IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.775 OF 2014

APPELLANT : ORIGINAL RESPONDENT NO.2.	National Insurance Company Ltd., through the Regional Manager, Nagpur Regional Office, Mangalam Arcade, 2nd Floor, Dharampeth Extension, North Bazar Road, NAGPUR - 440 010. (On R. A.)

V E R S U S

RESPONDENTS :	1. Kawduji Govindji Fulzele, Aged about : 59 years, Occupation : Labour.
	2. Smt. Parvatabai Kawduji Fulzele, Aged about : 50 years, Occupation : Household work.
	Both Residents of Karandala, Post Navegaon (Sadhu), Tahsil Umred, District Nagpur; (Original Petitioners) (Both on R.As.)
	3. Suresh Tukaram Karemore, Aged : Adult, Occupation : Business, Resident of Plot No.67, Dattatraya Nagar, Nagpur; (Original respondent No.1) (On R.A.).

Ms. Smita Deshpande, Advocate for appellant.
Shri Asghar Hussain, Advocate for respondent Nos.1 & 2.

CORAM:- S. M. MODAK, J.
DATED : 10/12/2020.

ORAL JUDGMENT :

Heard learned Advocate Mrs. Smita Deshpande for the appellant-Insurance Company and learned Advocate Shri Asghar Hussain for original claimant/respondent Nos.1 & 2. Though respondent No.3, owner of the offending vehicle/truck is served, has not appeared.

2. The judgment of the Claims Tribunal is challenged by the Insurance Company mainly on the ground that the parameters considered by the Claims Tribunal while computing compensation are not correct. According to them, the age of the claimants/parents ought to have been considered and multiplier of 11 ought to have been considered in stead of 18 (as applied by this Court in the case of *Bebibai w/o Vinayakrao Lakhakwar & others vs. Sujit s/o Laxmanrao Khadokar & others*, reported in *2014(1)Mh.L.J.658.)*. Whereas, the learned Advocate of the claimants supported the judgment and contended that as held by the Constitutional Bench of the Hon'ble Supreme Court in the case of *National Insurance Company Ltd. vs. Pranay Sethi*, the age of the deceased needs to be considered and not age of the claimants.

According to him, the multiplier of 18 applied is correct. He has also brought to my notice that certain heads were not considered by the Claims Tribunal. It includes loss of future prospects and loss of Filial consortium. Even though, cross-objection has not been filed, this Court has considered the request for enhancement, because the Court has to grant just compensation. In support of that, he relied upon the judgment in the case of *Surekha & others vs. Santosh & others*, reported in *2020 ACJ 2156* delivered by Hon'ble Supreme Court.

3. Deceased Suraj was son of the claimants. He was riding a motorcycle. The truck owned by respondent No.2 was driven speedily and the driver gave a dash. The deceased received injuries and he succumbed to death on 05/09/2009. Bhiwapur Police Station, District Nagpur registered an offence under Sections 279, 338 and 304-A of the Indian Penal Code. Deceased was earning Rs.5,000/- per month by serving in Jai Auto Centre. The parents were depending upon his income. They have approached the Claims Tribunal, Nagpur. It is the Insurance Company, who has contested the petition. Several contentions were raised. It includes denial of allegation about rash and

negligent driving by the truck driver, impleadment of the owner and the Insurance Company of the motorcycle, not holding valid licence by the truck driver and as such breach of policy, the case of contributory negligence and restricting the liability of the Insurance Company to the tune of 30% only.

4. On behalf of claimant, Kawduji Fulzele entered into the witness box. Whereas on behalf of Insurance Company, its Administrative Officer – Shri Ganesh Somkuwar entered into witness box. There is no dispute about the existence of the Insurance Policy on the date of accident. Admittedly, Kawduji Fulzele was not an eye-witness. He relied upon FIR at Exh.22, spot panchnama at Exh.23, Inquest Report at Exh.24 and Post-Mortem Report at Exh.27. Considering the nature of enquiry, these documents can certainly be considered during evidence. The Insurance Company can discharge its burden either by examining the witness or on the basis of available evidence. Though case was put to the witness about the manner of the accident, it was denied. It needs to be seen whether on the basis of this witness, whether the Insurance Company was successful in discharging the burden about the manner of the accident. Just like, it is true for

witness-Kawaduji. It is also true for the witness – Ganesh. He is not witness to the accident.

