Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 929 OF 2015

The New India Assurance Co. Ltd. ... Appellant
Vs.
Mrs. Jaya Vishnu Rathod & Ors. ... Respondents

Mr. Devendranath S. Joshi, Advocate for the appellant.
Ms. Varsha Chavan, Advocate for respondent nos. 2 and 3.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **4th March, 2016.**

P.C.:

Admit. The learned counsel for respondent nos. 2 and 3 waive service. By consent, the Appeal is heard finally and decided at the stage of admission.

2. This Appeal is directed against the judgment and award dated 10th September, 2014 passed by the Member, Motor Accident Claims Tribunal, Mumbai in M.A.C.P. No. 1679 of 2006 thereby awarding the compensation to the original claimants of Rs.10,00,000/- with interest @7.50% p.a. from the date of application. The accident took place on 10th May, 2006 at about 6.45 p.m. Deceased Vishnu Jaisingh Rathod, who was driving the motorcycle and his friend Satish Suresh Dange, who was pillion rider, were proceeding towards Mangaon on Jogeshwari-Vikroli Link Road, at that time, one offending dumper bearing no. GJ-3-Y-9834 dashed the

motorcycle and Vishnu fell down and the rear wheel of the dumper ran over his head. Vishnu died on the spot. Hence, the claim for compensation under 166 of the Motor Vehicle Act was filed by the widow, mother and minor brother for Rs.10,00,000/-. The opponents were served. The insurance company filed written statement and denied all the averments of the application and also sought leave to defend under section 170 of the M.V. Act. The original claimant/mother Sharda Rathod entered the box. Another witness Yogesh Ramesh Dalvi, who was working as Project Manager with Syndrome Technologies Pvt. Ltd. where deceased was employed, was examined. These two witness gave evidence on the point of earning and dependency. The insurance company did not lead any evidence. After considering the FIR dated 11th May, 2006, spot panchnama Exhibit 21, certificate of payment Exhibit 27, the learned Member of the Tribunal accepted that the deceased was drawing the salary of Rs.5,000/- p.m. at the time of accident. The deceased was born on 24th May, 1981, so on the date of accident, i.e., 10th May, 2006, he was 24 years old. Therefore, multiplier 18 was applied. Considering the number of persons dependent on the deceased, the learned Member of the Tribunal has rightly fixed the deduction as 1/3rd of the amount towards personal expenditure. It also considered 50% of the amount towards future prospects and thus, calculated that total dependency in respect of earning was Rs.10,80,000/- and in addition to other heads, Rs. 25,000/- towards funeral expenses, Rs.25,000/- towards loss of estate, Rs.1,00,000/- was granted to applicant/wife on account of loss of consortium. Being aggrieved by the said judgment and award, Appeal is filed.

3. The point of determination is whether the amount of award is exhorbitant and the order of the trial Court is to be set aside.

4. The learned counsel for the appellant/insurance company has submitted that the learned trial Judge ought to have considered the negligence on the part of the deceased. It is also submitted that the amount of compensation is exorbitant and is to be reduced. The learned counsel submitted that the driver of the dumper was not having necessary permit to ply the vehicle in Maharashtra.

5. The learned counsel for the original claimants/respondent nos. 2 and 3 opposed this Appeal. She submitted that the claim was restricted to Rs.10,00,000/-, therefore, the learned Member of the Tribunal though has arrived at figure of Rs.12,30,000/- towards the just compensation, it only can find the award upto Rs.10,00,000/-.

6. Perused the judgment and notes of evidence. The Tribunal has

considered the evidence of the mother rightly on the point of dependency. The Tribunal has also appreciated the point of negligence and has rejected the defence of the insurance company. The multiplier adopted as 18% and so also the deduction of 1/3rd is also correct as per the law laid down by the Hon'ble Supreme Court in the case of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., (2009) ACJ 1298 (SC)**. The learned Member of the Tribunal has rightly observed that the insurance company did not lead any evidence in support of its defence. Therefore, no interference is required in the judgment and award passed by the learned Member of the Tribunal. First Appeal is dismissed.

7. However, as pointed out by the learned counsel for respondent nos. 2 and 3, when the Tribunal has arrived at a conclusion that the figure of compensation comes to Rs.12,30,000/-, the learned Member should have granted the said amount and should not have restricted upto Rs. 10,00,000/- which is the claim made by the applicants. The Tribunal if comes to the conclusion after calculation of the amount under different heads that the amount is more than the claim amount made by the original claimants, then there is no bar for the Tribunal to restrict the said amount only to the claim made by the claimants. What is expected is that the Tribunal should give proper reasoning for fixing the amount of compensation and if at all is satisfied that the amount is more than what is

claimed, the Tribunal shall give the said amount as an adequate and just compensation. In this case, the claim though was made of Rs.10,00,000/-, the amount of compensation was fixed at Rs.12,30,000/-, which could have granted as an award. Now, the request made by the learned counsel for the original claimants that in appeal, the High Court can pass such order in absence of the Appeal filed by the claimants for the enhancement of the amount of award, cannot be accepted, as I am of the view that it is necessary for the claimants to file an Appeal for the enhancement of the compensation challenging the said judgment. Once the judgment and award is passed, then the party should challenge it, the relief can be given in the said Appeal, as prayed but contrary relief cannot be given in the appeal when it is not prayed so.

7. The learned counsel for the original claimants has submitted that claimants could not file Appeal within time because they did not have funds to file Appeal, however, now the claimants want to file Appeal, as they have received the amount of compensation in the last month. Considering these submissions and the facts and circumstances, claimants are at liberty to file the Appeal.

8. Appeal is dismissed.

(MRIDULA BHATKAR, J.)