IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1213 OF 2015

The New India Assurance Company Limited ... Appellant
vs.
Suman Nivrutti Kadam and Others ... Respondents

Mr. D.S. Joshi, for the Appellant.
Mr. T.J. Mendon, for Respondent Nos. 1 to 4.

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

DATE: **27th JANUARY, 2016**

P.C.:

. Admit. Heard and decided finally at the stage of admission, by consent.

2. The judgment and award dated 27th March, 2015 passed by the Member, M.A.C.T., Mumbai partly allowing the Application No. 474 of 2009 is challenged in this Appeal.

3. The deceased Nivrutti Kadam was travelling in a luxury bus bearing No. MH-04-G-4911 on 11th December, 2008 on Pune-

Mumbai express highway. One motor-truck bearing No. MH-04-BU-587 dashed the luxury bus and Nivrutti Kadam lost his life. His widow, children and the mother therefore filed an application under Section 166 of the Motor Vehicles Act, 1988 and demanded compensation of Rs. 20 lacs. After issuance of the notice, the owner of the truck and the Insurance Company appeared and challenged the application.

4. The Applicant/Suman Nivrutti Kadam, a widow of the deceased gave her evidence. No other evidence was laid by the Insurance Company. The learned Member of the Tribunal considered the evidence on record and fixed the amount of compensation of Rs. 15,50,000/- with interest @ 7.5% p.a. Hence, this Appeal.

5. The learned counsel for the Insurance Company argued mainly on the point of quantum. He submitted that the learned Member should not have fix the amount of monthly earning of the deceased @ Rs. 5,000/- p.m. but should have been fix Rs. 3,000/- p.m. in the absence of documentary evidence. He further submits that deduction should not have been 1/5 of the amount but it should have

been 1/4 of the amount. He further submitted that the learned Member ought not to have fix the amount of Rs. 2,500/- towards the future prospect. He argued that the learned Member of the Tribunal has committed error in giving the amounts towards loss of consortium and love and guidance and the amounts awarded on the higher side.

6. The learned counsel for the original claimant while opposing this Appeal submitted that the deceased was working as an agent with a Travel Agency and as per the evidence of widow he was drawing salary of Rs. 15,000/- p.m. The deceased was 33 years old at the time of the incident. Therefore the amount granted towards the loss of consortium and loss of love is correct. He submitted that the deceased in fact was paying the income tax. However, the income tax returns unfortunately were not produced before the trial Court.

7. Perused the evidence of Suman Nivrutti Kadam and the record & proceeding. She claimed that her husband was earning Rs. 15,000/- p.m. and working as an Agent with a Travel Agency. It is true that no other documentary evidence is produced in respect of her claim. However, the incident has taken place in the year 2008. The

evidence of Suman Kadam in respect of nature of job of the deceased cannot be disbelieved and thus if it is considered as the deceased was working as an Agent in a Travel Agency in the year 2008 and considering the standard of living of the deceased, his income can be considered as Rs. 5,000/- p.m. So I am of the view that the learned Member has not committed any error in fixing the earning of the income of the deceased as Rs. 5,000/- p.m. The deceased was 33 years old at the relevant time. The amount of compensation awarded in para 23 of the judgment towards the loss of consortium and loss of love is intangible compensation. So I am of the view that the said amounts are adequate and proper.

8. The submission of learned counsel for the Appellant on the point of deduction can be considered. There were four family members depending on the deceased at the time of his death and therefore the deduction towards personal and living expenses of the deceased should have been fixed as 1/4 of his income instead of $1/5^{th}$. Thus, accordingly the award can be modified.

9. The annual earnings of the deceased is already assumed

Rs. 90,000/- p.a. The deduction towards personal and living expenses of the deceased is fixed as considered 1/4th of the total amount which comes Rs. 22,500/-. The net dependency per annum would be Rs. 90,000/- minus Rs. 22,500/- = Rs. 67,500/-. The total dependency would work out to Rs. 67,500/- x 16 = Rs. 10,80,000/-. The amount of compensation under the remaining heads is maintained. Thus, the total amount of compensation comes to Rs. 14,80,000/-.

10. The Appeal stands disposed of accordingly.

(MRS.MRIDULA BHATKAR, J.)