

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 61 OF 2015
WITH CA/206/2015 IN FA/61/2015

ICICI Lombard Genera
Insurance Company Limited
Through its Legal Manager
At Adalat Road, Aurangabad

...Appellant

versus

1. Vishnudas s/o Pandu Malwad,
Age 46 years, Occ. Nil
2. Muktabai w/o Vishnudas Malwad
Age 41 years, Occ. Household
Both R/o. Selu, Tq. Renapur
District latur
(Ori. Claimants)
3. Rajabhau s/o Janardhan Dhakpade
Age major, Occ. Business,
owner of Vehicle No. MH-25-R-0897
R/o. Dhoki,
Tq. and District Osmanabad
4. Belapan s/o Bhaurao Kaste
Age major, Occ. Driver of Vehicle
No. MH-25-0897
R/o. Dhanora, Tq. Ausa,
District Latur
...Respondents

...
Advocate for Appellant : Mr. Choudhari Abhijit G
Advocate for Respondents 1 and 2: Mr. S.S. Shinde
Advocate for Respondent No.3 : Mr. D.S. Mali
.....

CORAM : V. K. JADHAV, J.
DATED : 14th JUNE, 2016

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award dated 26.8.2014,
passed by the learned Ex-Officio Member, M.A.C.T. Latur in

M.A.C.P. No. 82 of 2013, the original respondent No.3 insurer preferred this appeal to the extent of quantum.

2. Brief facts, giving rise to the present appeal, are as follows:-

a) On 03.02.2013, at about 10.30 p.m. deceased Sachin was riding his motor cycle bearing registration No. MH-14-6585 from Nilanga to Renapur. On way, within the limits of village Lodga, near Tondwali Mode, one Tata Indica car bearing registration No. MH-25-R-0897 came in high speed from opposite direction and gave a dash to the motor cycle of deceased Sachin by coming on wrong side. In consequence of which, deceased Sachin, who was riding the motor cycle and one Khalid, who was pillion rider, sustained multiple injuries. They were immediately taken to Civil Hospital Latur, where the Medical Officer, on arrival declared them dead.

b) The claimants/the parents of deceased Sachin preferred claim petition before the M.A.C.T. Latur for grant of compensation under various heads. It is contended that deceased Sachin died due to rash and negligent driving of car by respondent No.2, owned by respondent No.1 and insured with respondent No.3. Deceased Sachin was working as driver on monthly salary of Rs.7000/- p.m.

c) Respondent Nos. 1 and 2 have strongly resisted the claim petition by filing written statement. According to them, accident took place on account of rash and negligent driving of motor cycle by deceased. Respondent No.3 insurer has also strongly resisted the claim petition by filing written statement at Exh.22. It is contended that the deceased Sachin himself was responsible for his death. It is contended that he was driving the motor cycle in rash and negligent manner and in high and excessive speed. It is also contended that respondent No.2 has committed breach of condition of policy.

d) On the basis of rival pleadings of the parties to the claim petition, the learned Member of M.A.C.T. Latur framed issues and after considering the evidence led by the parties, the learned Member of Tribunal allowed the claim petition with costs and thereby directed the respondents to pay Rs.11,38,500/- jointly and severally to the claimants with interest. Hence, this appeal.

3. Learned counsel for the appellant-insurer submits that the claimants have failed to prove the salaried income of deceased Sachin. The Tribunal has committed error by relying upon oral evidence of son of so called employer of deceased Sachin and without any documents placed on record about salary being paid to the deceased, the tribunal has considered the income of deceased

Sachin as Rs.7000/- p.m. Even the Tribunal erroneously considered the future prospects of deceased Sachin and accordingly enhanced the income of deceased to the extent of 50% for computation of compensation. Learned counsel for the appellant, in order to substantiate his submissions, placed reliance on the following cases:-

- i. National Insurance Co. Ltd. Vs. Pushpa, reported in (2015) 9 SCC 166;***
- ii. Shashikala and Ors. vs. Gangalakshmamma and ors., reported in (2015) 9 SCC 150;***
- iii. Rajesh and others vs. Rajbir Singh and others, reported in (2013) 9 SCC 54***
- iv. National Insurance Co. Ltd. vs. Vaishali Harish Devare and Ors, reported in 2013 (4) Bom.C.R. 782***
- v. The New India Assurance Co. Ltd. vs. Smt. Alpa Rajesh Shah and Ors, reported in 2014 94) ALL MR 172.***

