and were read in evidence. The driver of the offending vehicle was not examined by the appellant as a witness. No other oral evidence was led by the appellant.

6] It was the case of the respondent nos. 1 and 2 that the said deceased was 65 years old at the time of her death and was carrying on business. The witness examined by the respondent nos. 1 and 2 produced income tax returns of the said deceased for the assessment year 2010-2011. As per the said income tax returns, the date of birth of the said deceased was 18th February, 1941. She died on 16th April, 2010. According to the Tribunal, the age of the said deceased was 69 years old at the time of the accident. The Tribunal after considering the oral and documentary evidence produced by the respondent nos. 1 and 2, directed the appellant and the respondent no.3 to pay sum of Rs.8,96,550/- together with interest @ 7.5. p.a. from the date of application till realization of the entire amount, jointly and severally to the respondent nos. 1 and 2. The appellant has impugned the said judgment and award in this First Appeal.

7] On 20th January, 2020, this Court after hearing the learned counsel for the parties permitted the respondent nos. 1 and 2 to file an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 within one week from the date of the said order, on the oral application made by the respondent nos. 1 and 2 seeking permission to produce the income tax returns for the assessment years 2008-2009 and 2009-2010. Pursuant to the said liberty granted by this Court by an order dated 20th January, 2020, during the pendency of this First Appeal, the respondent nos. 1 and 2 filed the Interim Application No. 1 of 2020 in this First Appeal under Order 41

Rule 27 of the Code of Civil Procedure, 1908 *inter-alia* praying for seeking permission to lead additional evidence and to rely upon the income tax returns of the said deceased for the assessment years 2008-2009 and 2009-2010 filed with the Income Tax Office, Solapur on 16th February, 2009 and 29th September, 2009 respectively.

8] It was the case of the respondent nos. 1 and 2 in the said application that after making search of the old records of the said deceased in the last week of December 2019, it was found that the said deceased had also filed income tax returns for the assessment years 2008-2009 and 2009-2010 with the Income Tax Office, Solapur on 16th February, 2009 and 23rd September, 2009 respectively, showing the income of Rs.2,89,744/- and Rs.3,71,244/- respectively. It was the case of the respondent nos. 1 and 2 that the income tax returns for the assessment year 2010-2011 was already produced by the respondent nos. 1 and 2 before the Tribunal showing the income of the said deceased as Rs.3,77,982/-.

9] By an order dated 20th January, 2020, this Court allowed the said Interim Application No.1 of 2020 filed by the respondent nos. 1 and 2 under Order 41 Rule 27 of the Code of Civil Procedure, 1908 and permitted the respondent nos. 1 and 2 to rely upon the income tax returns of the said deceased for the assessment years 2008-2009 and 2009-2010 in this First Appeal before this Court. This Court thereafter heard the learned counsel for

the parties on the other contentions raised.

10] Mr. Amol Gatne, learned counsel for the appellant invited my attention to the findings rendered by the Tribunal in the impugned judgment and award and would submit that the said deceased had expired on 16th April, 2010. The income tax returns for the assessment year 2010-2011 was filed after the death of the said deceased and thus could not have been considered as proof of the income of the said deceased on the date of her death. He submits that the Tribunal thus could not have considered the aggregate income tax of the said deceased at Rs.3,59,360/- but ought to have considered the monthly income of the said deceased at notional income at Rs.3,000/- p.m. and at such rate, the future loss of income would be only Rs.90,000/- p.a. as against Rs.8,41,550/- p.a. granted by the Tribunal. He submits that on the said amount of Rs.90,000/- p.a., the Tribunal could have considered another Rs.55,000/- as compensation, i.e., towards funeral expenses in the sum of Rs.25,000/-, loss of love and affection in the sum of Rs.15,000/- in favour of the respondent nos. 1 and 2 each.

