

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1297 OF 2014
WITH
CIVIL APPLICATION NO. 3801 OF 2014

The New India Assurance Co. Ltd. .. Appellant
vs.
Smt. Meenabai Hanumant Gaware & Ors. .. Respondents

Mr. S. S. Jinsiwale for Appellant.
Mr. V. B. Tapkir for Respondent Nos. 1 to 5.

CORAM : M. S. SONAK, J.
DATE: 14 FEBRUARY 2017

P.C :

1] Heard learned counsel for the parties. At their request and with their consent, the appeal itself is disposed of finally, at this stage.

2] This matter had come up earlier but was adjourned in order to enable learned counsel for respondent nos. 1 to 5 to take instructions as to whether the respondents would be interested in filing cross objections. Mr. Vilas Tapkir, learned counsel for respondent nos. 1 to 5 on basis of instructions from respondent nos. 1 to 5 today makes a statement that the said respondents are not interested in filing any cross objections.

3] Mr. Jinsiwale, learned counsel for the appellant submits that

the additions made towards future prospects are incorrect, since, the deceased was a self employed person. He submits that such additions is contrary to the law laid down by the Hon'ble Supreme Court in case of ***Reshma Kumari vs. Madan Mohan***¹. He submits that it is for this reason that the decision in the case of ***Rajesh vs. Rajbir Singh***² has been referred for reconsideration of a Larger Bench of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited vs. Pushpa & Ors.***³

4] The circumstance that the matter has been referred to the Larger Bench, does not, denude *Rajesh vs. Rajbir Singh* (supra) of its precedential authority. That apart, three Judges Bench of the Hon'ble Supreme Court in the case of ***Munna Lal Jain & Anr. vs. Vipin Kumar Sharma & Ors.***⁴, after noticing the decision in *Reshma Kumari* (supra) has held that even in case of a self employed person, addition to the extent of 50% of the actual income is required to be made, in a case where the deceased was less than 40 years of age. Therefore, it cannot be said that there is any infirmity in the impugned award. The award is quite consistent with the law laid down by the Hon'ble Hon'ble Court in the case of *Munna Lal Jain* (supra) there is accordingly no merit in the only submission raised by Mr. Jinsiwale in support of the present appeal.

1 (2013) 9 SCC 65

2 (2013) 9 SCC 54

3 (2015) 9 SCC 166

4 (2015) 6 SCC 347

This appeal is therefore dismissed. There shall be no order as to costs.

5] The amount of Rs.25,000/- deposited by the appellant in this court to be transmitted to the concerned MACT at Pune. The respondent nos. 1 to 5 shall be entitled to withdraw this amount as also any other amounts that may have been deposited by the appellant – insurance company in accordance with the impugned award.

6] In view of dismissal of the appeal, civil application does not arise and is disposed of.

(M. S. SONAK, J.)

Chandka