

appeal.

3. The deceased-Venkata Subramanyam Bopana was travelling in a car which belonged to his employer, the M/s Surya Pharmaceutical Ltd. He held the post of Vice President and was due to be promoted as a Managing Director of the aforesaid company. The car was being driven by another person. An accident was occurred on 30.03.2009 in which the deceased died. At the relevant time, his age was about 51 years. A claim Petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act") by the Widow and the minor son against the appellant-company and others. The respondents-herein omitted to implead the mother of the deceased as a respondent to the Claim Petition. According to them, though it is required by Section 166 of the Act that all the legal representatives be impleaded, they did not do so because the employee was not a legal representative,

having relinquished all her rights in respect of Estate of the claimant-widow on 17.02.2010, i.e., after the accident and during the pendency of the Claim Petition.

4. We might add, at the outset, that the Release Deed is on record and we have heard learned counsel for respondent No. 5, the mother of the deceased and we find that there is no evidence and sufficient material to resolve the dispute between the mother and the deceased on the one hand and the claimants, i.e, widow and adopted child on the other. We, therefore, relegate this dispute to be decided by appropriate proceedings, which the mother may adopt, if so advised.

5. The Tribunal found that at the relevant time, the deceased was found to have an income of Rs. 22,92,148/- per annum as Vice

President of the company. The Tribunal added 30% towards future prospects; it deducted 30% towards income tax and thus arrived at the actual salary of Rs. 22,92,148/-. The Tribunal also deducted 1/3rd towards personal expenses of the deceased and arrived at the multiplicand of Rs.15,28,099/- per annum. The Tribunal held the age of the deceased as 49 years. The multiplier applied was 11. The loss of dependency to the family was found to be Rs. 1,68,09,089/- As noted above, Rs. 2000/-, Rs.5000/- and Rs. 2500/- were added on account of funeral expenses, loss of consortium and loss of Estate respectively.

THE INSURANCE POLICY

6. The vehicle belonged to M/s Surya Pharmaceutical Ltd. and it was covered by package policy, also known as a comprehensive policy. This policy was clearly not an Act Policy under Section 147

of the Act. It is not in dispute that this policy was not Act policy under Section 147 of the Act. The relevant terms of the policy are as follows :

...Subject to the limits of liability as laid down in the schedule thereto, the company will indemnify the insured in the event of accident caused by or arising out of the use of the insured vehicles against all sums which the insured shall become legally liable to pay in respect :-

(i) death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicle Act, the company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured."

7. The clause of the policy reproduced above clearly covers the insured against all sums which the insurer may become liable to pay in respect of :

"(i) death of or bodily injury to any person including occupants carried in the vehicle (provided such

occupants are not carried for hire or reward)...."

8. We thus find that the claim of the widow and the adopted son is fully covered by the clause in the insurance contract, i.e., the policy and there is no scope for acceding to the submission made on behalf of the appellant-company that the claim is excepted by virtue of the provisions of Section 147 (1) of the Act in this case. We, therefore, reject the contention made on behalf of the appellant that the deceased was not a third party because he was an employee sitting in the car. It is obvious from the circumstances that the deceased was indeed a third party being neither the insurer nor the insured.

9. The next contention raised on behalf of the appellant is that the future prospects have been unreasonably granted to the

respondents. According to the appellant, the High Court noted that according to the appellant-company the deceased was 51 years but we find that no categorical finding was recorded that the deceased was 51 years of age. We, therefore, accept the finding of the Tribunal that the deceased was 49 years of age. It might therefore, not be necessary to consider the submission made by the appellant-company that because the deceased was above 50 years of age, the thumb rule laid down in the case of Sarla Verma vs. DTC reported in 2009 (6) SCC 121 ought to have been followed. We find from the observations relied on in Sarla Verma's case (supra) that there is a thumb rule that future prospects may not be awarded in case the deceased is above 50 years of age. This Court has observed as follows :

"....A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

10. We find that the High Court has rightly observed as follows:

"the deceased was holding the post of a Vice President and was due to be promoted as Managing Director thereby his income would have raised to 5.00 lacs per month (sic). Thus 30% had to be added to his income for future prospects as rightly done by the Tribunal."

There is, thus, no merit in this contention made on behalf of the appellant.

11. In the result, the appeal is liable to be dismissed and is dismissed accordingly.

12. However, It will be open to respondent No. 5, the mother of the deceased to take appropriate proceedings in respect of her alleged share in the compensation received by respondent Nos. 1 and 2.

13. The amount deposited in this Court

shall be released to respondent Nos. 1 and 2. Respondent No. 1 shall abide by the directions of the Tribunal relating to fixed deposit to be made in favour of herself and her son (respondent No. 2).

.....J.
[S.A. BOBDE]

.....J.
[L. NAGESWARA RAO]

NEW DELHI,
APRIL 18, 2017.

ITEM NO.10

COURT NO.9

SECTION XVIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 23853/2013

(Arising out of impugned final judgment and order dated 08/03/2013 in CIMA No. 303/2012 passed by the High Court Of J & K At Jammu)

NEW INDIA ASSURANCE CO. LTD

Petitioner(s)

VERSUS

SHANTI BOPANNA & ORS

Respondent(s)

(With interim relief and office report)

Date : 18/04/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE
HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s) Mr. Vishnu Mehra, Adv.
Ms. Manjeet Chawla, Adv.

For Respondent(s) Dr. Kylashnath Pillai, Sr. Adv.
Mr. G. Ananda Selvam, Adv.
Mr. Gopal Balwant Sathe, Adv.
Mr. Ram Sankar, Adv.

Mr. Gaurav Pachnanda, Sr. Adv.
Ms. Renu Gupta, Adv.
Mr. H. Maini, Adv.
Ms. Diksha Rai, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is dismissed in terms of the signed order.

[Charanjeet Kaur]
A.R.-cum-P.S.

[Indu Pokhriyal]
Court Master

[Signed order is placed on the file]