IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 12 OF 2007

The Oriental Insurance Company Ltd., (through its Senior Divisional Manager), "Indraprakash", Adalat Road, Aurangabad.	Appellant
Versus	
01 Vandana Balbhim Jagtap, age: 32 years, Occ: Household, R/o Irala, Tq. & District Osmanabad.	
02 Apeksha d/o Balbhim Jagtap, age: 13 years, Occ: Nil, R/o As above.	
03 Akshay s/o Balbhim Jagtap, age: 10 years, Occ: :Nil, R/o As above.	
04 Limbraj Vithal Jagtap, age: 66 years, Occ: Agril., R/o As above.	
05 Sau. Nagarbai w/o Limbaji Jagtap, age: 50 years, Occ: Household, R/o As above.	Respondents
06 Bhausaheb Laxman Kirtishahi, age: major, Occ: Driver, R/o Rahul Nagar, Near Railway Gate, Aurangabad.	Dismissed against Respondent No.6 vide Court's order Dated 24.04.2010.
07 M/s. Megha Fright Motors Private Limited, 44, Sector 16-A, Faridabad.	Dismissed against Respondent No.7 vide Court's order dated 28.07.2017.

Mr. A. G. Kanade, advocate for the Appellant.
Mr. S. S. Shinde, advocate for Respondents No.1 to 5.

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 12th August, 2022
PRONOUNCED ON: 19th August, 2022.

JUDGMENT :

1 The appellant-Insurance Company, who was original Respondent No.3 in M. A. C. P. No. 254 of 2000, has challenged the award dated 19.07.2006, passed by the learned Member, Motor Accident Claims Tribunal, Osmanabad (herein after referred to as "the learned Tribunal"), in the aforesaid Claim Petition, mainly on two grounds – firstly, excessive compensation has been granted; and secondly, wrong multiplier has been applied.

2 On perusal of the impugned judgment and award, it reveals that the claimants, who are present Respondents No. 1 to 5, had claimed total compensation of Rs. 10,00,000/- on account of accidental death of one Balbhim Jagtap i.e. husband of present Respondent No.1. However, the learned Tribunal, under the impugned award, granted compensation to the original claimants to the tune of Rs. 8.74,000/- along with interest @ of 7.5% p.a.

3 The learned Counsel for the appellant-Insurance

Company submits that there is no requirement of calling record and proceedings since the challenge in this appeal is only in respect of granting excessive compensation by taking into consideation higher income of the deceased without there being any proof of occupation. He further submits that the multiplier of 14 instead of 18, as applied by the learned Tribunal, is required to be considered while calculating the compensation. In support of his submission, he placed reliance on the judgment of the Hon’ble Apex Court in the case of **Managing Director, TNSTC Ltd. Vs. K. I. Bindu**, 2005 (8) SCC 473.

4 On the contrary, the learned Counsel for Respondents No.1 to 5 – original claimants prayed for dismissal of the appeal by supporting the judgment of the learned Tribunal. He also claimed that since the appeal against Respondents No. 6 & 7, who are the driver and owner, respectively, of the offending vehicle, is dismissed, the appeal is not maintainable.

5 Since the learned Counsel for the appellant-Insurance Company has submitted that there is no need to call the record and proceedings of the original Claim Petition, I have taken up the present appeal for hearing in the absence of Record & Proceedings.

6 It is not in dispute that deceased Balbhim Jagtap was proceeding towards Osmanabad from Aurangabad on a motorcycle as a pillion rider on 20.05.2000 at about 12.05 hours. It is also not in dispute that the offending vehicle i.e. Truck bearing Registration No. HR-38-D-4759 gave dash to the said motorcycle due to which deceased sustained multiple injuries and died. The appellant-Insurance Company has not disputed that the offending Truck was insured with it at the time of accident, however, it has only disputed the manner of calculation of compensation by considering higher income of the deceased and the applicability of higher multiplier.

7 With the assistance of learned Counsel for respective parties, I have gone through the impugned judgment and award and also heard rival submissions.

8 The appellant-Insurance Company, while raising the first ground of challenge to the impugned judgment and award, submitted that the learned Tribunal has granted excessive compensation by considering the income of deceased at higher side and by applying higher multiplier. So far as occupation of the

deceased is concerned, there appears no direct documentary evidence about the actual earning of the deceased, however, the impugned judgment reveals that the learned Tribunal has considered other documents such as Pass Book and Recurring Deposit Account (RD) receipts wherein there were periodical entries, by which the deceased had deposited certain amounts in the bank account of his wife i.e. present Respondent No.1 in the years 1997, 1998 and 1999. The said pass book appears to be at Exhibit-54 as per the judgment of the learned Tribunal. Further, there is also reference in the impugned judgment that the R. D. receipts produced at Exhibit-55 by wife of deceased show that deceased had kept an amount of Rs.10000/- in her name on 11.11.1998 i.e. prior to the accident.

