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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.218 OF 2012

|                                 |                |
|---------------------------------|----------------|
| The Oriental Insurance Co. Ltd. | ...Appellant   |
| V/s.                            |                |
| Ms.Puja S. Jadhav & Ors.        | ...Respondents |

Ms.Anita A. Agarwal for the Appellant.

Mr.Rohan Mahadik with Ms.Roshni M. Thakkar i/b The Juris Partners  
for the Respondent Nos.1 and 2.

**CORAM : R.D. DHANUKA, J.**  
**DATE : 20TH FEBRUARY, 2020.**

**P.C. :-**

1. By this appeal filed under section 173 of the Motor Vehicles Act, 1988 the appellant (original opponent no.3) has impugned the judgment and award dated 3<sup>rd</sup> September, 2011 passed by the Motor Accident Claims Tribunal, Pune in MACP No.1140 of 2005 thereby directing the appellant and the original opponent nos.1 and 2 to jointly and severally liable to pay a sum of Rs.7,92,000/- excluding the No Fault Liability amount to the respondent nos.1 to 3 with interest at the rate of 7% p.a. from the date of application till realization of the said amount.

2. By consent of the appellant and the respondent nos.1 to 3, the First Appeal is heard finally.

3. The respondent nos.1 and 2 are daughter and son of the

deceased Mangala Jadhav respectively. The respondent no.3 is daughter-in-law of the said deceased.

4. The father of the respondent nos.1 and 2 and Mangala Subhash Jadhav were proceeding by Scorpio Jeep bearing registration No.MH-12-AE-2880 from Chakan to Barshi by Pune – Solapur Highway. One Navnath Phulaware was the driver of the Jeep. When the said Jeep reached within the limits of Indapur at 11.45 p.m. the offending truck bearing registration No.AP-11-T-6464 while over taking tractor, had given dash to the Scorpio Jeep. Mangala Subhash Jadhav and her husband Subhash Jadhav sustained grievous injuries and lost their lives on the spot. The respondent nos.1 to 3 filed the claim application before the MACT, Pune *inter-alia* praying for compensation of Rs.10,00,000/-. The claim was resisted by the the appellant (original opponent no.3).

5. Learned Tribunal framed four issues for determination. The respondent nos.1 to 3 examined the respondent no.3 who produced various documents including, copy of FIR, spot panchanama, inquest panchanama, RTO certificate, post mortem report and a copy of insurance. She also produced various other documents including School Leaving Certificate etc. The appellant did not examine any witnesses.

6. The Tribunal allowed the compensation considering notional income of the deceased of Rs.3,000/- per month and

allowed various other non-pecuniary compensation including penal expenses towards love and affection.

7. Mrs. Agarwal, learned counsel appearing for the appellant invited my attention to the findings rendered by the Tribunal and would submit that the Tribunal could not have considered the notional income of Rs.3,000/- p.m. The next submission of the learned counsel is that insofar as the respondent no.3 is concerned, she being the mother in law of the said deceased could not have been awarded any compensation by the Tribunal.

8. A perusal of record indicates that though the appellant had claimed compensation considering monthly income of Rs.5,000/-, the Tribunal has considered notional income of Rs.3,000/- per month considering the judgment of the Supreme Court in case of **Smt. Sarla Varma vs. Delhi Transport Corporation, 2009 ACJ 1298 SC** and had applied the multiplier of 16 considering the age of the said deceased. In my view, loss of dependency arrived at by the Tribunal considering the income of Rs.3,000/- per month and after deducting 1/4th towards the expenses is in conformity with the principles laid down by the Supreme Court in the said judgment. I do not find any infirmity with this part of the judgment and award.

9. Insofar as the submission of the learned counsel for the appellant that the mother in law of the said deceased could not have been awarded any compensation is concerned, a perusal of the said

judgment and award clearly indicates that no separate amount of compensation has been awarded by the Tribunal in favour of the respondent no.3. In paragraph 4 of the operative part of the impugned judgment and award, the Tribunal has only directed the insurer and other opponents to pay the amount of Rs.2,00,000/- by separate account to the mother in law with a direction that she shall be liable to utilize the said amount for the betterment of the respondent nos.1 and 2. The respondent no.2 was minor when the said judgment and award was delivered. The respondent no.1 was 19 years old. In my view, there is no substance in this submission of the learned counsel for the appellant.

10. Learned counsel appearing for the respondent nos.1 and 2 states that the respondent no.3 expired at the age of 75 on 13<sup>th</sup> August, 2018. The Tribunal accordingly directed to pay compensation awarded to the respondent no.3 to the respondent nos.1 and 2.

11. The respondent nos.1 and 2 would be entitled to withdraw the amount deposited by the appellant out of the said amount deposited before the MACT, Pune. If there is any short fall in the amount deposited by the appellant, the same shall be deposited by the appellant with the MACT, Pune within two weeks from the date of computation of such shortfall. If there is any surplus amount left after payment of the decretal amount to the respondent nos.1 and 2, the Tribunal shall refund the said amount to the appellant on production

of an authenticated copy of this Court.

12. I do not find any infirmity with the findings rendered by the Tribunal in awarding compensation. The compensation awarded by the Tribunal is just and fair and does not warrant any interference. The First Appeal is devoid of merit and is accordingly dismissed.

13. The office is directed to transmit the amount of Rs.25,000/- deposited by way of statutory deposit by the appellant to the MACT, Pune expeditiously.

**(R.D. DHANUKA, J.)**