11] In his alternate submission, learned counsel submits that the Tribunal could not have considered the income tax returns which were filed immediately after the death of the said deceased but atmost ought to have taken into consideration the average of the income reflected in last three years of income tax returns prior to the date of the death of the said

deceased. In support of this submission, learned counsel placed reliance on the judgment of Supreme Court in case of **V. Subbulakshmi and Others vs. S. Lakshmi and Another, (2008) 4 SCC 224** and in particular paragraphs 3, 5, 20, 21 and 24. Learned counsel also placed reliance on an unreported judgment of this Court in case of **National Insurance Company Ltd. vs. Smt. Rupali Kailas Mamode and others** in First Appeal No.718 of 2010 delivered on 14th January, 2019 and in particular paragraphs 9 to 12 in support of the submission that the Tribunal ought to have taken average of the three years income and not on the basis of the income tax returns filed immediately after the death of the said deceased.

12] Learned counsel for the appellant also placed reliance on the judgment of Supreme Court in case of **Syed Basheer Ahamed and Others vs. Mohammed Jameel and Another, (2009) 2 SCC 225** and in particular paragraphs 9, 10 and 11 in support of the submission that the Tribunal ought to have considered the average of income shown in the income tax returns for the last three years before the date of death of the said deceased. Learned counsel for the appellant placed reliance on the judgment of Supreme Court in case of **ICICI Lombard General Insurance Company Limited vs. Ajay Kumar Mohanty and Another, (2018) 3 SCC 686** and in particular paragraph 7 in support of the aforesaid submission.

13] Learned counsel placed reliance on the judgment of Supreme Court in case of ***Ranjana Prakash and Others vs. Divisional Manager and Another, (2011) 14 SCC 639*** and in particular paragraphs 7 and 8 in support of the submission that since there is no counter claim or cross-objection filed by the respondent nos. 1 and 2, this Court cannot enhance the claim for compensation awarded by the Tribunal. Without prejudice to the aforesaid submission, learned counsel for the appellant tenders a statement showing calculation of the amount which could be considered by the Tribunal for allowing compensation in favour of the respondent nos. 1 and 2. He submits that according to the said calculation, the Tribunal could not have awarded more than Rs.8,00,300/- by taking the average of the income of three years which would arrive at Rs.3,20,120. He submits that out of the said amount of Rs.3,20,120 half of the amount would be deducted towards personal expenses. Considering the age of the said deceased, multiplier of 5 would be applicable and thus the total compensation would not exceed the sum of Rs.8,00,300/- with interest thereon.

14] Mr. R.S. Alange, learned counsel for the respondent nos. 1 and 2 on the other hand strongly placed reliance on the findings rendered by the Tribunal. He submits that the appellant has not impugned the findings of fact rendered by the Tribunal that the driver of the offending vehicle was solely responsible for the rash and negligent driving, causing death of the said deceased. He submits that the witness examined by the respondent nos. 1

and 2 had produced the income tax returns of the said deceased for the assessment year 2010-2011 which were marked as exhibits and were rightly read in evidence. The Tribunal was right in considering the said income tax returns for the assessment year 2010-2011 in the impugned judgment and award and has rightly considered the aggregate income as Rs.3,59,360/- and after deducting the income tax out of the said amount to the extent of Rs.23,000/- had rightly arrived at the aggregate income for the said assessment year at Rs.3,36,620/- p.a. He submits that the Tribunal has rightly deducted the half of the said amount towards personal expenses and has rightly held that the income of the said deceased per month was Rs.1,68,310/- and applying the multiplier of 5 in accordance with the principles of law laid down by the Supreme Court in case of **Sarla Verma v/s. Delhi Transport Corporation, 2009 ACJ 1298 (SC)**, the Tribunal has rightly allowed the claim at Rs.25,000/- as compensation towards funeral expenses and Rs.15,000/- each in favour of the respondent nos. 1 and 2 towards loss of love and affection.

