IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 512 OF 2021

United India Insurance Company Ltd.,
Through its Branch Manager, Branch Office
Latur Through The Divisional Manager/
Authorized Signatory, Divisional Office,
New Osmanpura, District Aurangabad. ..APPELLANT

VERSUS

1. Minakshi @ Meenabai w/O Babasaheb Bargaje,
Age : 52 YEARS, Occ. Household

2. Prashant Babasaheb Bargaje,
Age : 34 Years, Occ. Service,

3. Srikant Babasaheb Bargaje,
Age : 30 Years, Occ. Education,

4. Jaidevi d/o Babasaheb Bargaje,
Age : 28 Years, Occ. Education

5. Sundarbai W/o Narayan Bargaje,
Age : 89 Years, Occ. Nil Respondent No.5 deleted as per order dt. 17.02.2021.

All Resident of Takli, Taluka
Kaij, District Beed.
Presentely Residing at, Ashta,
Taluka Chakur, District Latur.

6. Shaikh Ismail Gulab,
Age : Major, Occ. Agriculture and Business
R/o. Uti, Taluka Ausa,
District Latur.

7. Ramesh Vithal Mule,
Age : Major, Occ. Business,
R/o. Boinde, Taluka Barshi,
District Solapur

8. Gangabai W/o Babasaheb Bargaje,
Age : 49 years, Occu. Business

9. Rajashree D/o Balasaheb Bargaje,
Age : 23 Years, Occ. Education

10. Bhagyashree D/o Babasaheb Bargaje,
Age : 19 Years, Occ. Education

Respondent No. 8 to 10, All
Resident Dapakar Niwas, Phule Nagar
Beed Road Kaij, Taluka Kaij, District
Beed. ..RESPONDENTS

Shri S.G.Dargad h/f, Mr. S.G. Chapalgaonkar
Advocate for the Appellant.
Shri Ram B. Deshpande, Advocate for Respondent Nos. 1 to 4, 8 to 10.
Shri. A. B. Hawale Advocate for Respondent No.7 (Absent)
Respondent No.5 is deleted.
Respondent No.6 served.

CORAM : VINAY JOSHI, J.

Closed for Judgment on : 19.01.2022.
Judgment pronounced on : 11.02.2022.

JUDGMENT:

This is an appeal of Insurance Company in terms of Section 173 of the Motor Vehicle Act, 1988 challenging the Judgment and award dated 03.02.2017 passed by the learned Member, Motor Accident Claim Tribunal, Latur in Motor Accident Claim Petition No. 255 of 2013.

2. The facts gives rise are such that on account of death of one Babasaheb Narayan Bargaje in vehicular accident dated 05.08.2013 his legal heirs have approached to the Tribunal for grant of compensation. At the relevant time, deceased Babasaheb was proceeding by riding on his motorcycle bearing Registration No. MH-44-E-4227 on Renapur to Latur road. While he came near Mahapur bridge, offending vehicle namely Tempo bearing registration No. MH-10-A-4314 came in high speed from opposite direction and gave forceful dash to motorcycle. As a result and impact of said accident, Babasaheb sustained multiple bodily injuries to which he succumbed. According to the claimants, the accident occurred due to sole rash and negligent driving of Tempo driver against whom police have registered the offence.

3. It was the claimant’s case that deceased Babasaheb was serving in police department and was drawing salary to the tune of Rs. 26,998/- per month. The claimants were solely dependent upon the income of the deceased. Due to untimely death of Babasaheb, they suffered mental as well as financial loss and therefore the claim.

4. Driver, owner and insurer of offending tempo resisted petition by filing written statement. Besides usual denials, it is

specifically denied that due to sole negligence of tempo driver accident occurred. It is contended that it was case of head on collision in which Babasaheb was also negligent and thus it is a case of contributory negligence.

5. The tribunal after assessing the evidence held that it was case of the contributory negligence in which deceased contributed to the extent of 20% while Tempo driver was negligent to the extent of 80%. Besides that, on the basis of salary certificate, the tribunal applied other set parameters and accordingly assessed the compensation, by use of multiplier of 11 as per the age of the deceased.