4. Learned counsel for the respondents-original claimants submits that the claimants have examined son of employer of deceased Sachin. The original employer of deceased Sachin is no

more and therefore, the claimants have examined his son. P.W.2 Abhishek has deposed that deceased Sachin was in his service as driver of the car and the said car was in the name of his father. He has further deposed that they were giving salary of Rs.7000/- p.m. to deceased Sachin. Deceased was in private job and usually in such private jobs, no record is maintained about the salary being paid to the driver employed for the purpose of driving the private car owned by the employer. The Tribunal has rightly considered the oral evidence of P.W.2 Abhishek and after considering the future prospects enhanced the actual income of deceased to the extent of 50% for computation of compensation. Deceased Sachin met with accidental death at young age and the tribunal has therefore, rightly considered his future prospects. Learned counsel submits that there is no substance in the appeal and the appeal is liable to be dismissed.

5. P.W.2 Abhishek has admitted in his cross examination that his father was paying salary to Sachin. He has further stated in his cross examination that they have not maintained the account of salary paid to Sachin and they have also not taken receipt from deceased Sachin for payment of salary. He has further admitted that deceased Sachin belongs to his community. It appears that he has deposed about the salary being paid to deceased Sachin on some higher side.

Deceased Sachin was serving as driver on private car and at the most he might be getting salary in between Rs.5000/- to Rs.6000/- considering the day to day activities of his employer. In absence of any documentary evidence, at the most, the salary of deceased Sachin can be considered to the extent of Rs.6000/- p.m. and no more than that. Deceased Sachin was 23 years old at the time of accident. The Tribunal has considered the actual income of deceased and enhanced the same by addition 50% for the purpose of computation of compensation by considering the future prospects. In the case of **Rajesh vs. Rajbir Singh** (supra) such addition in income by considering future prospects is also extended to self employed or a person on fixed wages.

6. It is true that in the case of **New India Assurance Co. Ltd. vs. Smt. Alpa Rajesh Shah, (supra)**, this court has observed that there is no prohibition on considering future prospects of increase in earning of deceased, who was self employed. However, claimants must produce satisfactory evidence to show that there were genuine prospects of increase in earning of deceased. In the case in hand, deceased Sachin was only 23 years old at the time of accident. He was having permanent driving licence to drive the light motor vehicle. Certified copy of the same is placed on record and marked Exh.42. I do not find any error in the impugned judgment and award in

considering the future prospects of deceased Sachin by the Tribunal.

7. In view of the above discussion, if the salary of deceased Sachin is considered as Rs.6000/- p.m. then recalculation of compensation is required to be done. Considering the addition of income to the extent of 50%, it can be said that there is loss of income to the extent of Rs.9000/- p.m. corresponds to Rs.1,08,000/- per year. From his yearly income, half of income is required to be deducted towards personal expenses of deceased Sachin. Thus yearly contribution to the family would be Rs.54,000/-. If this amount is multiplied by 18, the total compensation comes to Rs.9,72,000/-. It further appears that the tribunal has awarded very meager amount towards loss of estate, funeral expenses. It has come on record that after the accident, Sachin was taken to the Hospital at Latur where he was declared dead on arrival. Thus, the dead body thereafter brought to his village i.e. at Selu, Tq. Renapur. Thus, considering this aspects, Rs.25,000/- would be just and appropriate for funeral expenses. Further the Tribunal has awarded only Rs.2500/- for loss of estate. Considering the age of deceased Sachin, the same is increased by Rs.10,000/-. Thus, the claimants are entitled for total amount of Rs.10,07,000/-. The appeal succeeds to that extent. Hence, following order is passed:-

O R D E R

- I. The appeal is hereby partly allowed.
- II. The judgment and award dated 26.8.2014, passed by the Ex Officio Member, M.A.C.T. Latur in M.A.C.P. No. 82 of 2013 is modified in the following manner;-

“The original respondent Nos. 1 and 3 shall jointly and severally pay an amount of Rs.10,07,000/- (Rupees Ten lacs seven thousand only) inclusive of “no fault liability” under Section 140 of Motor Vehicles Act, with interest @ 7.5% p.a. from the date of petition till realization of entire amount.”
- III. Rest of judgment and award stands confirmed.
- IV. The award be drawn up in tune with the modification, as aforesaid,
- V. Appeal is accordingly disposed of. No costs.
- VI. Needless to add that the claimants are at liberty to withdraw the amount deposited by the appellant-insurer before the Tribunal.
- VII. In view of disposal of first appeal, civil application No. 206 of 2016 is also disposed of.

(V. K. JADHAV, J.)