15] Learned counsel for the respondent nos. 1 and 2 also tendered a calculation which according to the learned counsel would reflect the correct amount of calculation. He relied upon by the judgment delivered by a Division Bench of this Court in case of **New India Assurance Co. Ltd. vs. Alpa Rajesh Shah and Others, 2014 (2) Mh.L.J. 17** and in particular paragraph 9 and would submit that this Court has clearly held that the

Tribunal could not have taken an average of income for last three years. The income on the date of death ought to have been taken into consideration after deducting the income tax payable. Learned counsel for the respondent nos. 1 and 2 invited my attention to the income tax returns filed by the said deceased for the assessment years 2008-2009 and 2009-2010 and by his family members for the assessment year 2010-2011 and would submit that even if average of income taken for the last three years, the respondent nos. 1 and 2 would be entitled to recover a sum of Rs.8,19,240 with interest thereon and Rs.40,000/- each towards parental consortium each. The Division Bench of this Court has not considered the fact that the last income tax return was filed by the claimants after death of the deceased.

16] Learned counsel for the respondent nos. 1 and 2 placed reliance on the judgment of Supreme Court in case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram Alias Chuhru Ram and Ors., 2018 0 Supreme(SC) 892*** in support of the submission that in addition to the compensation based on the monthly income of the said deceased, the respondent nos. 1 and 2 also entitled to receive Rs.50,000/- each towards loss of love and affection and Rs.25,000/- towards funeral expenses.

17] Mr. Amol Gatne, learned counsel for the appellant in rejoinder submits that the Tribunal ought to have considered atmost the average of last two years income prior to the date of death of the said deceased and could

not have considered the income tax returns for the assessment year 2010-2011 which was filed after the date of demise of the said deceased. He submits that the respondent nos. 1 and 2 would not be entitled to claim Rs.40,000/- each towards parental consortium.

REASONS AND CONCLUSION

18] A perusal of the findings rendered by the Tribunal clearly indicates that the Tribunal after considering the oral and documentary evidence led by the respondent nos. 1 and 2 has held that the driver of the offending vehicle was solely responsible for the said accident, causing death of the said deceased. A driver of the Tavera Jeep in which the said deceased was travelling had not contributed any negligence in respect of the said accident. The said finding of the Tribunal has not been impugned by the appellant nor pressed before this Court during the course of argument. The main submission of the learned counsel for the appellant is that the Tribunal could not have considered the income tax returns for the assessment year 2010-2011 which was filed after the death of the said deceased or in the alternate ought to have considered the average of two years income tax returns or in any event last three years income tax returns without prejudice to the rights and contentions of the appellant that the Tribunal ought to have considered the notional income of the said deceased at Rs.3,000/- p.m.

19] By an order dated 20th January, 2020 passed by this Court, this Court allowed the Interim Application No.1 of 2020 filed by the respondent nos. 1 and 2 under Order 41 Rule 27 of the Code of Civil Procedure, 1908 and has permitted the respondent nos. 1 and 2 to rely upon the income tax returns of the said deceased for the assessment years 2008-09 and 2009-2010.

20] The question that arises for consideration of this Court is whether Tribunal ought to have taken into consideration the notional income of Rs.3,000/- p.m. of the said deceased or ought to have taken into consideration the average of income reflected in the last two years income tax returns or after considering the average of income reflected in last three years income tax returns including the income returns for the assessment year 2010-2011 which was filed after the death of the said deceased.

21] Supreme Court in case of **V. Subbulakshmi and Others** (supra) had considered the facts where the accident had taken place on 7th May, 1997. Income tax returns were filed on 23rd June, 1997. The Tribunal had not relied upon the said income tax returns and estimated the income of the said deceased at Rs.9,600/- p.m. as against income of Rs.12,500/- p.m. reflected in the document produced by the claimant. The High Court however estimated the income of the said deceased to be around a sum of Rs.4,000 p.m. from his agricultural operation and Rs.3,000/- from his commission business. The Supreme Court accordingly held that though there was no

basis for High Court to arrive at the conclusion that the income of the deceased was Rs.4,000/- from agricultural operation and Rs.3,000/- from his commission business, but no reliable document has been produced to show that the deceased was earning an income of Rs.12,500/- p.m., the High Court cannot be held to have committed any grave error in that behalf. In my view, the said judgment of Supreme Court would not assist the case of the appellant.

