

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 108 OF 2009
WITH
CIVIL APPLICATION NO. 482 OF 2009
IN FA/108/2009

Bajaj Allianz General Insurance Co. Ltd.
Through it's Branch Manager,
2nd Floor, Adalat Road,
Aurangabad.

... Appellant
(Orig. Resp. No.2)

Versus

1. Rekha W/o Laxmanrao Devkare,
Age : 40 years, Occu : Household,
R/o Plot No.16, Vazirabad, Nanded
At present R/o Deolgaon Raja,
Khakpurnal Colony,
District Buldhana.
2. Laxmanrao S/o Nagorao Devkare,
Age : 52 years, Occu : Service,
R/o As above.
3. Tushar Agrawal,
Age : Major, Occu : Business,
R/o Plot No. 60, Raikar Bhavan,
Sector-17, Vashi,
Navi Mumbai-400 703.

... Respondents
(Respdt.Nos.1&2-Org. Claimants,
Respdt.No.3-Org.Respdt No.1)

.....
Advocate for the appellant : Mr. S G Chapalgaonkar
Advocate for respondent Nos. 1 and 2 : Mr. D. Y. Nandedkar
.....

WITH
FIRST APPEAL NO. 36 OF 2009

1. Rekha w/o Laxmanrao Deokar,
Age 40 years, Occu. Household,

2. Laxmanrao s/o Nagorao Deokar,
Age 52 years, Occu. Service,

Both R/o Plot No.16, Vazirabad, Nanded,
Taluka and District Nanded.

... Appellants
(Orig. Claimants)

Versus

1. Tushar Agrawal,
Age Major, Occu. Business,
R/o Plot No. 60,
Raikar Bhavan, Sector-17,
Vashi, Navi Mumbai – 400 703.

2. Bajaj Allianz General Insurance Co. Ltd.,
2nd Floor, Rajendra Bhavan,
Near L.I.C. Building,
Adalat Road, Aurangabad – 431 001.

... Respondents
(Orig. Opponents)

.....
Advocate for the appellants : Mr. D. Y. Nandedkar
Advocate for respondent No. 2 : Mr. S G Chapalgaonkar
.....

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

ORAL JUDGMENT:-

1. Heard finally with consent of learned counsel for the respective parties.

2. Being aggrieved by the Judgment and Award dated 29.08.2008 passed by learned Ad-hoc District Judge-1, Nanded in MACP No.660 of 2006, the claimants have preferred First Appeal No.36 of 2009 for enhancement of compensation, whereas, the

insurer has preferred First Appeal No. 108 of 2009.

3. Since both the appeals have arisen out of the same award, they are heard together and decided by this common judgment.

4. Brief facts giving rise to the present appeals are as under :

a) On 15.01.2006, deceased Sushilkumar, along with his friends, was going to Sahara City at Ambewadi to observe sunset on a Bajaj Pulser motor bike bearing registration No. MH-12-CW-2312. At 5.30 a.m., they reached near Sahara City and parked their motor bikes by the side of the road. They were waiting for their other friends to arrive. At that time, one Tata Indica Car bearing registration No. MH-43-A-4520, owned by respondent No.1 and insured with respondent No.2, came in very high speed, in rash and negligent manner and gave dash to deceased Sushilkumar and one Pratik. In consequence of which, both of them suffered severe injuries. Deceased Sushilkumar was immediately shifted in one private hospital at Lonawala, however, he succumbed to the injuries in the said hospital while under treatment. Deceased Sushilkumar was the only son of the claimants. He was studying in first year Law Course in ILS Law College at Pune. He was a meritorious student and was also possessing number of additional qualifications. He was also

doing part-time job on monthly salary of Rs.3,000/-. The claimants, who are the parents of deceased Sushilkumar, preferred MACP No.660 of 2006 before the Motor Accident Claims Tribunal, Nanded for grant of compensation under various heads.

b) Respondent/insurer resisted the claim petition by filing written statement Exh.16. Respondent/insurer has denied the contention raised in respect of age, occupation and monthly salary of deceased Sushilkumar. It is also denied that the accident has occurred because of rash and negligent driving of the said motor vehicle Indica car. It is also contended that the driver of said motor vehicle India car was not holding valid and effective driving license at the time of accident, and therefore, there has been breach of policy conditions on the part of respondent/driver. It is also contended that the claim is highly excessive and exorbitant.

c) Respondent No.1 had not appeared before the Tribunal and therefore, the claim petition was ordered to proceed *ex-parte* against him.

d) Learned Member of the Tribunal, after considering the oral and documentary evidence on record, partly allowed the claim petition with proportionate costs and thereby directed the respondents to

jointly and severally pay Rs.4,99,500/- to the claimants towards compensation under Section 166 of the Motor Vehicles Act, with interest at the rate of 9% per annum from the date of filing of the claim petition till its complete realization. Being aggrieved by the same, as aforesaid, the claimants as well as the insurer have preferred these two separate appeals.

