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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
FIRST APPEAL NO.214 OF 2015

The New India Assurance Co. Ltd. ...Appellant
vs.
Smt. Sonall @ Minal Ishwar
Pachpute & Others ...Respondents

Mr.S.M.Dange for the Appellant and the applicant
Mr. Sugandh Deshmukh for the respondent Nos.1 to 4.

CORAM : A.S.OKA, & REVATI MOHITE DERE, JJ.
DATE ON WHICH JUDGMENT IS RESERVED: AUGUST 10, 2015
DATE ON WHICH JUDGMENT IS PRONOUNCED:OCTOBER 29,2015

JUDGMENT : (PER A.S.OKA,J.)

1 The appellant has taken an exception to the Judgment and Award dated 2nd January 2014 passed by the learned Additional Member of the Motor Accident Claims Tribunal at Pune in a claim petition filed by the respondent Nos.1 to 4 under Section 166 of the Motor Vehicles Act,1988 (for short `the said Act'). One Ishwar P. Pachpute was travelling by a car on 8th November 2008 along with his relatives. The said Ishwar (hereafter referred to as `the deceased') left Pimpri at about 10.00 p.m on 7th November 2008 for going to Nashik. The deceased along with his other relatives were proceeding to Nashik to attend a condolence meeting of their relative. At about 2.30 a.m on 8th November 2008, the car by which the deceased was travelling was near Kaveri Cement Tiles at Sinnar, Nashik on Pune Nashik Highway. The case made out in the claim petition is that at that spot,

a truck was parked at the middle of the road. There were no indicators on the truck. There was no other signal displayed to show that the truck was parked. It was alleged that the road was hardly 20 feet wide. Half of the road was used for traffic coming from the opposite direction. The person who was driving the car could not notice the parked truck because of the darkness. Though the driver was taking all the precautions, as the truck could not be noticed by the driver of the car, it dashed against the rear side of the truck. As a result of impact of the accident, the bonnet of the car got stuck up in the truck. The deceased was sitting behind the driver. He sustained serious injuries and died on the spot.

2 The respondent No.5 herein who was the opponent No.1 in the Claim Petition is the owner of the truck and the appellant who was the opponent No.2 in the Claim petition was the insurer of the truck on the relevant date. The respondent No.7 herein who was the opponent No.3 in the Claim petition was the owner of the car and the respondent No.8 being the opponent No.4 in the Claim Petition was impleaded as the insurer of the car on the relevant date.

3 The respondent No.1 is the widow of the deceased and the respondent No.2 is his minor daughter. The respondent Nos.3 and 4 are the parents of the deceased. The appellant contested the petition. It was admitted by the appellant that the truck was validly insured with it on the date of

accident. However, it was contended that the truck was parked on the road after taking all precautions and after observing the rules of the traffic. It was contended that there was a signal/indicator displayed on the rear side of the truck to indicate that the truck was parked. The contention of the appellant is that the driver of the car was driving in a rash and negligent manner and the accident occurred due to negligence on the part of the driver of the car. Another contention raised by the insurer is that the driver of the truck was not holding a valid licence and the truck was not having fitness certificate. Therefore, breach of terms and conditions of the policy of insurance was alleged.

4 The owner of the car filed written statement and contended that the truck was parked in the middle of the road without displaying any indicator. His contention is that the car was being driven in a moderate speed and only because of the darkness, the parked truck was not visible. The insurer of the car filed a written statement opposing the claim. It was admitted that the car was insured with it on the relevant date.

5 The Tribunal after considering the evidence on record came to the conclusion that the claimants (respondent Nos.1 to 4) have proved that it was the driver of the truck who parked the truck without taking any precautions and hence, he was guilty of negligence. Therefore, the Tribunal held the owner and the insurer of the truck as jointly and

severally liable to pay compensation. The learned Member of the Tribunal came to the conclusion that the yearly income of the deceased was about Rs.2,00,000/-. The Tribunal added 50% of the amount towards prospects of increase in the income in future. Hence, the income was taken as Rs.3,00,000/- per year. Considering the number of dependents, the Tribunal made deduction of ¼ from the income on account of personal expenditure of the deceased. The Tribunal applied multiplier of 15 considering the fact that the age of the deceased at the time of accident was 38 years. After adding the total amount of Rs.2,25,000/- towards loss of consortium to the respondent no.1, loss of care and maintenance to the respondent No.2 and the funeral expenses, the total compensation of Rs.36,00,000/- was awarded by the Tribunal.

6 On 17th March 2015, this Court recorded the statement of the learned counsel for the appellant that the challenge in the appeal is confined only to the quantum of compensation. Therefore, notice for final disposal at admission stage was issued. As the challenge is only to the quantum of compensation, and as the Appellant has accepted that the offending truck was insured with it on the date of accident, it is not necessary to serve notice to the rest of the respondents. The learned counsel for the respondent Nos.1 to 4 has stated that the said respondents are not challenging the impugned Judgment and Award.