6. The learned counsel appearing for the Insurance Company initially challenged use of uniform multiplier method as adopted by the tribunal. According to insurer, deceased was 52 years of age and was about to retire within six years. Having regard to the said fact, it is argued that the tribunal ought to have invoked a split-multiplier theory. To substantiate the said contention insurer relied on the decision in cases of

(I) ***N. Jayasree and Others Versus Cholamandalam MS General Insurance Company Ltd 2021 SCC Online SC 967***

(II) ***Divisional Manager, National Insurance Company Ltd Vs. Mariyammal and Others 2019 SCC OnLine Mad 7792***

(III) ***Chaya W/o Dilip Tamte And Others Vs. Suresh Gurusidappa Karanje and another 2014 OnLine Bom 671: (2014) 6 Bom CR 115*** :

(IV) ***Branch Manager, National Insurance Co. Ltd Bengaluru Vs. B. Nagalambika and Others Law Finder DOC ID # 1741047***

(V) ***Uma Shankar Vs. Revathy Vadivel 2014(1) TN MAC 651 (DB)***

Perused all above Judgments from which it can be gathered that in exceptional circumstances tribunal can adopt a split multiplier method in appropriate case. Herein, no special circumstances are made out to deviate from the set principles of law as laid down by the constitutional bench in case of National Insurance Company Ltd Vs. Pranay Sethi (2017) ACC 460. Moreover, a decision of this Court in case of ***The New India Assurance Company Limited Vs. Surekha Bhagwan Desle and others First Appeal No. 3027 of 2019 Bench at Aurangabad*** has been brought to notice wherein the submission about a split multiplier has been repealed by this Court, by relying on the decision of the Supreme Court in Pranaya Sethi’s case wherein the Supreme Court has approved to apply the multiplier as per the age of the deceased. Having regard to the said mandate, in absence of specific circumstances, there is no reason to take a different view, therefore, the submission in this regard carries no substance.

7. Coming to the point of negligence, the insurer has strongly assailed the impugned Judgment by contending that since it was a case of head on collision, the tribunal ought to have held that both wrong doers were equally responsible for the accident. With the assistance of both the sides, I have gone through the police papers. On the date of accident itself, a report has been lodged alleging that due to rash and negligent driving of Tempo driver accident occurred. The learned counsel appearing for the insurer specifically took me through spot panchnama bearing description of offending Tempo and rough sketch regarding the place of occurrence. It is pointed out that the place of accident is to the western side of road, particularly the offending Tempo was at western side of road and motorcycle was lying on the extreme western side of North South road. Moreover, it is pointed out that as per spot panchnama, left side head light and indicators of Tempo was damaged. He endavoured to impress that since the dash was to the left side of the Tempo that by itself shows that motorcycle completely went to wrong side and gave a dash.

8. It is submitted that the police papers which are produced by claimant can be safely relied and to that effect he relied on the decision of the Supreme Court in case of ***Oriental Insurance Company Limited Vs. Premlata Shukla And Others (2007) 13 Supreme Court Cases 476*.** Moreover reliance is placed on the decision of ***New India Assurance Company Limited Vs. Bismillah Bai And Others (2009) 5 Supreme Court Cases 112*** to state that in absence of material, negligence cannot be fastened on the vehicle which was insured.

9. On the other hand, the learned counsel appearing for the claimant would submit that on the date of accident itself F.I.R has been lodged stating about the total negligence of tempo driver. He would submit that merely on the basis of the position of vehicle after the accident definite inference about negligence cannot be drawn. It is the submission that always position of vehicle after accident depends upon variety of factors and therefore in absence of any evidence it cannot be held that deceased has contributed equally in the accident. In support of said contention, reliance is placed on the reported decision in case of ***Kiran Vs. Sajjan Singh and Others 2014 ACJ 2550 and Syed Sadiq And Others vs. Divisional Manager,***

United India Insurance Company Limited (2014) 2 Supreme Court Cases 735.

