IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3099 OF 2015

The New India Assurance Company Ltd.
a Subsidiary of the General Insurance
Corporation of India and a company
Incorporated under the Companies Act
having one of its Divisional office at
Adalat Road, Aurangabad
Through its Manager (Legal Hub) &
Authorized signatory ..Appellant
(Orig. Resp. No.2)

Versus

1. Pushpabai Waman Mangale,
Age 49 yrs, occ.nil
r/o 21/B, Akshay Colony
Valwadi, Deopur, Dhule
Tk.& District Dhule

2. Sunil Waman Mangale
Age 29 yrs, occ.nil
Address as above

3. Anil Waman Mangale,
Age 25 yrs.,occ. Nil
Address as above

4. Bharti d/o Waman Mangale
Age 27 yrs., occ. Nil
Address as above

5. Vaishali d/o Waman Mangale
Age 23 yrs, occ.nil
Address as above

6. Laxmibai Sadashiv Mangalee
Age 71 yrs, occ. Nil
Address as above

7. Sadashiv Pahuji Mangale,
Age 75 yrs.,occ. Nil
Address as above

8. Sunil Shamrao Patil,
Age 35 yrs.,occ. Driver & Truck Owner
r/o A.P. Kapadne,
Tk. & District Dhule ..Respondents
(R.No.1 to 7 : Org. Claimants
and R.No.8 : Org. R. No.1)

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Mr. A. B. Kadethankar, Advocate for the Appellant.
Mr. U. A. Bhadgaonkar, Advocate for Respondent Nos.1 to 6.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 18th APRIL, 2024.

JUDGMENT:-

1. The appellant/original respondent no.2-Insurer filed this appeal under Section 173 of the Motor Vehicle Act, impugning judgment and award dated 30.03.2011 passed by the Motor Accident Claim Tribunal, Dhule in M.A.C.P. No.443/2008.

2. With the consent of the parties, matter is taken up for final hearing.

3. Mr. Kadethankar, learned Advocate appearing for the appellant submits that respondent nos.1 to 7 / original claimants had raised claim for compensation of Rs.7,00,000/- against owner and insurer of the Truck, bearing Registration No.MH-28-M-4202, on account of accidental death of Late Waman Mangale, in motor accident dated 30.06.2008. The Truck was insured with the appellant-Insurance Company. He submits that the Tribunal passed excessive and exorbitant award, inconsistent with the settled principles of law regarding assessment of just compensation. He submits that the Tribunal failed to consider that the deceased was aged more than 53 years at the time of accident.

He was Government servant and due for retirement at the age of 58 years. The service period of 4 to 5 years was at his credit. Therefore, the Tribunal ought to have applied split multiplier for the period of balance of service and for post superannuation. He would further submit that the claimant nos.2 to 5 being major sons and daughters of the deceased could not have been considered as dependents on his income. Therefore, 1/3rd amount of assessed income ought to have been deducted by way of personal and living expense of the deceased.

4. Mr. Bhadgaonkar, learned Advocate appearing for claimants-respondent nos.1 to 6 supports the award.

5. Having considered submissions advanced and after going through pleading and evidence on record, apparently, the appeal is restricted to challenge to the assessment of the compensation. The first contention raised on behalf of the appellant is regarding the application of split multiplicand, since the deceased was due for retirement after four years and his salaried income would be available for balance service period only. Thereafter, he may receive the monthly pension, which may not be commensurate to his earning during the service period. Pertinently, similar arguments are disapproved by the Supreme Court while deciding appeal against award passed by the Karnataka High Court. Reference can be given to the judgment in case of ***Puttamma and Others Vs. K. L. Narayana Reddy and Another***[1], wherein Supreme Court observed thus:

> *"32. For determination of compensation in motor accident claims under Section 166 this Court always followed multiplier method. As there were inconsistencies in the selection of a multiplier, this Court in Sarla Verma*[4] *prepared a table for the*

1 **(2013) 15 SCC 45.**

selection of a multiplier based on the age group of the deceased/victim. The 1988 Act, does not envisage application of a split multiplier.

33. In K.R. Madhusudhan v. Administrative Officer[18] this Court held as follows: (SCC p. 692, paras 14-15)

> *"14. In the appeal which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefor. The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years the multiplier is 11, which is specified in the 2nd column in the Second Schedule to the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6.*
>
> *15. We are, thus, of the opinion that the judgment of the High Court deserves to be set aside for it is perverse and clearly contrary to the evidence on record, for having not considered the future prospects of the deceased and also for adopting a split multiplier method."*

34. We, therefore, hold that in absence of any specific reason and evidence on record the tribunal or the court should not apply split multiplier in routine course and should apply *multiplier as per decision of this Court in Sarla Verma[4] as affirmed in Reshma Kumari[17]"*

In view of the clear dictum of the Supreme Court, this Court finds no force in submissions made on behalf of the appellant.

6. The second contention is as regards to the dependency of the claimant nos.2 to 5. It is true that claimant nos.2 to 5 appears to be major sons and daughters of the deceased. However, there is nothing on record to demonstrate that they were independently earning or lost their dependency on the income of the deceased. Even, it is assumed that all claimant nos.2 to 5 were independent to certain extent, in absence of specific material before the Court, their dependency cannot be disapproved. The Supreme Court in case of ***National Insurance Company Limited Vs. Birender and Others***[2] rejected similar contentions observing that major sons and daughters of the deceased need not be independent in each and every case. In that view of the matter, deduction of 1/5th amount towards personal living expense of the deceased while assessing the compensation to the dependents cannot be faulted. Pertinently, considering the age of the deceased, 15% of his income could have been added towards future prospects, but no such addition is made by Tribunal that balances aspect of dependency.

7. Taking into consideration the overall review of assessment of compensation under impugned award, no fault can be found in the final award. Although, it is sought to be contended that the multiplier applied is not in tune with the legal position, on factual assertion, it is found that multiplier of '11' is applied, since the age of deceased was 54 years. Similar multiplier is approved for the age group of 51 to 55 years in case of ***Sarla Verma and Ors. Vs.***

2 **(2020) 11 SCC 356.**

Delhi Transport Corporation and Ors.[3] as well as in case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors***[4]**.**

8. In light of the aforesaid discussion, no case is made out for interfere in the award passed by the Tribunal. The appeal is devoid of merit. Hence, First Appeal stands dismissed with cost.

9. The amount, if any, deposited by the appellant-Insurance Company be disbursed to the claimants in tune with the apportionment made under the award passed by the Tribunal.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2024

3 **AIR 2009 SC 3104.**
4 **(2017) 16 SCC 680.**