5. His evidence was particularly focusing on issue of letter to the owner and to the driver of the truck, thereby demanding the driving licence. The Claims Tribunal has accepted this defence of Insurance Company about not holding driving licence by the driver of the truck. But, so far as the manner of the accident is concerned, I have to consider the evidence of witness – Kawduji and to verify whether it corroborates police papers. The FIR has been lodged by one Narendra Gedam. The deceased - Suraj was coming in the direction of Bhiwapur when he came near Tas Colony, the driver of the offending truck came from opposite direction and gave a dash to the motor cycle. On getting information, the first informant went to Hospital at Bhiwapur and then lodged an FIR.

6. If this evidence is produced, there is no reason to infer that a case of contributory negligence has been made out. The said contention of the company cannot be accepted. Hence, there is no room for apportioning the compensation in between the claimants and Insurance Company.

AGE OF THE DECEASED / CLAIMANT

7. The judgment in case of **Bebibai w/o Vinayakrao Lakhakwar and others Vrs. Sujit s/o Laxmanrao Khadokar and others**, reported in **2014(1) Mh.L.J. 658** was pointed out to me on behalf of Insurance Company. The observations "*thus considering all the imponderables which enter into mind and the guidelines from* ***Sarla Verma's*** *case, choice of multiplier would no doubt depend upon the age of deceased or ages of claimants, whichever is higher*" is highlighted. On that basis, it is argued on behalf of Insurance Company that the age of parents needs to be considered.

8. Learned advocate for claimants brought to my notice the observations by Hon'ble Apex Court in case of **Pranay Sethi**. It was a Judgment delivered by Constitution Bench. In para 59.7, it has been categorically observed that age of the deceased should be the basis for applying the multiplier. So, now there is no room for considering the age of claimants for deciding multiplier. The contention of Insurance Company is rejected.

EXACT MULTIPLIER

9. The Claims Tribunal has applied the multiplier of 18 as per the guidelines given in **Sarla Verma's case**. The same Judgment of **Bebibai (supra)** is relied upon wherein the Court has considered the multiplier of 15. In that case, deceased was a bachelor and Court has considered the multiplier of 15. While doing that, this Court has considered the age of mother of the deceased falling in between the age group of 50 to 55 years. As per **Sarla Verma's** guidelines, if the deceased is falling within that age group, the multiplier is 11. Whereas if the deceased is falling within age of group of 25 – 30 years, the multiplier is 18. So this Court has balanced the rights of parties and considered the multiplier of 11.

10. I am afraid that this exercise can be done in this case as contended on behalf of the Insurance Company. When the Constitutional Bench of Hon'ble Supreme Court in case of **Pranay Sethi** has categorically observed that the age of deceased is the sole factor for deciding the multiplier, the exercise of arriving at

balance by considering the age of deceased and the age of claimants can be done. There seems to be no dispute about the age of deceased. He was of 24 years as shown in Post-Mortem Report at Exh.27. So, I find no wrong committed by the Claims Tribunal in applying the multiplier of 18. So, the contention of the Insurance Company cannot be accepted.

11. For the above discussion, I do not think that the Judgment of the Claims Tribunal can be interfered with.

CLAIM FOR ENHANCEMENT

12. On behalf of the claimants, claim for enhancement is made basically on account of not considering the future prospect and not considering the filial consortium. It is true that these factors were not considered by the Claims Tribunal. Hon'ble Apex Court in case of **Surekha and others vrs. Santosh and others,** reported in **2020 ACJ 2156** has opined not to take hyper-technical approach while dealing with the matters under the Motor Vehicles Act. Even though cross-appeal has not been filed while exercising Appellate Jurisdiction, Court can enhance the compensation. This

was the specific issue before the Hon'ble Supreme Court. Considering the limited issue involved, the Hon'ble Apex Court has accepted the claim for enhancement. The importance of Judgment cannot be viewed on the basis of how lengthy it is, as contended on behalf of the Insurance Company. We have to consider the ratio laid down therein.

