IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1104 OF 2001

The United India Insurance Co. Ltd. ... Appellant

Vs.

Shri Shiraj Gulab Mulani & Ors. ... Respondents

Mr.Ketan Joshi i/b S.R. Singh for the Appellant
Mr.D.G. Sutavalekar for Respondent Nos.7 & 8

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

DATE: **28th JANUARY, 2016**

ORAL JUDGMENT:

1. In this appeal, the judgment and award dated 11.7.2000 passed by the Member, Motor Accident Claims Tribunal, Solapur in MACP No.94 of 1995, thereby awarding an amount of Rs.1,47,000/- with interest @ 12% p.a. from the date of the filing of the petition.

2. None appears for the respondent/original claimants. However, after going through the impugned judgment and the record and as this appeal is of the year 2001 and already listed on Board, it is heard and decided on merit.

3. It is a death claim filed by the dependents of one Firoze, who died in the vehicular accident on 23.11.1994. He was driving a motor cycle of his friend who was a pillion rider. They were proceeding from Vizori to one

Chilling Centre at Sadashiv Nagar. The deceased lost his control and sustained injuries. He was taken to hospital but he succumbed to the injuries. At the relevant time, he was working as an electrician and was earning Rs.2,065/- per month. His parents and dependent brothers and sisters filed application u/s 166 of the Motor Vehicles Act for compensation. The Insurance Company, the opponent owner of the jeep and driver of the jeep appeared. They filed their written statements denying all the contentions made in the application. The opponent Nos.1 and 2 denied the charge of negligence. The insurance company in its written statement had contended that the opponent No.2 i.e., the driver of the jeep was not having a valid licence and therefore the insurance company is not liable to pay compensation. It supported the claim of the other opponents that the motor cyclist was rash and negligent and was responsible for the accident. The father of the deceased Shiraz Gulab Mulani entered the box, gave evidence on the point of incidence and also about the income of the appellant. The driver opponent No.2 Mohan Jagannath Gaikwad entered the box and gave evidence. After considering the oral and documentary evidence, the Tribunal awarded compensation of Rs.147,000/- with interest @ 12% p.a. Being aggrieved by the said judgement, this appeal is preferred by the Insurance Company.

4. A short issue is involved in this case which is in respect of defence taken by the insurance company. The learned Counsel for the insurance

company has submitted that the incident has taken place on 23.11.1994. The policy cover of the jeep was valid from 29.7.1993 to 28.7.1994. Therefore, at the relevant time, the vehicle was not insured. It is further submitted by the learned Counsel that though the owner and driver of the vehicle filed written statement, they did not give particulars of the policy.

5. The learned Counsel further submitted that while calculating the amount of compensation, the learned Member, Tribunal has committed an error by fixing a wrong figure as the yearly income of the deceased. He submitted that in paragaph 11 of the impugned judgment, his income was fixed as Rs.300/- per month and accordingly his yearly income was fixed at Rs.3,600/-. However, due to a typographical error, it is written as Rs.8,600/- as yearly income, which error was carried forward in the entire calculations based on the figure of Rs.8,600/- per year. The learned Counsel therefore submitted that this needs to be reduced.

6. Nobody appears for the applicants/original claimants. However, after going through the judgment and record and hearing submissions, it is found that the insurance company has not taken the defence in respect of valid policy of the jeep. Therefore, no issue to that extent was framed by the learned Member, Tribunal. If such defence would have been put up, then, the learned Tribunal must have framed the issue accordingly. Moreover, it appears from the judgment and record that no evidence is

tendered on the point of valid policy of the jeep. The insurance company did not tender either oral or documentary evidence to that effect. Therefore, the submissions of the learned Counsel on this point cannot be considered.

7. The submission of the learned Counsel about the typographical error in the calculations, is correct. Thus, as the monthly income was fixed at Rs.300/- by the Member, Tribunal, the annual income comes to Rs.3,600/-. There were six dependents in the family, who are the applicants. In view of the number of family members, the deduction towards personal expenses can be considered as 1/4th. Therefore, the yearly income comes to Rs.2,700/-. Further, the trial Court has fixed the multiplier at 17, correctly. So, Rs.2700/- x 17 = Rs.45,900/-.

8. The accident took place in November, 1994 and the matter was decided by the Tribunal on 11.7.2000. Thus, the matter is very old. There was a death of a sole bread winner in the family. Moreover, the law is developed today and while deciding an appeal, it is necessary to consider all the heads of compensation which are available to be given to the dependents. It is necessary for the Court to consider to see that the dependents are given just and adequate compensation. On the point of future income, I rely on the judgment of the Supreme Court in the case of

Santosh Devi vs. National Insurance Company Ltd.[1] so also in respect of loss of love and other heads, I rely on the judgment of the Supreme Court in the case of **Rajesh vs. Rajbir**[2]**.** Accordingly, in the present matter, future prospects can be assessed at 30% of the income which comes to Rs.13,770/-. Thus, Rs.13,770 plus Rs.45,900/- equals to Rs.59,670/- rounded off to Rs.60,000/-. The funeral expenses are increased from Rs.1,000/- to Rs.3,000/-. Thus, the total amount comes to Rs.63,000/-. The Tribunal has granted Rs.10,000/- towards loss of love, affection and company. However, in view of the judgment in the case of **Rajesh vs. Rajbir (supra)** and considering that the Act is a benevolent legislation, to meet and adjust the amount of compensation of Rs.147,000/- granted by the Tribunal, each applicant is granted Rs.14,000/- totalling to Rs.84,000/-. Thus, the amount of Rs.63,000 plus Rs.84,000/- totalling to Rs.147,000/- is not disturbed.

9. Appeal is disposed of accordingly.

(MRIDULA BHATKAR, J.)

1 (2012) 6 SCC 421
2 (2013) 9 SCC 54