5. Learned counsel for the original claimants submits that the Tribunal has not considered the income of deceased Sushilkumar. Learned Member of the Tribunal has also not considered the future prospects of deceased Sushilkumar. Learned Member of the Tribunal has, therefore, failed to make an addition to the income of deceased Sushilkumar by considering his future prospects. The Tribunal has awarded very meager amount under the non-pecuniary heads.

6. Learned counsel for the respondent/insurer submits that even though deceased Sushilkumar was a non-earning member, the Tribunal has considered his notional income as Rs.4,000/-. Furthermore, the Tribunal has committed error in deducting 1/3rd amount of his income towards personal expenses instead of 1/2 since deceased Sushilkumar was a bachelor at the time of accident. There is no question of considering future prospects since deceased

was not earning anything and he had appeared for the first year of LL.B. course only. The Tribunal has awarded excessive amount and therefore, recalculation of compensation is required to be done.

7. On perusal of the record and proceedings, it appears that deceased Sushilkumar had appeared for the first year of New Five Year Law Course (Semester Pattern) from ILS Law College, Pune, University of Pune. He had a Diploma in MS-Office and had also passed Elementary Grade Drawing Examination. He was also declared to be the best Scout Student. Furthermore, he had also passed I.T. Stars Scholarship Examination in the year 2004. In addition to this, there are various sports certificates placed on record. All the said certificates are marked at Exh.37 to Exh.50 respectively. Deceased Sushilkumar was the only son of the claimants. He was also doing part-time service at Pune on monthly salary of Rs.3,000/-. He had secured first class in the Secondary Certificate Examination. In light of the above, the Tribunal ought to have added amount to the income of deceased Sushilkumar by considering future prospects. Furthermore, it also appears that the Tribunal has committed error in deducting $\frac{1}{3}^{\text{rd}}$ amount towards personal expenses of deceased Sushilkumar instead of deducting $\frac{1}{2}$ of the amount as he was a bachelor at the time of his accidental death. Learned Member of the Tribunal has further erroneously applied multiplier 15 instead of 18 as

deceased Sushilkumar was 19 years old at the time of his accidental death. It further appears that the Tribunal has awarded meager amount under the non-pecuniary heads as well. In view of the above, recalculation of compensation is required to be done.

8. Thus, considering the income of deceased Sushilkumar and by addition in his income towards future prospects, it would be just and reasonable to consider the loss of future income to the tune of Rs.5,000/- per month, corresponding to Rs.60,000/- per annum. Out of the said amount of Rs.60,000/-, after deduction of 1/2 amount towards personal expenses and after applying multiplier 18, the loss of future income comes to the tune of Rs.5,40,000/-. In addition to this, the claimants are also entitled for an amount of Rs.50,000/- for loss of love and affection instead of Rs.15,000/- as awarded by the Tribunal. Further, the claimants are also entitled for an amount of Rs.10,000/- towards funeral expenses.

9. Thus, the break up of compensation under various heads, which can be broadly categorized as under :

1. Loss of future income	Rs.5,40,000=00
2. Loss of love and affection	Rs.0,50,000=00
3. Funeral expenses	Rs.0,10,000=00
4. Loss of estate (as awarded by the Tribunal)	Rs.0,02,500=00

Total Rs.6,02,500=00

The claimants are thus, entitled for compensation of Rs.6,02,500/-. Hence I proceed to pass the following order:

ORDER

- I. First Appeal No. 108 of 2009 (Bajaj Allianz General Insurance Co. Ltd. v/s Rekha w/o Laxmanrao Devkare and others) and First Appeal No. 36 of 2009 (Rekha Laxmanrao Devkare and another v/s Tushar Agrawal and another) are hereby partly allowed.
- II. The judgment and award dated 29.08.2008 passed by the Adhoc District Judge-1, Nanded in MACP No. 660 of 2006 is hereby modified in the following manner:

“Respondent Nos. 1 and 2 shall jointly and severally pay Rs.6,02,500/- to the petitioners towards compensation under Section 166 of the Motor Vehicles Act, inclusive of NFL amount already paid, with interest at the rate of 9% per annum, from the date of filing of the petition till realization of the entire amount.”
- III. Rest of the Judgment and Award dated 29.08.2008 passed by the Adhoc District Judge-1, Nanded in MACP No. 660 of 2006 stands confirmed.
- IV. Parties to bear their own costs.

- V. Award be drawn up in tune with the modification as aforesaid.
- VI. Both the First Appeals are accordingly disposed of.
- VII. In view of disposal of First Appeals, nothing survives in pending Civil Application No. 482 of 2009 and the same also stands disposed of.

(V. K. JADHAV, J.)

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