IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 3267 OF 2015
IN
CIVIL APPLICATION NO. 12949 OF 2016

Reliance General Insurance Co.
through Its Manager … Appellant
Vs.
Nikhil Devidas Avhad & Anr. … Respondents

Mr. S.S. Patil, Advocate for the Appellant.
Mr. P.B. Shirsath, Advocate for respondent no.1.

CORAM : A.V. NIRGUDE, J.
DATE : 26-09-2016.

Per Court :

1. Admit.

2. This is insurance company's appeal challenging the judgment and award dated 24-08-2015 passed by the learned Member of Motor Accident Claims Tribunal, Ahmednagar in M.A.C.P. No. 713 of 2011 in which respondent no.1 was the claimant. I will refer the parties as per their designation in the lower court. The facts leading to the litigation in short can be stated as under:

3. On 02-08-2011 applicant and his friend Pravin were riding a motor cycle. Applicant was sitting on pillion seat. Their motorcycle met with an accident with the offending vehicle a motor truck. Due to the accident applicant sustained serious injuries to his right hand. During the treatment his hand was required to be amputated. Applicant was 17 years old at the time of accident, on one side the Police registered offence against the driver of the truck, on the other, the applicant rushed to accident tribunal with his claim petition. At the time of trial, the applicant could succeed to prove that it was the truck driver who was principally responsible

for the accident. On the other hand, the insurance company tried to suggest that there was breach of insurance company of the offending truck contended that there was a breach of policy condition. The learned member held that there was no breach of policy condition and thereafter the learned member went on to calculate the amount of compensation.

4. Learned counsel for the appellant-insurance company conceded that, the finding of the tribunal about breach of policy condition is not now in dispute and he would not press that issue further. However, he asserted that the learned member erred in selecting multiplier for calculating compensation. Learned counsel for the appellant secondly contended that, in the facts of this case the learned member could not have awarded compensation on account of loss of future prospects.

5. Which multiplier is applicable in this case? The learned member chose 19 as multiplier and he mentioned that he chose that multiplier as per the judgment of supreme court in the case of **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr.** reported in **AIR 2009 SC 3104**. On perusal of the judgment of **Smt. Sarla Verma**, I found that, the chosen multiplier of 19 was erroneous. The supreme court in the judgment of **Smt. Sarla Verma** *inter alia* discussed at length as to how and what multiplier should be chosen. The supreme Court took into account earlier judgment of supreme court in the case of **General Manager, Kerala State Road Transport Corporation Vs. Susamma Thomas** reported in **1994 (2) SCC P.176**, judgment in the case of **U.P. State Road Corporation Vs. Trilok Chandra** reported in **1996 (4) SCC P. 362**, judgment in the case of **New India Assurance Co. Ltd. Vs. Charlie** reported in **2005 (10) SCC P. 720**. The supreme court then clarified as to which multiplier scale in **Trilok Chandra's** judgment is applicable through the judgment

of supreme court in the case of **Charlie**. Following is the chart taken from the supreme court judgment:

Age of the deceased	Multiplier scale as envisaged in Susamma Thomas	Multiplier scale as adopted by Trilok Chandra	Multiplier scale in Trilok Chandra as clarified in Charlie	Multiplier specified in second column in the Table in II Schedule to MV Act	Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation)
1	2	3	4	5	6
Upto 15 yrs.	-	-	-	15	20
15 to 20 yrs.	16	18	18	16	19
21 to 25 yrs.	15	17	18	17	18
26 to 30 yrs.	14	16	17	18	17
31 to 35 yrs.	13	15	16	17	16
36 to 40 yrs.	12	14	15	16	15
41 to 45 yrs.	11	13	14	15	14
46 to 50 yrs.	10	12	13	13	12
51 to 55 yrs.	9	11	11	11	10
56 to 60 yrs.	8	10	9	8	8
61 to 65 yrs.	6	8	7	5	6
Above 65 yrs.	5	5	5	5	5

6. The supreme Court, thus, decided that in case the age of the deceased is between 15 to 20, the applicable multiplier would be 18 though multiplier actually used in second schedule of Motor Vehicle's Act is 19. In view of this judgment, there appears an apparent error in the impugned judgment and this error deserves to be corrected at this stage.

7. The issue of future prospects is still under active consideration of the supreme court. In any case, supreme court has not ruled that, in case of a non-salaried person compensation under such head is not permissible. The learned Member having regard to the age of the victim held that, he has suffered loss due to reduction in future prospects. As said above, respondent-victim

was a pillion rider, he was about 17 years old and for no fault on his part he suffered such a ghastly injury due to which he has lost permanently one limb. Implication on the future of the victim of such loss can certainly be assessed. One of the factors that would figure out is that due to loss of one limb the victim would not be able to under take number of vocations that require use of both the hands.

In that view, I agree, with the learned Member when he also assessed compensation for loss of future prospects.

8. The appeal should therefore succeed partly. I am only inclined to reduce the multiplier form 19 to 18, the other calculation and the amounts awarded under other heads shall remain unchanged. There shall be new award. The new calculation shall read as under:

Towards permanent disability 80% (4,500 x 12 x 18)	**Rs. 7,77,600/-**
Towards medical bill & medicines	Rs. 75,623/-
Towards special diet	Rs. 4,000/-
Towards travelling	Rs. 3,000/-
Towards attendant	Rs. 4,000/-
Towards pain and suffering	Rs. 1,00,000/-

Total	**Rs. 9,64,223/-**
Round up	**Rs. 9,64,300/-**

9. New award shall be made accordingly. Amount as per the new award shall be disbursed in terms of the award to the respondent, if any excess amount is deposited the same shall be refunded to appellant-insurance company. The amount shall be sent to the tribunal where Regular Darkhast No. 98 of 2015 is pending. The other condition imposed in the award shall remain intact. Civil applications disposed of.

(A.V. NIRGUDE)
JUDGE

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