IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

27 FIRST APPEAL NO. 3579 OF 2016

THE NATIONAL INSURANCE CO. LTD.
VERSUS
MAHANADA SAMBHAJI HANGE AND ORS
...
Advocate for Appellant : Chapalgaonkar S.P.
Advocate for Respondents : S.R. Bagal h/f. A. S. Shivpuje
For R/1 To 5
...

CORAM : V.K. JADHAV, J.
DATE : 01-03-2017.

P.C. :

1. Heard finally with consent at admission stage.

2. Being aggrieved by the judgment and award passed by the M.A.C.T. Ahmedpur dated 30.10.2015 in M.A.C.P. No. 12 of 2012, the original respondent-insurer has preferred this appeal to the extent of quantum. The learned counsel for the appellant-insurer submits that, though the claimants had claimed that deceased Sambhaji was earning Rs. 15,000/- per month by doing the work of cooking and carrying the business of pandal decoration, failed to substantiate the same. The learned counsel submits that, the Tribunal has erroneously considered the two receipts of insurance premium paid by the deceased for his insurance policies, even though the claimants failed to prove the same. Those insurance premium receipts are not the exhibited document even then the learned Member of the Tribunal considered the same and

on the basis of certain guess work inferred that deceased Sambhaji was earning Rs. 15,000/- per month. The learned counsel submits that, the Tribunal has, therefore, awarded exorbitant amount of compensation under the head of loss of future income.

3. The learned counsel for the respondent-original claimants submitted that, deceased Sambhaji was doing the cooking work and also carrying out the business of pandal decoration. The learned counsel submits that, the claimants have examined witness no.2 Sunil Baburao to prove the income of the deceased form the work of cooking on contract basis. The said witness has produced on record the certificate exhibit-51 and the said certificate indicates that deceased had submitted a tender for the work of cooking in the year 2010 for an amount of Rupees Three Lakhs. The learned counsel submits that, the original receipt of the insurance premium paid by the deceased are produced on record along with the list exhibit-29 and the learned Member of the Tribunal has rightly considered those premium receipts. The learned Member of the Tribunal has correctly drawn the inference that if deceased was paying the premium to the extent of Rs. 42,000/- and some odd amount, his monthly income in consonance with that must be more than of Rs. 12,000/- per month. The learned Member of the tribunal has therefore correctly considered the income of the deceased from both the sources at Rs. 15,000/- and worked out the compensation under the head of loss of future

income. The learned counsel for the respondent claimants submits that, the Tribunal has also awarded interest @ 6% instead of 7.5% per annum.

4. On careful perusal of the pleadings, oral and documentary evidence and the judgment and award passed by the Tribunal, I find that the claimant no.1-Mahananda, who happen to be the widow of deceased Sambhaji has deposed that deceased Sambhaji was carrying out the business of sound service and pandal decoration and he was also working as a cook. He was earning Rupees Three Lakhs per annum in total from both the sources. The claimants have also examined witness no.2, Sunil Baburao who has deposed that deceased was working as a cook and he was the President of one Sant Bhagwanbaba Warkari Shikshan Sanstha and they used to give the contract to deceased for cooking food of the members of the said sanstha. Those members are 800 to 900 in numbers and the members used to visit and various pilgrimage centers. He has also produced on record one order exhibit-51 wherein a contract of cooking work was given to deceased Sambhaji for providing the breakfast, two times food to the members for a particular period in the year 2010. I understand that it is not possible for the claimants to prove the earnings of the deceased by producing on record the documentary evidence particularly when deceased was doing the work of cooking and carrying out the business of pandal decoration. The learned

Member of the Tribunal has considered two receipts of insurance premium and those insurance premium receipts are filed along the list exhibit-29. Even though the receipts of insurance premium are not exhibited, I have perused the same. On careful perusal of those two receipts, it appears that, so far as the premium receipt dated 29.09.2006 is concerned the same is for the amount of half yearly premium of Rs. 3245/- only and the another one is for the half yearly premium of Rs. 1636/- only. The learned Member of the Tribunal has considered the payment of Rs. 19,470/- under the said receipt dated 27.09.2006 as a amount of half yearly premium and determined the monthly income of deceased Sambhaji on its basis. On the other hand, it appears that, deceased Sambhaji was paying the premium of not more than Rs. 9,000/- per annum. Those policies as appearing from the premium receipt are for the period from 2005-2006 and 2008 respectively.

5. In view of the above discussion and in the light of the evidence adduced by the claimants on the point of the income of deceased Sambhaji, it would be just and appropriate to consider the income of deceased Sambhaji at Rs. 12,000/- per month from all the sources after considering 1/4th of deduction on account of personal and living expenses and inclusive of his future prospects. So far as, compensation awarded under the other heads are concerned the learned counsel for the appellant-insurer has not made any submissions with regard thereto. So far as the loss of

future income is concerned, in the light of the above discussion the judgment and award passed by the Tribunal requires modification. Hence the following order:

ORDER

i) The appeal is hereby partly allowed, no costs.

ii) The judgment and award passed by the M.A.C.T. Ahmedpur dated 30.10.2015 in M.A.C.P. No. 12 of 2012 is hereby modified in the following manner.

iii) The opponents shall jointly and severally pay Rs. 23,76,000/- (Rupees Twenty Three Lakhs Seventy Six Thousand Only) including interim compensation to the applicants with further interest @ 7.5% from the date of application i.e. 08.05.2012 till the entire amount is realised.

iv) Rest of the judgment and award stands confirmed.

v) Award be drawn up as per the above modification.

vi) The claimants are permitted to withdraw the amount of Rs. 23,76,000/- (Rupees Twenty Three Lakhs Seventy Six Thousand Only) as per the modified award along with interest accrued thereon and the remaining amount shall be refunded to the appellant-insurer.

vii) Appeal is accordingly disposed of.

(V.K. JADHAV)
JUDGE

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