IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1346 OF 2014
with
CAF/3993/2014
with
CAF/3204/2015

The New India Assurance Co. Ltd. ... Appellant

Vs.

Smt.Alka Kamlesh Shah & Ors. ... Respondents

Mr.D.S. Joshi for the Appellant
Mr.Vijay Kokitkar for Respondent Nos.1 & 2 and for Applicant in CAF/3204/2015

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **14th OCTOBER, 2015**

P.C.:

1. By this appeal, the judgment and order dated 5.9.2013 passed by the Chairman, Motor Accident Claims Tribunal, Mumbai in Application No.3187 of 2008 is challenged. It is a death claim under section 166 of the Motor Vehicles Act, 1988. The accident has taken place on 11.5.2008 when the husband of the Respondent No.1 and the father of respondent No.2 died when he was driving a car No.MZA 880 owned by respondent No.3. A luxury bus came from the opposite side and it dashed the vehicle.

2. He died in the accident. Hence, respondent Nos.1 and 2 filed claim application. Pursuant to the notices, the insurance company and the

owner appeared in the claim application. Respondent No.1 tendered evidence. Documents were also filed in support of the claim. After considering the oral and the documentary evidence produced by the parties, the learned Chairman of the Motor Accident Claims Tribunal, Mumbai partly allowed the claim and granted compensation of Rs.9,76,000/- inclusive of NFL amount alongwith interest @ 7.5% p.a. from the date of the application. Being aggrieved by the judgment and award, the insurance company has filed this appeal.

3. The challenge in this appeal is only on the point of quantum of the amount. The learned Counsel for the appellant insurance company has submitted that the Tribunal has wrongly fixed the salary of the deceased as Rs.7,500/- per month though no documentary evidence is tendered by the applicants on the point of his income. The learned Counsel has submitted that a notional income of Rs.3,000/- should have been considered. He further submitted that the Tribunal has erred in deducting $1/5^{th}$ portion of the salary towards personal expenses, when there were only two dependents. He submitted that it should have been $1/3^{rd}$ of the amount that ought to have been deducted towards the personal expenditure.

4. The learned Counsel for the respondents opposed the appeal and supported the order passed by the learned Chairman.

5. After perusal of the order and the other documents, it is found that the applicants have examined AW2 one Vinod Rajput with whom the deceased was employed as a Driver. He has deposed that he was having business of transport and he has employed the deceased as a Driver. Though he did not submit any documents disclosing his Income Tax returns or Sales Tax returns, the evidence of this AW2 Vinod Rajput is rightly relied on by the Tribunal. It is a common experience that when the Driver is appointed on a private vehicle, then, no record of his salary is kept. So, the salary fixed at Rs.7,500/- appears reasonable and that cannot be reduced.

6. However, there are two dependents and therefore, the submissions of the learned Counsel for the appellant that the deductions towards the personal expenses should have been 1/3rd of the income, is accepted. The compensation awarded on the other heads, that is, the loss of consortium, loss of estate is found adequate and thus, on taking salary per month at Rs.7,500/- less 1/3rd deduction i.e., Rs.2,500/-, the monthly dependency would come to Rs.5,000/-. The yearly salary would thus be Rs.60,000/- (Rs.5000 X 12). The deceased was between the age group of 45 to 50 years. Hence, the appropriate multiplier of 13 was taken into account and thus, Rs.60,000/- X 13 = Rs.7,80,000/-, which will be adequate. The amount of Rs.20,000/- towards the loss of consortium and

Rs.20,000/- towards loss of estate, totalling to Rs.40,000/- is to be added and the amount of the compensation comes to Rs.8,20,000/- instead of Rs.9,76,000/- with rate of interest @ 7.5% undisturbed. Thus, with the above order, the Appeal is partly allowed and they are directed to pay the above amount with interest @ 7.5% p.a.

7. The learned Counsel for the Insurance Company submits that it has deposited the entire amount. Hence, the insurance company has deducted the TDS. So, except TDS amount and the extra amount, which is deposited as per the judgment of the Tribunal, remaining amount is allowed to be withdrawn by the original applicant, after proving her identity.

8. First Appeal and the Civil Applications are disposed of accordingly.

(MRIDULA BHATKAR, J.)