22] In so far as the judgment of this Court in case of ***National Insurance Company Ltd. vs. Smt. Rupali Kailas Mamode*** (supra) relied upon by the learned counsel for the appellant is concerned, this Court has held that the Tribunal had erred in determining the income of the said deceased only on the basis of last income tax returns submitted by him and can be taken into consideration the income that was shown in the income tax returns of the preceding two years.

23] Supreme Court in case of ***Syed Basheer Ahamed and Others*** (supra) has held that although the Motor Vehicles Act, 1988 is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected nor it should be punitive to the person liable to pay compensation. The determination of the compensation must be based on certain data establishing reasonable nexus between the loss incurred by the dependents of the deceased and the compensation to be awarded to him.

The amount of compensation determined to be payable to the claimant has to be fair and reasonable by accepted legal standards. In the matter of computation of compensation, there is no uniform rule or formula for measuring the value of a human life.

24] Supreme Court in the said judgment in case of ***Syed Basheer Ahamed and Others*** (supra) has adverted to a judgment of 3 Judge Bench of the Supreme Court in case of ***Gobald Motor Service Ltd. vs. R.M.K. Veluswami, AIR 1962 SC 1*** in which it was held by the Supreme Court that in calculating the pecuniary loss to the dependents many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the dependents may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. It is held that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependent by the death must be ascertained. In paragraph 20 of the said judgment, it is held by the Supreme Court that for arriving at a just compensation, it is necessary to ascertain the net income of the deceased available for the support of himself and his dependents at the time of his death and the amount, which he was accustomed to spend upon himself. Supreme Court held that such exercise has to be on the basis of the data, brought on record

by claimant, which again cannot be accurately ascertained and necessarily involves an element of estimate or it may partly be even a conjecture.

25] Supreme Court in case of **ICICI Lombard General Insurance Company Limited** (supra) has considered the facts where the Tribunal had committed an error of computation. The Tribunal had on the basis of income tax returns for the years 2007, 2008 and 2009 arrived at an average income of Rs.1,45,231/-. The Tribunal however noted that the average income comes to Rs.2,62,372/-. The Tribunal however proceeded on the annual income of Rs.2,22,000/- on the basis of the testimony of the claimant that he was earning Rs.18,500/- p.m. The Hon'ble Supreme Court modified the order passed by the Tribunal and the High Court and awarded a sum of Rs.9,10,000/- with interest.

26] A Division Bench of this Court in case of **New India Assurance Co. Ltd. vs. Alpa Rajesh Shah and Others** (supra) has held that the Tribunal had committed an error by taking an average of the income for last three years. The Division Bench, however, did not consider a situation where last income tax return of the deceased was filed after the death of the deceased. The income on the date of death ought to have been taken into consideration after deducting the income tax payable. In so far as the submission of the learned counsel for the appellant that the Tribunal could not have considered the income tax returns for the assessment year 2010-2011 at all while

considering the monthly income of the said deceased, in view of the fact that the said return was filed after the death of the said deceased is concerned, in view of the fact that this Court had permitted the respondent nos. 1 and 2 to rely upon the income tax returns for the assessment years 2008-2009 and 2009-2010, I am not inclined to accept the submission of the learned counsel that the Tribunal ought to have considered the income of the said deceased on the basis of notional income of Rs.3,000/- p.m.

27] The appellant did not raise any objection before the Tribunal that income tax returns for the assessment year 2010-2011 could not be considered by the Tribunal when the said document was tendered in evidence on the ground that the said return was filed after the death of the said deceased. Be that as it may, both the parties have filed their respective calculations taking into consideration the net total income based on the average of three years. The respondent nos. 1 and 2 have also shown the average of two years excluding the income reflected in assessment year 2010-2011. In my view, it would be more appropriate if average of last two year's income tax returns after excluding the return filed after the date of death of the said deceased is taken.