10. In above referred case of Kiran Vs. Sajjan Singh and Others the Supreme Court took a note of its earlier decision in case of ***Jiju Kuruvila Vs. Kunjujamma Mohan, 2013 ACJ 2141 (SC)*** wherein it has been observed that mere position of the vehicle after accident, described in panchnama cannot give a substantial proof of rash and negligent driving on the part of one or the other driver. It is common knowledge that after accident in order to give safe passage, the vehicles are moved to the side of the road. When there is collision in between two vehicles coming from opposite direction, the position of vehicles after accident depends upon various factors like the speed of vehicles, intensity of collision, portion collided of smaller vehicle to the bigger one etc. Pertinent to note that after investigation the police have filed charge sheet against Tempo driver. The insurance company has not endavoured to examine the tempo driver to claim exception. Therefore in absence of any material, merely on the basis of position of vehicle after accident, dash was to the left side of Tempo and it was head on collision equal liability cannot be fastened. Always driver of bigger vehicle owes heavy duty to take care while driving on public road. The tribunal was right in assessing negligence to

the extent of 20% to the deceased and 80% to the Tempo driver which calls no interference.

11. Coming to the point of quantum, the deceased was serving in police department, salary certificate of deceased was produced on record showing his last drawn monthly salary to the tune of Rs. 21,509/-. Having regard to the number of dependents, the tribunal has rightly deducted 1/5th towards living and personal expenses of the deceased. Use of multiplier of 11 as per age of deceased was appropriate in view of the settled norms. The Tribunal has assessed the compensation and had reduced to the extent of 20% proportionate amount as per negligence and concluded that the loss of the dependency was of Rs. 18, 17,080.32 which is proper.

12. The learned counsel appearing for claimants has submitted that the tribunal has not made additions on account of future prospects and also the amount under the head of consortium was not properly assessed. In this regard, he relied on the decision of ***MAGMA GENERAL INSURANCE COMPANY LIMITED VS. NANU RAM @ CHUHRU RAM AND OTHERS (2018) 18 SUPREME COURT CASES 130.*** On the other hand, the learned counsel appearing for the insurer would submit that this being appeal of insurer without filing cross appeal or cross

objection claimant cannot seek for enhancement. In support of said contention, reliance is placed on the decisions in cases of ***Ranjana Prakash And Others Vs. Divisional Manager And Another (2011) 14 Supreme Court Cases 639, United India Insurance Co. Ltd Vs. Rajani Suresh Bhore and others 2017 SCC OnLine Bom 8169 : (2017(5 AIR Bom R 592, New India Assurance Company Ltd Aurangabad Vs. Sunita and Others 2019 SCC OnLine Bom 2, National Insurance Comopany Ltd Bhandara Vs. Budha Watujichoudhari and Others 2019 SCC OnLine Bom 307***. To counter said submissions, the learned counsel for the claimant relied on the decision of Supreme Court in case of ***Surekha and Others Vs. Santosh and Others 2020 ACJ 2156*** to contend that there is no hurdle in granting just compensation, despite cross appeal.

13. No doubt, a Court in appeal can set at right obvious error committed by tribunal. It is settled position that, without filing substantive appeal or cross objection the claimant can defend the award by pointing other errors or omissions committed by the tribunal. As regard to the assessment of compensation is concerned, on the basis of salaried income the tribunal has rightly calculated the compensation by invoking the dictum of the Supreme Court laid down in the case of Sarla Verma Vs.

Delhi Transport Corporation (2009 ACJ 1298). It reveals that though the tribunal has not separately awarded filial consortium to the children, however, substantial amount has been awarded to the children on account of loss of love and affection. Having regard above peculiar facts, in the appeal of insurer no addition could be made as urged. In view of that impugned Judgment and order calls no interference in this appeal. Hence appeal stands dismissed. No order as to costs.

(VINAY JOSHI)
JUDGE

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