IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4501 OF 2016
IN
FIRST APPEAL (STAMP) NO.18633 OF 2016

Royal Sundaram Alliance Insurance Co. Ltd. …Applicant/Appellant
vs.
Smt. Vidya Devidas Londhe And Ors. …Respondents

WITH
CIVIL APPLICATION NO.1233 OF 2017
IN
FIRST APPEAL (STAMP) NO.18633 OF 2016

Smt. Vidya Devidas Londhe And Ors. …Applicants
vs.
Royal Sundaram Alliance Insurance Co. Ltd.…Respondent

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Mr. Nikhil Mehta, i/b. KMC Legal Venture, for the Appellant/Applicant in CAF/4501/16.

Mr. Sachin Gite, for the Respondents/Applicants in CAF/1233/17.

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CORAM : S.C. GUPTE, J.

DATED : 2 MAY 2017

P.C. :

. Heard learned Counsel for the parties.

2. Civil Application No.4501 of 2012 is for condonation of a delay of 14 days in filing the First Appeal. For the reasons stated in the Civil Application, the Civil Application is allowed by condoning the delay. Office shall now number the First Appeal, subject to removal of other office objections, if any. The First Appeal itself is admitted and taken up

for hearing forthwith by consent of parties.

3. The First Appeal challenges an order passed by MACT, Nashik on a Motor Accident Claim Petition. Respondent Nos. 1 to 3 were original claimants before MACT, Nashik. The claim was on the basis of an accident involving a fatality. Devidas Vishwanath Londhe was riding a motor cycle from Sangamner to Sinnar and met with an accident on 15 October 2012. At Gurewadi Shiwar, the insured vehicle, being an Indica car, coming from the opposite direction, hit the motor cycle driven by Devidas. Devidas sustained grievous injuries. He was initially admitted in a hospital at Sinnar and, thereafter, shifted to Shatabdhi Hospital at Nashik, where he was treated from 15 October 2012 to 1 November 2012. He eventually succumbed to the injuries. Devidas was survived by his widow and two sons, who are Respondent Nos. 1 and 2 (original claimants before MACT, Mumbai) and his old parents, who are Respondent Nos. 5 and 6 to the First Appeal (Original Opponent Nos. 3 and 4). The Trial Court held that the accident was caused by rash and negligent driving of the Indica car and the death of the victim was a result of this accident. The Trial Court held that the claimants were entitled to get compensation of Rs.32,95,000/- with interest at the rate of 7.5% per annum from the date of the claim petition till payment or realization. This compensation was worked out on the basis of the income of the deceased Devidas, who was a labour contractor, and who was claimed to be earning Rs.40,000/- per month. An income tax return for the Assessment Year 2012-13 was filed in support of this income. Besides this income tax return, the claimants also examined Claimant No.1 and a Tax Consultant, who had filed income tax returns for the

deceased for about 9 to 10 years. Based on these examinations and the return produced before the Court, the net income of the deceased was worked out to Rs.3 lakhs per annum as an average annual income. The return of income for A.Y. 2011-12 showed the gross income of the deceased at Rs.3,53,749 and net income of Rs.3,35,853. Since income tax returns for three years were not placed on record and therefore, there was no way to assess ups and downs in the business in order to assess an appropriate average annual income, applying a thumb rule average annual income of Rs. 3 lakhs was worked out as a basis for computation of loss of income. There was no compensation awarded towards future prospective income, since there was no evidence to show that the income was increasing every year. Without any other contrary proof, memorandum of postmortem examination showing the age of the deceased as 48 years was accepted and his age was reckoned as 48 years. A multiplier of 13 was, accordingly, applied. The gross compensation was, thus, computed at Rs.39 lakhs. Considering that there were about 5 dependent persons staying with the deceased Devidas, applying the ratio of **Sarla Verma**'s case, 1/5 amount, i.e. Rs.7,80,000/- was deducted towards the personal expenses of the deceased and Rs.31,20,000/- was computed by the Tribunal towards loss of income. Adding to it Rs.25,000/- towards funeral expenses and Rs.50,000/- for loss of estate, a total compensation of Rs.32,95,000/- was worked out. There is broadly no infirmity in this computation. The only aspect of dispute, in practical terms, appears to be the deduction of 1/5th towards personal expenses. It is submitted by learned Counsel for the Appellant that considering that there were only three Applicants, the deduction ought to have been 1/3rd and not 1/5th. On the other hand, it is submitted by learned Counsel for Respondent Nos. 1 to 3 (Original Claimants) that apart from the original claimants, there were Appellant Nos. 3 and 4, who are aged parents of deceased Devidas, who had submitted a joint purshis, waiving their right of compensation. It is submitted that, accordingly, the deduction of 1/5 towards personal expenses is justified. Anyway, learned Counsel for both parties leave the deduction of personal expenses to this Court. Considering the overall controversy and the facts of the case, this Court is of the view that deduction of 1/4th amount towards personal expenses of deceased Devidas will meet the ends of justice. Accordingly, the compensation is reworked to Rs.30 lakhs. The First Appeal is, accordingly, allowed partly by reducing the principal amount of compensation from Rs.32,95,000/- to Rs. 30 lakhs. Rest of the order is confirmed. The amount of Rs.25,000/-, deposited in this Court as a pre-condition for filing of this appeal by the Appellant, shall be transferred to MACT, Nashik. All Civil Applications are disposed of. Respondent Nos. 1 to 3 shall be entitled to withdraw the entire amount of compensation in terms of the present order.

(S.C. GUPTE, J.)