

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

3 FIRST APPEAL NO. 3266 OF 2015

RELIANCE GENERAL INSURANCE COMPANY,
THROUGH ITS MANAGER
VERSUS
SMT. SHOBHA PRABHAKAR WARULE (MALI) AND OTHERS

...
Advocate for Appellant : Mr. S. S. Patil.

Advocate for Respondent Nos.1 to 3 : Mr. Girish V. Wani.

Advocate for Respondent Nos.4 & 5 : None.

...

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

DATE : 24th July, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Chairman of the Motor Accident Claims Tribunal, Jalgaon dated 28th July, 2015 in MACP No.563 of 2009, original Respondent No.3 / Insurer has preferred this appeal to the extent of quantum as awarded by the Tribunal.

3 The learned counsel for Appellant / Insurer submits that deceased Prabhakar was 50 years of age at the time of his accidental death. However, the Tribunal has erroneously considered the age of deceased Prabhakar as 40 years at the time of his accidental death. The learned counsel submits that the relevant multiplier would be 13

instead of 15. The learned counsel submits that deceased Prabhakar was 50 years of age at the time of his accidental death and as such, the Tribunal should have added in the income of deceased Prabhakar 30% of the amount towards the future prospects. However, the Tribunal has added the amount in the income of deceased to the extent of 50%.

4 The learned counsel for Respondents / Claimants has fairly conceded that deceased Prabhakar was 50 years of age at the time of his accidental death. The learned counsel submits that the Tribunal has awarded very meager amount under the head of loss of consortium. Though the Respondents / Claimants have not preferred any appeal or cross-appeal, they are entitled for just and reasonable compensation under all the heads. The learned counsels submits that it is well settled that a widow is entitled for an amount of Rs.1,00,000/- under the head of loss of consortium and the same may be granted. The learned counsel submits that the Tribunal has also awarded 7.5% interest per annum instead of 9% per annum. The learned counsel submits that so far as Respondents / Claimant No.3 is concerned, the Court has awarded very meager amount under the head of loss of love and affection.

5 On perusal of the pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the Tribunal has erroneously considered the age of deceased Prabhakar as 40 years instead of 50 years. Both the counsel admit that the Tribunal has committed error. Since the Tribunal has erroneously considered the age of deceased Prabhakar as 40 years, the Tribunal is bound to commit the mistake in applying the multiplier as well as addition in the income of deceased Prabhakar towards his future prospects. Considering the age of deceased Prabhakar, the relevant multiplier would be 13 and addition in his income towards future prospects would be 30% instead of 50%. So far as loss of consortium is concerned, the Tribunal has awarded very less amount. The Respondent / Claimant No.1 is entitled for an amount of Rs.1,00,000/- under the head of loss of consortium. Considering the age of deceased Prabhakar, the relevant multiplier would be 13. Thus, the compensation as awarded by the Tribunal requires re-determination.

6 The Tribunal has considered the net monthly salary of deceased Prabhakar as Rs.8,426/- and after making addition in the income of deceased Prabhakar to the extent of 30% towards the future prospects, the monthly amount comes to Rs.10,953/-. The Respondents / Claimants are entitled for the compensation of

Rs.17,08,668 /- ($10953 \times 12 \times 13 = 1708668$). Further $1/3^{\text{rd}}$ of the amount from the aforesaid amount of compensation is liable to be deducted towards personal and living expenses of deceased Prabhakar and after making $1/3^{\text{rd}}$ deduction, the Respondents / Claimants are entitled for Rs.11,39,112/- under the head of loss of future income. The Respondent / Claimant No.1 entitled for an amount of Rs.1,00,000/- for loss of consortium and Rs.50,000/- for loss of love and affection to Respondent No. 3. The Tribunal has awarded just and reasonable compensation under the head of funeral expenses.

7 In view of the above discussion, the Claimants are entitled for an amount of Rs.12,99,112/-. Hence, the following order:

ORDER

- I. The appeal is hereby partly allowed with proportionate costs.
- II. The judgment and award passed by the learned Chairman of the Motor Accident Claims Tribunal, Jalgaon dated 28th July, 2015 in MACP No.563 of 2009, is hereby modified in the following manner.

“The Petitioners to recover an amount of Rs.12,99,112/- (Rupees Twelve Lacs Ninety-Nine Thousand One-Hundred and Twelve Only) (inclusive of N.F.L. amount) from the Respondents jointly and severally with interest at the rate of 9% per annum from the date of petition till realization of the amount.”

- III. Rest of the judgment and award passed by the Tribunal stands confirmed.
- IV. Award be drawn up as per the above modification.
- V. If any amount is paid as per the judgment and award passed by the Tribunal, the same shall be the part of award after modification.
- VI. The Respondents / Claimants are entitled to withdraw the amount as per the modified award and the Appellant / Insurer is also entitled for refund in terms of the modified award.
- VII. By consent, the amount deposited before this Court shall be transferred to the Tribunal.

VIII. The appeal is accordingly disposed of.

IX. Pending civil applications are disposed of.

[V. K. JADHAV, J.]

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