7 The learned counsel for the appellant pointed out that even according to the case of the respondent Nos.1 to 4, the business of the deceased was of running a Medical shop at Pune. He pointed out that on the basis of the income tax returns filed for the last three years, the learned Member of the Tribunal came to the conclusion that the yearly income of the deceased was of Rs.2,00,000/-. His submission is that the income of Rs.2,00,000/- taken on the basis of the income tax return is exorbitant. The learned counsel for the appellant relied upon the decision of the Apex Court in the case of Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another[1]. He pointed out that contrary to the law laid down in the said decision, though the deceased was self- employed, the learned Judge mechanically granted 50% increase in the income on account of future prospects of increase in the earnings. He invited our attention to the decision of the Apex Court of Bench consisting of three Hon'ble Judges in the case of Reshma Kumari and others Vs. Madan Mohan and another[2]. He urged that the Apex Court in the said decision held that in the cases where the deceased was self employed, actual income at the time of death without any addition to the income for future prospects should be appropriately taken into consideration and only in extraordinary circumstances and exceptional cases, the departure can be made with this rule. In substance, he

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1 (2009) 6 SCC 121

2 (2013) 9 SCC 65

submitted that the law is that in case of a deceased who was self employed person, while computing the income of the deceased for the purpose of granting compensation, future prospects of increase in the earnings should not be taken into consideration. The learned counsel submitted that apart from the fact that even the estimate of income of the deceased at Rs.2,00,000/- per year is exorbitant. He urged that in any case, 50% of the amount could not have been added towards the future prospects of increase in the income of the deceased.

8 The learned counsel for the respondent Nos.1 to 4 (original claimants) urged that no absolute proposition of law has been laid down that in case of self employed deceased, for the purpose of determining the income for computing compensation, additional amount cannot be considered towards future prospects of increase in the income. He urged that if there is a cogent evidence on record to show that there was every likelihood and strong possibility that the income of the deceased would have increased in future, allowance can be made for future prospects of increase in the income. In support of this proposition, he relied upon another decision of the Apex Court in the case of Rajesh and others Vs. Rajbir Singh and others[3]. He urged that in the said decision, the Apex Court has applied the ratio of the decision in the case of Sarla Verma even in the case of self employed deceased. He urged that in the present case, there is a strong

3 (2013) 9 SCC 54

evidence on record to prove the future prospects of increase in the earnings. He submitted that in any case, the income of the deceased on the date of the death would have been Rs.3,00,000/- as established by the evidence of Shri Nilesh Yeolekar, Chartered Accountant. He would urged that no fault can be found with the view taken by the Tribunal. His submission is that the compensation granted by the Tribunal is just and reasonable and hence, no interference is called for with the impugned Judgment and Award.

9 We have carefully considered the submissions and we have perused the record. Only two questions arise for consideration. One is about the income of the deceased on the date of accident as well as the correct multiplicand. The second question is whether in the facts of the case, any amount can be granted towards future prospects of increase in the earnings of the deceased.

10 As far as the first question is concerned, perusal of the record and the evidence on the aspect of income of the deceased is necessary.

11 The respondent No.1-the Widow of the deceased filed her affidavit in lieu of examination in chief. She stated that the deceased was a businessman. He was the owner of a medical shop under the name and style of M/s.Varad Medical and he was in the business for 15 years. She stated that the income from the business was growing every year. She stated

that the deceased was income tax payer for last four years. She stated that his income from the business as per the balance sheet for the assessment year 2008-2009 was Rs.2,48,409/-. She stated that the income increased by 18% from the income during the assessment year 2007-2008. We have perused her cross examination. She stated in the cross examination that after the unfortunate accident, the business of the deceased has been closed down. She admitted that she has not produced books of accounts of the business of the deceased. However, we find that there is no suggestion given in the cross examination challenging the statement of the respondent No.1 that her husband was in the business of running the medical store for last 15 years. There is no challenge to the statement that the deceased was the income tax payer for last 4 years and that his business was growing. A suggestion was given that the income of the deceased during the year 2008-09, as per the balance sheet, was Rs.2,48,409/-. She denied the correctness of the said suggestion.

