IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.885 OF 2015

The New India Assurance Co. Ltd.]
Branch Manager, Hutatma Complex,]
Park Chowk, Solapur through Mumbai]
Regional Office-I, New India Bhavn,]
2nd Floor, 34/38, Bank Street, Fort,]
Mumbai-400 023].. Appellant

Versus

1. Sunita Sunil Kangude,]
Aged about 36 years,]

2. Sumeet Sunil Kangude,]
Aged about 12 years,]

3. Siddhi Sunil Kangude,]
Aged about 9 years,]

4. Samiksha Sunil Kangude,]
Aged about 7 years,]
Respondent nos.2, 3 and 4 minors]
hence through natural guardian]
mother Respondent no.1 herein.]
All above R/o. C/o. Rachandra]
Mane, Kaman, Taluk-North]
Solapur, Dist : Solapur.]

5. Chidgupkar Mohd. Arif A. Hamid,]
R/o. 9, Ambika Nagar,]
Majarewadi, Solapur.]

6. Sakhubai Annasaheb Kangude,]
Aged about 66 years,]

7. Annasaheb Bajaba Kangude,]
Aged about 71 years,]
Both R/o Pangaon, Tal-Barshi,]
Dist: Solapur].. Respondents

Mr. S. S. Jinsiwale for the Appellant.
Mr. R. S. Alange for the Respondent Nos.1 to 4.

CORAM : R.M. SAVANT, J.
DATE : 8th AUGUST 2016

ORAL JUDGMENT

1 Admit. Considering the nature of the challenge raised heard forthwith.

2 The above First Appeal raises a challenge to the judgment and order dated 11.09.2014 passed by the Learned Member of the Motor Accident Claims Tribunal, Solapur ("MACT" for short), by which order, the Motor Accident Claim Petition No.122 of 2013 ("MACP" for short) came to be partly allowed and the Opponent Nos.1 and 2 were jointly and severally held to pay an amount of Rs.30,09,600/- alongwith interest at

the rate of 9% per annum from the date of petition i.e. 01.08.2013 till realization of the amount together with proportionate interest. The MACT has thereafter apportioned the amount by issuing further directions which are contained in clauses 3A and 3B of the operative part.

3 The facts giving rise to the above First Appeal can in brief be stated thus :-

The deceased one Sunil Annasaheb Kangude was involved in an accident which took place on 22.03.2013. The said Sunil Kangude was riding a motorcycle from Pangaon to Vairag which was given a dash by one Sumo Jeep bearing registration No. MH-13/B-2744 which was coming from the opposite direction. Due to the said dash Sunil Kangude sustained serious injuries and died on the spot. It seems that thereafter an FIR was registered by the local police i.e. Vairag Police Station in respect of the said accident. The Respondent Nos.1 to 4 who are the Claimants filed the instant claim Petition being MACP No.122 of 2013 claiming an amount of Rs.50,00,000/- as compensation. The said claim was founded on the fact that said Sunil Kangude was 39 years old at the time of his death and working as a peon in a local school and that he was getting salary of Rs.17,531/- per month. It was also the case of the Petitioners that Sunil Kangude was having a tractor and milching cows and she buffaloes. It was their case that Sunil Kangude was earning Rs.10,00,000/- per annum from agricultural income and Rs.1,00,000/- from tractor.

4 The Opponent No.1 i.e. the Respondent No.5 though served did not appear.

5 The Opponent No.2 i.e. the Appellant herein the New India Assurance Co. Ltd. filed its written statement and denied the allegations made in the MACP. It was the case of the Insurance Company that the accident had occurred on account of the rash and negligent driving of the said Sunil Kangude. The maintainability of the MACP was also challenged on the ground of non-joinder of necessary parties. It was also the case of the Insurance Company that the vehicle in question i.e. Sumo Jeep was not having valid fitness certificate and the driver was not having effective driving licence and therefore there was breach of the conditions of the policy, the age of the deceased was also sought to be disputed.

6 The Trial Court on the basis of the pleadings on record framed the following issues :-

> “1. Whether the death of Sunil Annasaheb Kangude was caused on account of accident dated 22.03.2013 arising out of the use of Sumo Jeep bearing No. MH-13/B-2744 ?
>
> 2. Whether the accident was caused due to rash and negligent

driving of the Sumo Jeep bearing No. MH-13/B-2744 by its driver ?

3. Whether the petitioners are entitled to compensation ? If yes, to what amount and from whom ?

4. What order and decree ?”

7 In so far as evidence is concerned, the Claimants adduced the evidence of the Claimant No.1. The Claimants also produced documents in the form of the motor accident report Exh.46, copy of the FIR Exh.47, copy of the complaint dated 23.03.2013 filed by Police Naik Sahdeo Machhindra Jagdale, copy of the inquest panchanama Exh.50 and copy of the postmortem report Exh.51. The MACT on the basis of the report as also the FIR, recorded a finding that the accident had occurred on account of the rash and negligent driving by the driver of the Jeep on account of which dash was given to the motorcycle of Sunil Kangude. The MACT further recorded a finding that Sunil Kangude had died in view of the serious injuries that he had suffered to the head.

