IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 3209 OF 2016
WITH
CIVIL APPLICATION NO. 12106/2016

Reliance General Insurance Company,
Through its Manager,
C/o Reliance General Insurance Company,
Adalat Road, Aurangabad … Appellant

Vs.

1. Sangita Ravindra Joravar,
Age: 28 yrs, Occ. Household,

2. Vrushali D/o Ravindra Joravar,
Age: 9 yrs, Occ. Nil

3. Vaishali D/o Ravindra Joravar,
Age: 7 yrs, Occ. Nil

4. Bhaskar Somaji Joravar,
Age: 67 yrs, Occ. Nil

5. Suman Bhaskar Joravar,
Age: 61yrs, Occ. Household,
No.2 and 3 are minors under
guardianship of their mother
Ori.claimant no.1.
All R/o Newasa, Tq. Newasa,
Dist. Ahmednagar.

6. Bhiku P. Agrawal,
Age: Major, Occ. Business,
R/o Plot No. 355, Ward No. 12/B,
Gandhidham, Kutch, Gujarat.

7. Chadraman Kumar Gopalsinha (Deleted) … Respondents

Mr. S.S. Patil, Advocate for the Appellant.
Mr. Ram B. Deshpande, Advocate for the respondents.

CORAM : P.R. BORA, J.
DATE : 15-10-2016.

ORAL JUDGMENT :

1. The present appeal is filed against the judgment and award passed by the Motor Accident Claims Tribunal at Newasa in M.A.C.P. No. 172 of 2014 on 06.05.2016.

2. The aforesaid claim petition was filed by respondent nos. 1 to 5 (hereinafter referred to as claimants) herein claiming compensation on account of the death of Ravindra Joravar in a vehicular accident happened on 20.08.2010, having involvement of a tanker bearing registration no. GJ-12-Y-8951 owned by present respondent no.6 and insured with the present appellant. The learned tribunal after having considered the oral and documentary evidence brought on record before it awarded the compensation of Rs. 10,02,600/- to the claimants jointly and severally from the owner and insurer of the offending tanker. Aggrieved by the insurance company has filed the present appeal.

3. Mr. Swapnil Patil, the learned counsel appearing for the appellant-insurance company assailed the impugned judgment mainly on two grounds. According to the learned counsel, the claimants have not brought on record any cogent and sufficient evidence as about the income of deceased Ravindra. The learned counsel inviting my attention to certain observations made by the tribunal submitted that, even the tribunal has observed that there

was no concrete evidence as about the income of deceased Ravindra. The learned counsel submitted that, though, it was the contention of the claimants that deceased Ravindra was carrying the business of selling milk, they did not bring on record any cogent evidence to prove the income of the deceased. Learned counsel submitted that, placing on record the account extract of the bank account in the name of deceased was not sufficient to prove the income of the deceased. The learned counsel submitted that, the tribunal has erred in holding the income of the deceased Ravindra to the tune of Rs. 4,000/- per month.

4. On the basis of such evidence, the learned counsel further submitted that, when the income of the deceased itself was not proved satisfactorily and there was no concrete evidence as about the income of the deceased there was no reason to increase the income of the deceased on notional basis on account of the future prospects. Learned counsel submitted that, unless there is a very specific and concrete evidence from the side of the claimants proving the prospects of the deceased the income of the deceased cannot be increased even notionally on the count of future prospects and no compensation can be determined on the basis of such increased income. The learned counsel further submitted that, as per the age of deceased Ravindra i.e. 26 years the appropriate multiplier is of 17, whereas, the tribunal has applied the multiplier of 18. The learned counsel submitted that, on this count also the

impugned award needs to be modified.

5. Shri Deshpande, the learned counsel appearing for the original claimants, supported the impugned judgment and award. The learned counsel submitted that, by examining an employee from the bank in which the deceased was maintaining his account and used to deposit the payment received to him by way of sale of milk. The claimants have sufficiently proved the income of the deceased. The learned counsel submitted that, as per the evidence so produced on record by the claimants infact the tribunal ought to have held the income of deceased on higher side. The learned counsel submitted that, deceased Ravindra was having bright future prospects in the business of selling milk. The learned counsel submitted that, considering these aspects, the tribunal has rightly increased the income of the deceased by 20% and has accordingly determined the amount of dependency compensation on the basis of the said income.

6. As about another objection raised by the insurance company about the application of multiplier, the learned counsel was fair enough in submitting that, the compensation was liable to be calculated in the present matter by applying multiplier of 17 and to that extent the claimants may not have any objection if the award is modified.

7. I have carefully considered the submissions advanced

by the learned counsel appearing for the respective parties. On perusal of the judgment it is revealed that, the tribunal, though, has observed that the claimants did not produce on record any concrete evidence as about the income of deceased Ravindra. The tribunal, has further observed that, the bank entries of the account maintained in the name of deceased Ravindra sufficiently demonstrate the average income of the deceased Ravindra. Considering the evidence as aforesaid, the tribunal, has held the income of deceased Ravindra to the tune of Rs.4,000/- per month. It does not appear to me that, the income of the deceased so held by the tribunal can be in any case said to be arbitrary or on higher side.

8. The tribunal has further observed that, considering the age of deceased it was likely that in the future he would have developed his business of selling milk and, as such, the tribunal has increased the income of deceased by 20% while determining the amount of dependency compensation. Though, the learned counsel for the insurance company was very persuasive in submitting that, in absence of any evidence as about the income, future prospects could not have been considered by the tribunal, having regard to the evidence on record, it does not appear to me that, the tribunal has committed any error in notionally increasing the income of the deceased considering his future prospects. On the contrary what I noticed is that the tribunal has very moderately increased the

income of deceased by considering the future prospects. I, therefore, do not see any reason to cause interference in the finding so recorded and the income so determined of the deceased for the purpose of determining the amount of dependency compensation.

9. The other objection raised on behalf of the appellant-insurance company as about the application of wrong multiplier certainly deserves consideration and the award certainly needs to be modified to that extent. The learned counsel for the claimants was fair enough in conceding that, in the present matter multiplier of 17 ought to have been applied.

10. The tribunal has held the income of the deceased to the tune of Rs. 4,000/- and, accordingly, held the dependency of the claimants on the income of the deceased to the tune of Rs. 36,000/- per annum. By applying the multiplier of 18 to the said amount, the tribunal, had determined the amount of dependency compensation to the tune of Rs. 6,48,000/-, as stated herein above the appropriate multiplier to be applied in the instant case was of 17, by applying the said multiplier the amount of dependency compensation comes to Rs. 6,12,000/-, by adding 20% amount in the said compensation considering the future prospects of deceased Ravindra the amount gets increased to Rs. 7,34,400/-. In so far as the compensation awarded by the tribunal towards non pecuniary damages is concerned, I do not see any reason to cause any

interference n the amount so awarded. The claimants are, thus, held entitled for the total compensation of Rs. 9,59,400/- instead of Rs. 10,02,600/- as awarded by the tribunal in the impugned award.

11. The impugned award, therefore, needs to be modified to the aforesaid extent. Save and except the modification in the amount of compensation as aforesaid the other part of the order passed by the tribunal is maintained as it is. The appeal, thus, stands allowed to the aforesaid extent, modified award be prepared accordingly. The original claimants are permitted to withdraw the amount as per the modified award in terms of the original award. Balance amount be refunded to the appellant-insurance company. Pending civil application, if any, stands disposed of.

(P.R. BORA)
JUDGE

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