

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (STAMP) NO. 30672 OF 2015
WITH
CIVIL APPLICATION NO. 483 OF 2016
AND
CIVIL APPLICATION NO. 3854 OF 2015
IN
FIRST APPEAL (STAMP) NO. 30672 OF 2015

Reliance General Insurance Co. Ltd. .. Appellant
vs.
Hanmant Tukaram Raut & Ors. .. Respondents

Mr. Deepika Motagi for Appellant in FA.
Mr. R. V. Sankpal for Respondents Nos. 1 and 2 in FA.

CORAM : M. S. SONAK, J.
DATE: 20 FEBRUARY 2017

P.C :

1] Learned counsel for the appellant submits that since only the issue of quantum is involved, matter be taken up for final disposal at this stage. Learned counsel for respondent nos. 1 and 2, supports this plea and states that the respondents are not in a position to file any cross objections in the matter and therefore, he will have no objection if the appeal itself is taken up for final disposal at this stage.

2] Ms Motagi, learned counsel for the appellant submits that in this case, learned MACT has erred in applying the multiplier of 18 on the basis of the age of victim which was 21 years. She submits

that the victim was a bachelor at the time of the accident. In such circumstances, she submits that the multiplier has to be determined by taking into consideration the age of the dependents. For this proposition, she relies upon the decision of the learned Single Judge of this court in the case ***United India Insurance Company Ltd. vs Sobha Amarsingh Rajput***¹ .

3] Ms Motagi further submits that in this case, since the victim was bachelor, the deduction towards his personal expenses should have been to the extent of 50% i.e. one half and not one third as adopted by the learned MACT. On such basis, she submits that the compensation amount comes to Rs.2,54,100/- and not Rs.4,65,228/- as determined in the impugned award.

4] Mr. Sankpal, who appears for the claimants, submits that there is no case made out to interfere with the impugned award on the grounds urged by Ms Motagi. In any case, he submits that in this case, no compensation has been awarded towards loss of love and affection, as well as towards funeral expenses, only an amount of Rs.2,000/- has been awarded. He further submits that the claimants' son died in the accident when he was only 21 years of age, therefore, compensation was necessary to be awarded as against the said two heads. For this reason, Mr. Sankpal submits

1 2016 (4) ACC 407

that the appeal is liable to be dismissed.

5] Ms Motagi, submitted that in this case the insurance policy was itself fake, however, since such plea was not raised before the MACT, she is not raising such a plea before this court. This is proper. The factual plea of this nature, was required to be raised in the first instance before the MACT. Such a plea, cannot be raised directly for the first time before this court. Therefore, Ms Motagi is right in her submission.

6] Ms Motagi is also right in her submission that the multiplier applied in the present case is incorrect. As per the decision of the *Sobha Amarsingh Rajput* (supra) the correct multiplier will be 13, since, the average age of the dependants would come to 45. Ms Motagi is also right in her contention that since deceased was a bachelor at the time of his demise, deduction towards personal expenses should have been one half and not one third. On this basis, the compensation amount itself comes to Rs.2,44,100/-. Notwithstanding the aforesaid, there is no case made out to interfere with the impugned award because, the learned Tribunal has made no award whatsoever under the head of love and affection. In this case, the deceased was a young boy of 21 years. His parents are certainly entitled to be compensated for the loss of

love and affection. In the facts and circumstances of this case, this amount would come to Rs.2,00,000/- as per the decision in the case of **Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr.**² and other matters. Further, an amount of at least Rs.25,000/- was required to be awarded towards funeral expenses and not just Rs.2,000/- as has been awarded. Therefore, if this additional amount of Rs.2,23,000/- is added, then the compensation will come to much more than Rs.4,65,228/- which has been awarded. In such circumstances, although, the contentions of Ms Motagi are upheld, on facts, there is no case made out to interfere with the impugned award. Accordingly, this appeal is dismissed. There shall however be no order as to costs. The interim order granted earlier is hereby vacated.

7 In view of dismissal of appeal, civil applications do not survive and are disposed of accordingly.

(M. S. SONAK, J.)

Chandka

² (2009) 6 SCC 121