8 In so far as the issue of compensation is concerned, the MACT has adverted to the 7/12 extract of the agricultural lands Gat No.821, 851 and 852 situated at Pangaon which documents were marked as Exh.62 to 64. The MACT has also adverted to the evidence of one Vijay Bhagwantrao Gaikwad at Exh.38 whose evidence was to the effect that he was serving

as a clerk in the sugar factory in the year 2012-13 and the deceased Sunil Kangude had sent sugarcane worth Rs.2,46,897/- to the said sugar factory. The MACT in view of the fact that after the death of Sunil Kangude the said lands were already inherited by the Claimants did not deem it appropriate to consider the income from agriculture. The MACT in so far as Sunil Kangude's income from employment is concerned by relying upon the evidence which was on record came to a conclusion that Sunil Kangude's net salary would be Rs.17,000/- per month and thereafter deducting 1/4th of the amount came to a conclusion that the total loss of salary to the Claimants is Rs.12,750/- per month and the total annual loss of income to the Claimants is Rs.1,53,000/-. Reliance was placed on the judgments of the Apex Court reported in ***2009(6) SCC 121*** in the matter of ***Sarla Verma Vs. DTC*** as also ***(2013) 9 SCC 54*** in the matter of ***Rajesh and others Vs. Rajbir Singh and others***, wherein the Apex Court has held that for persons in the age group of 40 to 50 years, there should be addition of 30% towards loss of future prospects. The MACT therefore on the said basis calculated the annual loss to the Claimants as being Rs.1,53,000/- + Rs.45,900/- = Rs.1,98,900/- and by applying the multiplier of 14 as Sunil Kangude was in the age group of 40 to 50 calculated total dependency in the sum of Rs.27,84,600/-. In the light of the judgment of the Apex Court in *Rajesh*'s case (*supra*), an amount of

Rs.25,000/- towards funeral expenses, Rs.1,00,000/- for loss of consortium and Rs.1,00,000/- for loss of love and affection and guidance for minor children have to be added and therefore, awarded the total amount of Rs.30,09,600/- and on the said amount awarded the interest at the rate of 9% per annum from the date of the Petition i.e. 01.08.2013 till realization. As indicated above, it is the said judgment and order dated 11.09.2014 passed by the MACT, Solapur, which is taken exception to by way of the above First Appeal.

9 The Learned Counsel appearing on behalf of the Insurance Company i.e. Appellant would contend that though in the Memo of Appeal there are various grounds, the impugned judgment and order passed by the MACT, Solapur, is challenged on the ground that the MACT had erred in calculating and awarding future prospects at the rate of 30% to the Claimants. It was the submission of the Learned Counsel that the deceased was in a private employment and therefore future prospects could not have been taken into consideration.

10 Per contra, the Learned Counsel appearing on behalf of the Respondent Nos.1 to 4 would support the computation on the basis of the future prospects at 30%. It was the submission of the Learned Counsel that having regard to the judgments of the Apex Court in *Rajesh*'s case

(*supra*) and ***Munna Lal Jain & anr. Vs. Vipin Kumar Sharma & ors***. reported in ***2015(4) Bom.C.R. 72,*** even in respect of private employment the loss of future prospects would have to be taken into account.

11 Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, the MACT, Solapur, has on the basis of the evidence on record, came to a conclusion that it is on account of the rash and negligent driving of the driver of the vehicle i.e. Sumo Jeep bearing registration No. MH-13/B-2744 that the accident had occurred and that the deceased had expired on account of the serious injuries that he had suffered to his head in the said accident. The MACT, Solapur, has also on the basis of the material on record which was the salary certificate as also the oral evidence of the Headmaster of the school has recorded a finding that the deceased Sunil Kangude was working as a peon and was drawing salary of Rs.17,000/- per month. The MACT thereafter in terms of *Sarla Verma*'s case (*supra*) has deducted $1/4^{th}$ of the amount towards personal expenses as also added 30% towards future prospects. As indicated above, the grievance of the Insurance Company is as regards the Award of 30% on account of loss of future prospects and the said challenge is sought to be justified by contending that Sunil Kangude being employed privately, there could not have been loss of future prospects. In the light of the judgments of the Apex Court in

Rajesh's case (*supra*) as also *Munna Lal Jain*'s case (*supra*), the said contention cannot be countenanced. A useful reference could be made to paragraph 11 in *Munna Lal Jain*'s case (*supra*). The said paragraph reads thus :-

> "11. As far as future prospects are concerned, in (*Rajesh and others Vs. Rajbir Singh and others*), 2013 B.C.I. (soft) 331 (S.C.): 2013(9) S.C.C. 54 a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote :
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> > "8. Since, the Court in *Santosh Devi* case actually intended to follow the principle in the case of salaried persons as laid down in *Sarla Verma* case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In otherwords, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."
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> The deceased being of the age of 30 years, 50% is the required addition."

11 Hence the issue of loss of future prospects in case of self employed persons and the percentage at which it is to be calculated is set

at rest by the Apex Court. Since the challenge is restricted to the aforesaid aspect, there is no merit in the above First Appeal which is accordingly dismissed.

[R.M. SAVANT, J]