12 The respondent Nos.1 to 4 also examined Shri Nilesh Yewalekar, a Chartered Accountant. He stated that the deceased was a young and smart businessman who was running a medical shop in the name and style of M/s. Varad Medical. He stated that the deceased was in the business for last 15 years and the business was steadily growing. He stated that he was engaged to file returns of the business since 2005-2006. He deposed about the income disclosed

in the returns of the financial year 2006-2007 (assessment year 2007-2008), financial year 2007-2008 (assessment year 2008-2009) and financial year 2008-2009 (assessment year 2009-2010). The income disclosed in income tax returns of the aforesaid three years was Rs.2,05,424/-, 2,48,409/- and 2,29,675/- respectively. He stated that the income of Rs.2,29,675/- was the income for the approximate period of nine months till the date of death of the deceased. According to him this income is for the period between 1st April 2008 till 8th November 2011(the date of the death of the deceased). He stated that by taking the said income of Rs.2,29,675/- as the income for nine months, the income of the full year would have been Rs.3,06,233/-. In the cross examination, he admitted that income tax return for the assessment year 2009-2010 was filed after the death of the deceased under the signature of the respondent No.1. In the cross examination, he stated that the business of the deceased has been closed down. A suggestion was given to him that the income shown in the return of the assessment year 2009-2010 was excessive with a view to secure higher compensation. He denied the correctness of the same. There is no challenge in the cross examination to the income reflected in the returns of the earlier two years. The copies of the income tax returns have been admitted in evidence at Exhibits-58 to 60.

13 We have perused income tax return at Exhibit-60 for the assessment year 2007-2008. It shows that

the place of business of the deceased was Shop No.6 in Regent Chambers, Opposite Garware College, Karve Road, Pune. Thus, a judicial notice can be taken that the shop of the deceased was in a very prime locality in Pune. The income shown in the said return is Rs.2,05,424/-. Income tax paid is Rs.19,153/- which is inclusive of interest of Rs.3406/-. Thus, after deducting income tax, income comes to Rs.1,83,041/-. The return for the assessment year 2008-2009 is at Exhibit-59 which again shows the same address of the place of business. The total income shown in the said return is Rs.2,48,409/-. Income tax paid is of Rs.14,424/- which includes interest of Rs.643/-. After deducting income tax, the net income comes to Rs.2,35,385/-. The said return has been filed on 30th September 2008. Both the said returns have been filed by the deceased. The return for the period between 1st April 2008 till the date of death of the deceased has been filed after the accident under the signature of the respondent No.1. The contention of the appellant is that as the said return is filed after the death of the deceased, it shows excessive/ inflated income only with a view to get more compensation. Surprisingly, such a suggestion was not given to the respondent no.1 in her cross examination who is the author of the said return as it bears her signature. The only suggestion given to her is that the income of the deceased during the year 2008-09, as per the balance sheet, was Rs.2,48,409/-. She denied the correctness of the same. It was not suggested to her that the income of

Rs. 2,29,675/- shown in the return for the period between 1st April 2008 till 8th November 2008 was an inflated income. If the said suggestion would have been given to her, she could have produced documents to substantiate the said income as shown in the return filed by her. Therefore, the income shown in the last return filed after the accident cannot be discarded. It is not necessary to ignore the income disclosed in the return filed after the death of the deceased in every case. It depends on facts of each case. In this case, the income shown in the last return cannot be ignored. Thus, as the income of Rs. 2,29,675 was earned by the deceased between the period from 1st April 2008 till 8th November 2008 (i.e the period of eight months and eight days- about 248 days), the income per day can be taken at Rs.926/-. Hence, the income for the period of 365 days can be taken at Rs.3,37,990/-. After deducting 10% on account of income-tax, the yearly income of the deceased can be reasonably taken at Rs.3,00,000/-. This is the income taken by the Tribunal after giving allowance to future prospects of the increase in income.

14 The Tribunal has committed an error by taking the yearly income of the deceased only at Rs.2,00,000/-. This appeal is the continuation of the application under section 166 of the said Act. Therefore, it is the duty of the Court to determine what is the just compensation payable to the claimants. Moreover, this Court can always correct such findings by exercising the power under Rule 33

of Order XLI of the Code of Civil Procedure, 1908. Thus, even without adding any component on account of the future prospects of increase in the earnings of the deceased, the income of the deceased on his death will have to be taken as Rs.3,00,000/- per year. Considering that there were four dependents, 25% amount is rightly deducted towards the personal expenditure of the deceased. Considering the fact that the age of the deceased was 38 years, multiplier of 15 has been rightly applied. Thus, the loss of dependency will be Rs.33,75,000/- (Rs.2,25,000/- multiplied by 15). After adding the total amount of Rs.2,25,000/- towards loss of consortium to the respondent no.1, loss of care and maintenance to the respondent No.2 and the funeral expenses, the total compensation of Rs.36,00,000/- with the interest at the rate of 9% was correctly awarded by the Tribunal. Therefore, even without adding any amount on account future prospects of increase in the earnings of the deceased, The compensation awarded under the impugned judgment and award is just and proper. Hence, the appeal deserves to be dismissed.

15 Hence, the second question need not be answered as it becomes academic.

16 Hence, we pass the following order:

(I) The Appeal is dismissed with no orders as to costs.

(ii) Civil application No.2350 of 2014 does not survive and the same is also disposed of.

(REVATI MOHITE DERE,J.) (A.S.OKA,J.)