IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.595 OF 2015
with
CAF/997/2015

United India Insurance Company ... Appellant

Vs.

Mrs.Manisha Pramod Thote & Ors. ... Respondents

Mr.Rahul Mehta i/b KMC Legal Venture for the Appellant
Mr.T.J. Mendon for Respondent Nos.1 & 2

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **6th JANUARY, 2016**

P.C.:

1. Heard.

2. Admit. By consent of the parties, the appeal is called out and heard finally. This appeal is directed against the judgment and award dated 30.10.2014 passed in MACP Application No.1312 of 2011 by member, Motor Accident Claims Tribunal, Mumbai. The challenge in the appeal is only the point of quantum. Thus, as the issue is short, it is taken up and decided finally.

3. Respondents are the original applicants. Respondent No.1 is the widow of the deceased Pramod, Respondent No.2 I.e, applicant No.2 is the mother of the deceased. On 1.5.2011 at about 00.10 hours, when

Pramod was going on a two wheeler alongwith his cousin, they halted by the side of the road. At that time, one TATA Sumo vehicle bearing No.MH-19-Y-5741 came from opposite direction in a high and excessive speed in negligent manner and hit the deceased and his friend from the front side. The deceased Pramod succumbed to the injuries in the hospital and therefore, the application was filed under section 166 of the Motor Vehicles Act Act by the defendant wife and the mother. Respondent No.1 stepped into box. On the point of salary, evidence was led of one Umesh Kadlsaskar, an employee of the company viz., Reuters, where the deceased Pramod was working. So also of one Amit Bhagat on the point of incident, as he witnessed it and also of one Manisha. The Member, Motor Accident Claims Tribunal after considering the documentary as well as the oral evidence of the witnesses granted compensation of Rs.51,85,000/- to the applicants with simple interest @ 7.5% p.a. from the date of presentation of the application. Being aggrieved by the said order, the appellant insurance company filed this appeal.

4. A point of determination in this appeal is whether the compensation awarded by the insurance company is excessive, in view of the income of the deceased and the dependency of the applicants.

5. The learned Counsel for the appellant insurance company has submitted that the original applicant Manisha Thote, wife of the deceased,

was working in the same company and she is earning Rs.15,000/- at the time of evidence. She has admitted this fact and the said amount ought to have been taken into account and should have been deducted while fixing the amount of compensation and dependency. He further argued that the learned Member has committed error in fixing the amount of future prospect and rise in the salary mechanically. He ought to have appreciated the evidence of Kardaskar that the increment and promotion depends on the performance of the employee and, therefore, the rise of Rs.3 lacs should not have been considered. Therefore, considering the number of the dependents there should have been 1½ of the amount which ought to have been deducted for the personal and living expenses of the deceased.

6. Mr.Mendon, the learned Counsel appearing for the respondents, while opposing the appeal, has relied on the judgment in the case of **Vimal Kanwar & Ors. vs. Kishore Dan and others**[1] where a similar issue of deduction of the amount to the tune of salary received by the dependent claimants, who was employed on compassionate ground was before the Supreme Court. The learned Counsel also relied on the judgment of the Division Bench of the Bombay High Court in the case of **MSRTS vs. Tulsabai Tukara Kadave & Ors.**[2] where the Division Bench also had opportunity to deal with the same issue as to whether the income of the

1 2013 ACJ 1441
2 1990 ACJ 523

widow who was employed on compassionate basis can be deducted or not. The learned Counsel submitted that in these two judgments, the view expressed by the Supreme Court and the Bombay high Court are against the submissions made by the insurance company.

7. Perused the impugned judgment of the learned Member, Motor Accident Claims Tribunal. The applicant No.1 widow was employed on a compassionate ground in the same company and that she is drawing Rs.15,000/- is an admitted fact. However, such earning of the widow who is appointed on compassionate ground cannot be considered as pecuniary advantage liable for deduction.

8. In the case of **MSRTC vs. Tulsabai (supra),** the Division Bench of this Court also held that whatever salary the widow was getting is against the work she was doing as a result of the working in the establishment and it is not to be considered as a result of a death of her husband. The submissions of the learned Counsel that the deduction of 1/3rd is not sustainable as the deceased was a married man and there were two dependent family members. Hence, there is no illegality in the order passed by the learned Member, Motor Accident Claims Tribunal and the amount of compensation granted is just and adequate and cannot be labelled as excessive.

9. Hence the appeal is dismissed. The amount of Rs.25,000/- which is deposited in this Court shall be transferred to the Motor Accident Claims Tribunal, Mumbai.

10. In view of the disposal of the appeal, the Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)