IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1214 OF 2015

The New India Assurance Company Ltd. ... Appellant

Vs.

Smt.Laxmi Sambhaji Pawar & Ors. . ... Respondents

Mr.D.S. Joshi for the Appellant
Mr.T.J. Mendon for Respondents

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

DATE: **28th JANUARY, 2016**

P.C.:

1. Admit. By consent of the parties, Appeal is called out and heard finally.

2. This appeal is directed against the judgment and award dated 27.3.201527.3.2015 passed in MACP No.146 of 2009. The original claimants i.e., the respondents – the parents, a widow and three minor children of deceased Sambhaji Pawar who died on 11.12.2008 at Pune Mumbai express highway near village Borj, Tal.:Lonavala, Dist.:Pune. The deceased on that day at about 2 am, was in a luxury bus bearing No.MH-04-G-4911 and proceeding towards Mumbai. At that time, a truck bearing No.MH-04-BU-587, collied on the bus. The impact was severe and in the said accident, some persons in the bus died. Sambhaji was one of them. Therefore, the claim was filed for compensation of Rs.20 lakhs by the

dependents against the truck driver and the insurance company. After notice, the owner of the truck did not appear, however, the insurance company appeared and filed its written statement, defended the claim on the ground of negligence and also challenged it on the point of earning of the deceased. The applicant Laxmi Pawar, the widow, stepped into the witness box and submitted the documents and gave evidence. She deposed that the deceased was working as a travel agent and also was running a watch repairing shop and his income was claimed as Rs.15,000/- per month. The insurance company did not lead any oral evidence. Considering the oral and documentary evidence, the Tribunal allowed the claim and awarded Rs.17 lacs with interest @ 7.5% p.a. This being found excessive, the insurance company filed its appeal.

3. Mr.Joshi, the learned Counsel for the insurance company, has submitted that though the challenge is on the point of negligence, deductions by the Tribunal, the main challenge is on the point of income of the deceased. He submitted that the claimants did not adduce any documentary or oral evidence to prove that the deceased was a travel agent and he was running one Kiran Watch Centre at Vikhroli. In the absence of such evidence, the Tribunal has erred in fixing the monthly income of Rs.5,000/- of the deceased. He further argued that the deduction towards personal and living expenses of the deceased is fixed at 1/5th which is contrary to the law laid down in **Sarla Verma vs. Delhi**

Transport Corporation & anr.[1] and it should have been 1/4th. To that extent, he submitted that it is necessary to modify the order. On the point of proving quantum in the absence of necessary evidence, Mr.Joshi submitted that the claim of the original claimants should be dismissed. He relied on the Division Bench judgment in the case of **New India Assurance Co. Ltd. Vs. Alpa Rajesh Shah**[2] dated 19.10.2013.

4. Learned Counsel appearing for the original claimants supported the order passed by the learned Tribunal. He relied on the evidence of the widow Laxmi S. Pawar. She had produced the PAN card of the deceased. She deposed that the deceased was working as a travel agent and also running business of watch repairing shop viz., Kiran Watch Centre at Suryanagar, Vikhroli (West), Mumbai. In support of his submissions, the learned Counsel also produced a registration certificate under Bombay Shops and Establishment Act, 1948, which was marked as exhibit 34. It was renewed till 2003 and he submitted that it was to be renewed after five years. So the due date was in the year 2008. So, the notional income which was fixed as Rs.5,000/- is correct. He was 31 years old at the time of his death and, therefore, the multiplier i.e., 16 was considered by the Tribunal appropriately.

1 2009(6) SCC 121
2 First Appeal No.848 of 2012 with Cross Objection st. No.25362 of 2013 decided on 19.10.2013

5. In this appeal, the main challenge is to the notional income of Rs.5,000/- per month. I have gone through the evidence of claimants, who deposed that the applicant was working as a travel agent and was also running a business of watch repairing and the registration certificate under the Bombay Shops and Establishment Act was produced before the Tribunal. The said certificate was renewed upto 1.1.2003. It shows that the shop was at Vikhroli (West), Mumbai, which is in the suburban Mumbai. Although his occupation was watch repairing, he was mainly working as a travel agent with a travel agency. Though nothing is produced including any evidence of the employer before the Tribunal, the fact that the deceased was travelling in a luxury bus, shows that he could afford to travel in a luxury bus and was doing two businesses. The accident has taken place in 2008 and considering the standard of living in Mumbai and the earning capacity and where a person is doing two businesses to survive, the notional income fixed at Rs.5,000/- per month is not on a higher side, but in my view, appropriate and cannot be objected.

6. In the case of **New India Assurance vs. Smt.Alpa Rajesh Shah (supra),** it is held that no income towards future prospects should be taken into consideration in the absence of evidence. In the said case, the Division Bench has referred to the case of **Reshma Kumari & Ors. vs. Madan Mohan and anr.**[3] and observed that in the case of self-

3 2013 ACJ 1441

employment, there is no prohibition on considering the future prospects of increase in the earning of the deceased, who was self employed. However, the claimants must produce satisfactory evidence to show that there was genuine prospect of increase.

7. In the case of **Alpa Rajesh Shah (supra)**, the deceased was carrying on the business of sale of liquor and the licence was also not produced by the claimants and, therefore, no evidence was adduced in regard to the potential to earn more income in future, the award was modified to that extent.

8. The present case can be distinguished on facts, considering the evidence tendered by the parties. In the present case, as discussed above, actual licence was produced and so also, it was pleaded that the deceased was working as a travel agent. Thus, it shows that the deceased was working hard to earn more money for his family by carrying on two businesses at the relevant time. In this view of the matter, the amount fixed in respect of notional income also towards future income, cannot be faulted with.

9. The submissions of the learned Counsel for the insurance company that the deduction towards personal expenditure ought to have been $1/4^{th}$ and not $1/5^{th}$ that is fixed by the Tribunal is a valid submission in view of the judgment in the case of **Sarla Verma & Ors. Delhi Transport**

Corporation[4], considering the dependency. To that extent, the award can be modified.

10. Thus, the annual earnings of the deceased is already assumed at Rs.90,000/- p.a. (Rs.7,500 X 12) The deduction towards personal and living expenses of the deceased is fixed as considered 1/4th of the total amount which comes to Rs.22,500/-. The net dependency per annum would be Rs.90,000/- less Rs.22,500/- equalling to 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 reamaining heads is maintained. Thus, the total amount of compensation comes to Rs.16,30,000/-.

11. With the above order, the Appeal is disposed of.

(MRIDULA BHATKAR, J.)

4 2009 (6) SCC 121