28] If the average of last two years income tax returns excluding the return for the assessment year 2010-2011, which was filed after the death of the said deceased is taken into consideration, the average yearly income

comes to Rs.3,30,494/-. There is no dispute that out of the said income 50% amount has to be deducted towards personal expenses which comes to Rs.1,65,247/-. There is no dispute that considering the age of the said deceased, multiplier of 5 would apply. After applying multiplier of 5, loss of dependency would Rs.8,25,235/-. There is no dispute that the respondent nos. 1 and 2 would be also entitled to recover Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.50,000/- each towards loss of love and affection, thus, totalling to Rs.9,55,235/-.

29] In so far as the sum of Rs.40,000/- towards parental consortium of the respondent nos. 1 and 2 made across the bar is concerned, in my view the respondent nos. 1 and 2 would not be entitled to claim the said amount in view of the fact that the said deceased was 69 years old at the time of his death and thus the demise of the said deceased was not a premature death. The judgment of Supreme Court in case of **Magma General Insurance Co. Ltd.** (supra) would thus apply to the facts of this case. I am thus not inclined to consider the parental consortium at Rs.40,000/- each demanded by the respondent nos. 1 and 2.

30] In so far as the submission of the learned counsel for the appellant that the respondent nos. 1 and 2 could not claim any amount seeking enhancement of claim awarded by the Tribunal, in view of the respondent nos. 1 and 2 not having filed counter claim is concerned, after considering

the judgment of Supreme Court in case of ***Ranjana Prakash and Others*** (supra) and in case of ***United India Insurance Co. Ltd. vs. Smt. Kunti Binod Pande and ors – (2019) SCOnline Bom 5606***, this Court has held that it is duty not only of the Tribunal but also of the High Court to grant just compensation to a victim under Section 166 of the Motor Vehicles Act, 1988. There is thus substance in this submission of the learned counsel for the appellant.

31] I therefore pass the following order:-

- (a) The respondent nos.1 and 2 would be entitled to recover a sum of Rs.9,55,235/- with interest @ 7.5% p.a. from the appellant from the date of filing of application till realization. The respondent nos. 1 and 2 would be entitled to recover the said amount out of the amount deposited by the appellant before the M.A.C.T., Solapur in M.A.C.P. No. 258 of 2010.
- (b) If there is any shortfall in the amount deposited by the appellant, the appellant shall deposit the shortfall within two weeks from the date of such shortfall amount by the M.A.C.T., Solapur. If there is any surplus left after paying the decretal amount to the respondent nos. 1 and 2 payable under the judgment and award dated 3rd December, 2015, modified by this judgment, such surplus amount shall be paid to the appellant.
- (c) If any additional amount of Court fee is payable due to increase of the compensation amount, if any by this judgment, the respondent nos. 1 and 2 are directed to pay the deficit in

payment of Court fee with the M.A.C.T., Solapur within two weeks from the computation of such shortfall in payment of Court fee.

- (d) Operative part of the judgment and award dated 3rd December, 2015 passed by M.A.C.T., Solapur in M.A.C.P. No. 258 of 2010 is modified by this judgment.
- (e) First Appeal No.665 of 2019 is disposed off in aforesaid terms. In view of disposal of the First Appeal No.665 of 2019, Civil Application No. 3766 of 2019 does not survive and is accordingly disposed off.
- (f) Office is directed to transmit the statutory deposit of Rs.25,000/- by the appellant if not transmitted so far to the MACT, Solapur expeditiously.
- (g) Office is directed to transmit the records and proceedings of the trial Court received by the office, if any, to the concerned trial Court expeditiously.

32] This judgment will be digitally signed by the Private Secretary of this Court. Sheristedar of this Court is permitted to forward the appellant and the respondents copy of this order by e-mail. All concerned to act on digitally signed copy of this order.

(R.D. DHANUKA, J.)