IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1442 OF 2013
WITH CA/4717/2013 IN FA/1442/2013 WITH CA/3067/2017 IN FA/1442/2013

UNITED INDIA INSURANCE CO LTD
VERSUS
LUNGHAJI VITHAL GHUGE AND ORS
...
Advocate for Appellant : Mr. Chapalgaonkar S.G.
Advocate for Respondents 1 to 3 : Mr. R.B. Muley
Advocate for Respondent No.4 : Mr. N.R. Bhavar
Advocate for respondent No.5: Sai Joshi i/b J.P. Legal Associates
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CORAM : V. K. JADHAV, J.
DATED : 16th MARCH, 2017

PER COURT:-

1. At the outset, learned counsel for the respondents original claimants submits that during pendency of this appeal, respondent No.1-original claimant No.1 Lunghaji Vithal Ghuge died. Learned counsel submits that his legal heirs are already on record. In view of this submission, name of respondent No.1 Lunghaji Vithal Ghuge be deleted from the array of respondents, forthwith.

2. Heard finally with consent of the parties at admission stage.

3. Being aggrieved by the judgment and award passed by the learned Member of M.A.C.T. Aurangabad, dated 3.2.2010 in MARJI No. 408 of 2007, the original respondent insurer has preferred this

appeal to the extent of application of wrong multiplier by the Tribunal while determining the amount of compensation.

4. Learned counsel for the appellant insurer submits that the learned Member of the Tribunal by judgment and award dated 12.9.2007 in M.A.C.P. No. 304 of 2005, partly allowed the claim petition and awarded the compensation. In the said judgment and award, the learned Member of the Tribunal has applied multiplier 10 and accordingly determined the compensation. Aggrieved by the same, the respondents original claimants preferred M.A.R.J.I. No. 408 of 2007 for review of the judgment and by impugned judgment and order dated 3.2.2010 in M.A.R.J.I. No. 408 of 2007, the Tribunal has applied the multiplier 18 in consonance with the age of deceased and awarded the compensation. Learned counsel submits that deceased Kaduba was unmarried son and the average age of the parents is required to be considered for applying relevant multiplier or at the most age of the mother of unmarried son may be considered for applying relevant multiplier. Learned counsel submits that the application of relevant multiplier by considering the age of the parents is no more *res-integra* and in the following two judgments this Court has concluded the issue.

i) The New India Assurance Company Ltd. vs. Ramrao Lala

Borse ad others, reported in 2015 SCC Online Bom. 6564

ii) United India Insurance Company Ltd. vs. Sobha Amarsingh Rajput and others, reported in 2016 SCC Online Bom. 8996.

Learned counsel for the appellant submits that the scope of review petition is very limited and it appears that the learned Member of the Tribunal decided M.A.R.J.I. No. 408 of 2007 as is decided the appeal against the judgment and award passed earlier in M.A.C.P. No. 304 of 2005. Learned Member of the Tribunal has considered the age of deceased and erroneously applied the multiplier 18 instead of 13 which is in consonance with the age of mother of deceased.

5. Learned counsel for the respondents claimants submits that in the earlier judgment, the learned Member of the Tribunal has erroneously applied multiplier 10 and therefore, respondents claimants approached the Tribunal again by filing M.A.R.J.I. No. 408 of 2007 for review of judgment. While deciding the said review petition, on the basis of school leaving certificate Exh.61, the Tribunal has considered the age of the deceased as 26 years on the date of accidental death and thus correctly applied multiplier 18 in consonance with his age at the time of his accidental death. There is no substance in the appeal. No interference is required in the

impugned judgment and award.

6. I have also heard also learned counsel for the respondent owner.

7. In the case of ***The New India Assurance Company Ltd. vs. Ramrao Lala Borse and others, (supra)***, the Division Bench of this court in para 27 of the judgment has made observations that selection of multiplier cannot in all cases be solely dependent on the age of the deceased. If a young man is killed in the accident leaving behind aged parents who may not survive long enough to match with the high multiplier provided by the second schedule, then the Court has to offset such high multiplier and balance the same with the short life expectancy of the claimants. The age of the parents was held as a relevant factor in case of minor's death.

8. In case of ***United India Insurance Company Ltd. vs. Sobha Amarsingh Rajput (supra),*** this court by referring all earlier judgments on this point, in para Nos. 82 and 83 of the judgment has observed that life expectancy of the deceased may be higher, but if the life expectancy of the dependents-claimants is not that much, which is obvious in case where claimants are the parents, amount of compensation cannot be assessed on the basis of life expectancy of

the deceased. In para 83 of the judgment, this court has observed that as the deceased were bachelors and the claimants are the parents and as the age of the parents is higher than the age of the deceased, choice of multiplier has to be made depending on the average age of the parents and not the age of the deceased.

9. In view of the above observations, I find that the Tribunal has erroneously applied the multiplier 18. Considering the peculiar facts of the present case, if the age of the mother as on the date of accident is considered, since father is no more at present, the relevant multiplier would be 13 instead of 18. Thus, the compensation amount comes to Rs.3,12,000/-. The Tribunal has rightly awarded the amount of Rs.10,000/- under non pecuniary heads, no interference is required in the same. Thus, the claimants are entitled for amount of Rs.3,22,000/- in total. The judgment and award passed by the Tribunal dated 3.2.2010 in M.A.R.J.I. No. 408 of 2007 requires modification. Hence, I proceed to pass the following order:-

ORDER

I. First appeal is hereby partly allowed. No costs.

II. The judgment and award passed by the learned Member, M.A.C.T. Aurangabad dated 3.2.2010 in M.A.R.J.I. No. 408 of 2007 is modified in the following manner:-

“The claimants are entitled for compensation of Rs.3,22,000/- (Rupees Three lacs twenty two thousand only) including the compensation under no fault liability.”

III. Rest of the judgment and award stands confirmed.

IV. Award be drawn up as per the above modification.

V. Needless to say that if the amount is paid as per the judgment and award dated 3.2.2010 passed by the Member, M.A.C.T. in M.A.R.J.I. No. 408 of 2007, the same shall be part of the award after modification and the amount in excess, if deposited by the appellant insurer in connection with the modification of the award, the same shall be refunded to the appellant-insurer and the balance amount as per the modified award shall be paid to the claimants.

VI. The appeal is accordingly disposed of.

VII. Pending civil applications are also disposed of.

(V. K. JADHAV, J.)

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