9 It is contended by the original claimants that deceased was doing centering work at Pune and was earning Rs.9000/- per month. Though there is no documentary evidence about the actual earning of deceased Balbhim Jagtap, but the aforesaid documents definitely show that the deceased was maintaining his family at the costliest city like Pune. Moreover, though the claimants claimed income of deceased to the tune of Rs.9000/- per month, but the impugned judgment reflects that the learned

Tribunal has only considered monthly income of the deceased to the tune of Rs.6000/- per month. Further, the learned Tribunal has deducted an amount of Rs.2000/- out of the said amount towards personal expenses of the deceased despite the fact that deceased Balbhim Jagtap was maintaining family of five members. As per the ratio laid down by the Hon'ble Apex Court in the case of **Sarla Verma & others Vs. Delhi Transport Corporation & another**, reported in (2009) 6 SCC 121, said deduction appears to be at higher side and in fact said deduction should have been less had this Claim Petition would have been decided after the judgment of the Hon'ble Supreme Court in **Sarla Verma's** (*supra*) case.

10 Considering all these aspects, I, therefore, come to the conclusion that the learned Tribunal has properly appreciated the material on record and reasonably held that the deceased must be earning Rs.6000/- per month. I, therefore, do not find any reason to find fault with the aforesaid finding of the learned Tribunal as regards monthly income of the deceased.

11 The learned Counsel for the appellant-Insurance Company, in his second submission, contended that the multiplier 18 applied by the learned Tribunal is also erroneous and instead of

the same, multiplier 14 should have been applied, as it was found that deceased Balbhim was 30 years old at the time of accident. The learned Counsel for the appellant has placed reliance on the judgment in the case of **Managing Director, TNSTC Ltd. Vs. K. I. Bindu**, (*supra*), wherein the Hon'ble Apex Court has considered multiplier of 13 for the deceased in that case, who was 34 years of age. In the instant case, the learned Tribunal has considered the table under Section 163-A of the Motor Vehicles Act for applying the multiplier of 18 for the purpose of calculation of compensation, which is proper for the age group of 25 to 30 years. There Is no doubt about the age of the deceased, being 30 years, at the time of accident. It is significant to note that the Claim Petition has been decided prior to the judgment of the Hon'ble Apex Court in the case of **Sarla Verma** (*supra*), wherein the proper multiplier for the age group of deceased is fixed at 17. As such, there is no big difference between the multiplier of 17 as fixed by the Hon'ble Apex Court in the case of **Sarla Verma** (*supra*) and multiplier 18, as fixed by the learned Tribunal in the instant matter. In the judgment relied upon by the learned Counsel for the appellant-Insurance Company, age of the deceased was 34 years and, therefore, multiplier of 13 was applied. However, in the instant case, age of the deceased is less and as per the table under Section 163-A of the Motor Vehicles Act as well as the judgment in **Sarla Verma's** (*supra*) case, there is no big difference between the multiplier, which is to be applied. Further, the learned Counsel for the appellant could not justify as to how the multiplier of 14 is applicable in the instant case.

12 It is extremely important to note that the law on the aspect of computation of compensation is now well settled by the Hon'ble Apex Court in the case of **Sarla Verma** (*supra*) and by way of clarification in its subsequent judgment in the case of **National Insurance Company Limited Vs. Pranay Sethi & others**, (2017) 16 SCC 680. The Hon'ble Apex Court has gone ahead and added future prospects of 50% and 40% respectively if the deceased is permanent employee or a self-employed person. In the instant matter, though such future prospects are not permissible, as the petition was decided prior to the aforesaid judgment of the Hon'ble Apex Court, but considering the ratio laid down by these judgments, the multiplier of 18 applied by the learned Tribunal appears definitely appropriate.

13 Under such circumstances, I am of the opinion that the learned Tribunal has properly calculated the amount of

compensation by appreciating the documents on record and, therefore, not much weightage can be given to the submission of the learned Counsel for the appellant-Insurance Company that excessive compensation has been awarded by the learned Tribunal by applying wrong multiplier and taking into consideration higher income of the deceased. In view of the same, no interference is called for in the impugned judgment and award passed by the learned Tribunal.

14 In the result, the appeal stands dismissed.

(SANDIPKUMAR C. MORE)
JUDGE

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