

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 2074 OF 2013

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.
VERSUS
DURPADABAI GANPAT SURYAWANSHI AND OTHERS

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Advocate for Appellant : Mr. S. G. Chapalgaonkar.

Advocate for Respondent Nos.1 & 2 : Mr. G. R. Syed.

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CORAM : **V. K. JADHAV, J.**

DATE : 28th February, 2017.

ORDER:

. Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Nanded dated 30th October, 2012 in MACP No.443 of 2009, the original Insurer has preferred this appeal to the extent of quantum.

2 Brief facts giving rise to the present appeal are as follows:

On 4th April, 2009 at about 07:30 pm, deceased Sachin aged 8 years was going on foot by the side of Mukhed-Narsi road and on way, one Indica car bearing registration No.MH-14-AM-5768 came from his backside and gave dash to him. In consequence of which, deceased Sachin has sustained grievous injuries on his head. He was immediately shifted to Lotus Hospital, Nanded where he succumbed to the injuries during the course of treatment. The parents

of deceased Sachin approached to the Tribunal by filing MACP No.443 of 2009 for grant of compensation of Rs.4,00,000/- on various grounds. The Claimants have adduced the oral and documentary evidence. However, the Respondents have not adduced any evidence. The learned Member of the Tribunal vide its impugned judgment and award directed the Respondents (including the Appellant / Insurer) to pay jointly and severally an amount of Rs.3,32,000/-. Being aggrieved by the quantum, the Appellant / Insurer has preferred this appeal.

3 The learned counsel for the Appellant / Insurer submits that even though deceased Sachin was 8 years old at the time of his accidental death, the Tribunal has considered his notional income at Rs.3,000/- per month and after deducting 1/3rd of expenses towards his personal and living expenses, considered the loss of future income of the family at Rs.24,000/- per annum. By applying the multiplier 15, the learned member of the Tribunal has worked out the compensation. The learned counsel submits that deceased Sachin was a non earning member and there is no question of considering his notional income as such. Thus, the entire approach of the Tribunal is erroneous and the impugned judgment and award is liable to be set aside on this ground alone.

4 The learned counsel for Respondents / Claimants submits that the Tribunal has rightly considered the notional income to the extent of Rs.3,000/- per month and after deducting 1/3rd of the personal expenses considered the loss of income at Rs.24,000/- per annum. The learned Member of the Tribunal has also awarded the compensation under the non-pecuniary heads and also for funeral expenses. No interference is required. There is no merit in the appeal.

5 On careful perusal of the judgment and award most particularly in para 11, it appears that the learned Member of the Tribunal though referred the provisions of Schedule II, considered the notional income of deceased Sachin. The learned Member of the Tribunal ought to have considered the notional income of non-earning member of the family at Rs.15,000/- by giving reference to Schedule II as provided under Section 163-A of the Motor Vehicles Act. The Supreme Court in the case of **Kishan Gopal and another Vs. Lala and others**, reported in **2014(3) Mh.L.J. 560** has raised the said limits from Rs.15,000/- to Rs.30,000/- in view of the change in circumstances. In view of the ratio laid down by the supreme Court in the aforesaid case and considering the legal position that the appeal is in continuation of the original claim petition though the approach of the

Tribunal is erroneous while considering the notional income of deceased Sachin at Rs.3,000/- per month and 1/3rd deduction towards his personal expenses, the Tribunal has awarded the just and reasonable compensation of Rs.3,32,000/- by considering the other non-pecuniary heads also.

6 In view of the above, I do not find any substance in the appeal. The judgment and award passed by the Tribunal stands confirmed. Hence, the following order:

ORDER

- I. The appeal, is hereby dismissed with costs.
- II. The Respondents / Claimants are permitted to withdraw the amount if deposited before this Court by the Appellant / Insurer.
- III. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]