

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO. 2120 OF 2013
AND
CIVIL APPLICATION NO. 3764 OF 2013
AND
CIVIL APPLICATION NO. 3765 OF 2013

The New India Assurance Co. Ltd. .. Appellant
vs.
Shri. Pandurang B. Deshmukh and ors. .. Respondents.

Mr. S.S. Jinsiwale for the Appellant.
Mr. Sangramsingh Yadav for Respondent No.3.

CORAM : M. S. SONAK, J.
DATE : 31 JANUARY 2017.

P.C. :-

1] In this civil application as well as the accompanying appeal, respondent No.1 is stated to have expired in the year 2013. Till date, no steps have been taken to bring on record the legal representatives. In these circumstances, both the civil applications as well as the appeal, in fact stand abated as against the legal representative of deceased respondent No.1.

2] Mr. Jinsiwale, learned counsel for the appellant, however submits that if some time is granted, the appellant will take necessary steps. At this stage, it is not necessary to grant any further time to the appellant. Since, even if the two grounds raised by the appellant in support of this appeal are to be accepted as correct, there is no reason to interfere with the impugned award.

3] Mr. Jinsiwale, learned counsel for the appellant, submitted that in this case the claimant's son was a bachelor on the date of his demise in the accident, which led to institution of the claim petition. For this reason, he submitted that the deduction towards personal expenses should have been to the tune of 50% and not merely 1/3rd as is reflected in the impugned judgment and award. Further, Mr. Jinsiwale submits that since the claimant's son was a bachelor, the Motor Accident Claims Tribunal (MACT) was entirely wrong in applying the multiplier of 17, on the basis of age of the deceased son, who was 33 years. Relying upon the decision in ***United India Insurance Company Ltd. Vs. Sobha A. Rajput and ors. - 2016 (0) Supreme (Mah) 1386***, Mr. Jinsiwale submits that in such a situation the multiplier has to be adopted depending upon the average age of the parents. He submits that in this case the average age would come to 58 to 62 years and therefore multiplier adopted would be 8 and not 17. On such basis, Mr. Jinsiwale submits that the impugned award is liable to be modified specifically.

4] With assistance of learned counsel appearing for the parties, i.e., Mr. Jinsiwale, learned counsel for the appellant and Mr. Yadav, learned counsel for respondent No.3 (the owner of rickshaw which met with accident), I have perused the reasoning of the impugned award. Although, there may be merit in the submission of Mr. Jinsiwale, it is to be noted that even after making the deductions or rather the determination, on the basis urged by Mr. Jinsiwale, still there is no reason to interfere with the ultimate conclusion recorded in the impugned award.

5] The aforesaid is because, the MACT was plainly wrong in treating the income of the deceased as only Rs.3000/- when in fact, the evidence on record suggests that apart from salary income, the deceased was earning additional income by way of agricultural operations. That apart, the impugned award has made no addition whatsoever to the income of Rs.3000/- per month, which itself is quite inadequate, on basis of law laid down by the Hon'ble Supreme Court in *Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors. - (2015) 6 SCC 347* and other cases. On this basis, considering the age of deceased was only 33 years, at the time of his death an addition of at least 50% was warranted towards future prospects. That apart, in this case, towards love and affection or mental agony and shock, meagre amount of only Rs.10,000/- each have been awarded. In terms of the decision of the Hon'ble Supreme Court in of *Rajesh V. Rajbir Singh - 2013(9) SCC 54*, the compensation under this head should have been at least Rs.1 lakh. Besides, towards funeral charges and ambulance charges, again, an amount of Rs.4000/- has been awarded, which is also grossly inadequate.

6] In this case, in fact, the MACT has determined the compensation of Rs.4,08,000/-. However, since the claimants had claimed only Rs.3,36,000/-, the MACT restricted the compensation to Rs.3,36,000/- with addition towards the component of mental agony, shock, love and affection and funeral expenses, and awarded total compensation of Rs.3,60,000/-. If the correct principles were to be applied, the compensation amount would far exceed Rs.5 lakhs or thereabouts. This is even after accepting in its entirety the

contentions raised by learned counsel for the appellant in the present appeal.

7] Taking into consideration the aforesaid position, it is not necessary to admit this appeal, which in any case stands abated as against respondent no.1. There is also issue as to whether the appeal can proceed against the other respondents in absence of legal representatives of deceased respondent No.1. However, without going into the said issue, in the light of the aforesaid discussion, there is no necessity to admit this appeal. The appeal is accordingly, dismissed. The interim order , if any, stand vacated.

8] The amount of Rs.25,000/- deposited in this court to be transmitted to the concerned MACT within a period of four weeks from today. The concerned MACT to issue notice to Shantabai P. Deshmukh, resident of Basappachi Wadi, Tal. & Dist. Satara, so that she is in a position to withdraw the amount deposited by the appellant towards the satisfaction of the impugned judgment and award.

9] The civil application seeking condonation of delay and the civil application for stay do not survive and the same are also disposed of.

10] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)