

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FIRST APPEAL NO. 443 OF 2012**

New India Assurance Co. Ltd.

.... Appellant

1st Floor, New India Bhavan, 34-38

Bank Street, Fort, Mumbai -400 023

Versus

Uday Vishnu Sawant (since deceased

Through legal heirs- Savita Vishnu Sawant

(Deceased through Legal heirs)

1-A-i) Madhavi Murlidhar More, 61 years

1-A-ii) Supriya Janardhan More, 59 years

1-A-iii) Meghna Jitendra Kamble, 47 years

1-A-iv) Suvarna Prakash Kadam, 47 years

All adults, Indian Inhabitant, residing at

44/C Bharat Bhuvan, Room No.6,

Jagannath Bhayankar Marg, Near Elphinstone

Bridge, Prabhadevi, Mumbai – 400 013

.... Respondents

.....

Ms. Jyoti Bajpayee, Advocate for the Appellant.

Mr. Niketan Nakhawa a/w. Mr. Pramod Purav, Advocate for Respondent
Nos. 1A(i) to 1A(iv).

CORAM : SHIVKUMAR DIGE, J.

DATE : 6th DECEMBER, 2023

JUDGMENT :

1. The issues involved in this appeal are monthly income of the claimant is considered is on higher side and application of multiplier.

2. It is the contention of learned counsel for the appellant that at the time of accident the claimant was under the influence of alcohol and due to his own negligence accident was occurred. But this fact is not considered by the Tribunal. The Tribunal has considered monthly income

of the claimant on higher side. Learned counsel further submitted that the multiplier should not have been applied while calculating the compensation. But the Tribunal has applied multiplier and on that basis compensation is awarded. She further submitted that the compensation awarded under the conventional head are on higher side. Hence requested to allow appeal.

3. It is the contention of learned counsel for the respondent-claimant that due to accident the claimant has suffered 30% disability. The doctor was examined to prove the disability. The claimant was milk vendor and he was getting Rs.5,000/- per month but the Tribunal has considered monthly income at Rs.3,000/- which is proper. Learned counsel further submitted that no evidence produced on record to prove that at the time of accident deceased was under the influence of alcohol, as the claimant has suffered 34% disability. As per the view of the Hon'ble Apex Court in the case of *Sarla Verma & Ors. Vs. Delhi Transport Corp. & Anr.*¹ multiplier is properly applied.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Vehicle Claims Tribunal, Mumbai (for short "**the Tribunal**"). In respect of the issue that, at the time of accident the claimant was under the influence of alcohol, no evidence was produced before the Tribunal to prove the said fact. Hence, I do not see

1 AIR 2009 SC 3104

any merit in it. It has come on record that claimant was serving milk to milk vendor and he was getting Rs.5,000/- per month from it. The Tribunal has considered his monthly income at Rs.3,000/-. I do not find infirmity in it.

To prove the disability of claimant, the doctor has been examined. The doctor has stated that due to the accidental injuries the claimant has suffered 34% permanent disability. As per the view of the Apex Court in the case of *Vijay Kumar Rastogi Vs. U.P.State Road Transport Corporation* ² if there is permanent disability multiplier should be applied.

5. In view of the above, I pass following order:

- (i) The appeal is dismissed. No order as to cost.
- (ii) The claimants are permitted to withdraw the amount deposited by the appellant along with accrued interest thereon.
- (iii) The statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it.
- (iv) Pending applications, if any, stands disposed of.

6. The appeal is disposed off.

(SHIVKUMAR DIGE, J.)