13. The law on this point is very clear. The Tribunal is under obligation to grant just compensation. Just compensation means the compensation which the Tribunal considered it as just. No amount of money can compensate the life of the deceased. So, I am inclined to accept the contention for enhancement.

14. As held in case of **Pranay Sethi**, if the deceased is self-employed and if he is below 40 years of age, 40% of the established income is to be considered towards the loss of future prospect. According to the father, the deceased was earning Rs.5,000/- per month from Jai Auto Center. Whereas the Claims Tribunal has considered the income of the deceased as Rs.3,000/-. The appellants have not examined any witness on the point of said income except the father, no documents on the point of income is also pointed out to me.

15. Though, this Court has to grant just compensation but does not mean that whimsically, it cannot be granted when there is no foundation. So, I am unable to accept Rs.4,500/- as income of the deceased for want of documents. However, certain percentage needs to be considered towards future prospect. But he has permanent job future prospect of 50% is to be considered and if the income is established, 40% is to be considered towards future prospect. The deceased was neither in permanent employment nor his income has been established. That is why the Claims Tribunal has assumed his income as Rs.3,000/-. It does not mean that if neither of the criteria are fulfilled, no percentage for future prospect can be considered. These are the general guidelines. So, I think that 30% towards future prospect from yearly income of Rs.36,000/- (Rs.3,000/- x 12) can be considered and it comes to Rs.10,800/-. I am inclined to grant Rs.40,000/- towards parental consortium. It can be granted while ascertaining the amount of just compensation. No pleadings are required because it is on the basis of guidelines fixed by the Hon'ble Apex Court in case of **Magma General Insurance Company Limited Vrs. Nanuram Alias Chuhru Ram and others**, reported in **(2018) 18 SCC 130**.

CONTRIBUTION TOWARDS DEPENDENTS

16. The Claims Tribunal has considered 50% towards personal expenses and 50% towards the dependents i.e. father and mother. The father cannot be said to be dependent as contended by the learned Advocate for the Insurance Company. My attention was brought to the observations in para 31 of **Sarla Verma's** Judgment. It has further been observed that father may be having his own income and he cannot be considered as dependent. It is true that nothing has come in the evidence about the income of the father. He was of the age of 54 when the petition was filed. I think already, certain claim of the petitioner was rejected for want of proof about the income and already, the Claims Tribunal has granted certain concession to the Insurance Company while considering the income, on this factor, I am not inclined to accept it. Considering the age of the father i.e. closing to retirement (even though he may be having different income), the possibility of dependency on the son will be more and 50% contribution to the family considered by the Claims Tribunal cannot be interfered with. Hence, I am not inclined to accept the

appeal of Insurance Company and the amount of compensation is re-calculated as under :-

i]	Yearly income (Rs.3,000/- x 12)	= Rs.36,000/-.
ii)	30% towards future prospect	= Rs.10,800/-
iii]	Contribution towards family (Half of Rs.46,800/-)	= Rs.23,400/-
iv]	Multiplicand (Rs.23,400 x 18)	= Rs.4,21,200/-
v]	Parental consortium	= Rs. 40,000/-.
vi]	Loss of estate, funeral exp.	= Rs. 4,500/-
	Total	**Rs. 4,65,700/-**

Hence, the order.

ORDER

1) The appeal is dismissed.

2) The award dated 14/03/2014 passed in M.A.C.P. No.780/2009 by Motor Accident Claims Tribunal, Nagpur is modified as under :-

a) The respondent No.3 - owner is directed to pay Rs.4,65,700/- to the respondent Nos.1 and 2 / claimants along with interest of 7.5% from the date of petition till realization.

b) The appellant - Insurance Company is directed to first pay the amount of Rs.4,65,700/- with interest and then to recover from respondent No.3 - owner.

3) Parties to bear their own costs.

4) Respondent Nos.1 and 2 to pay court fee for the amount enhanced by this Court.

CIVIL APPLICATION (CAF) NO.679 OF 2020

1. The amount of Rs.25,000/- deposited towards mandatory deposit and amount of Rs.3,56,606/- be paid to the respondent Nos.1 and 2 in equal proportion.

2. Civil application is disposed of.

[JUDGE]

Choulwar