IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3068 OF 2015
IN
FIRST APPEAL (ST) NO. 5522 OF 2015
WITH
FIRST APPEAL (ST) NO. 5522 OF 2015
AND
CIVIL APPLICATION NO. 3069 OF 2015
WITH
CIVIL APPLICATION (ST) NO. 4975 OF 2017

H.D.F.C. General Insurance Company Ltd. .. Applicant/Appellant
vs.
Smt. Vaishali R. Tipare and ors. .. Respondents

Mr.Abhijit Kulkarni for the Applicant/Appellant.
None for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 6 MARCH 2017.

P.C. :-

1] Heard Mr. Abhijit Kulkarni, learned counsel for the applicant/appellant- Insurance Company.

2] There is delay in institution of the appeal. Mr. Kulkarni, learned counsel states that all the respondents except respondent No.6 have been served. He submits that in the appeal, the appellant basically questions the quantum of compensation and therefore, the presence of respondent No.6 may not be necessary.

3] For the reasons set out in the civil application, the delay in institution of the appeal is condoned and the same is disposed of accordingly.

4] At the request of Mr.Kulkarni, learned counsel for the appellant-Insurance Company, the appeal is taken up for final disposal, since the issue involves is only of quantum.

3] Mr. Kulkarni submits that in this case the Motor Accident Claims Tribunal (MACT), Nashik has incorrectly taken into consideration the amounts towards bonus, overtime and incentive, as forming a part of the salary components of the deceased Rajesh Tipare. He submits that these amounts are variable and never certain. Under these circumstances, these amounts could never have been included in the salary components. For the purposes of determining the annual income of the deceased Rajesh Tipare, Mr.Kulkarni points out that an amount of Rs.1964/- per month has been added towards over time and Rs.6000/- and Rs.21,792/- has been added towards bonus and incentive to the annual income. He submits that together, an amount of almost Rs.51,292.50 has been added to the annual income of the deceased Rajesh, which amount, did not warrant any addition. Mr. Kulkarni submits that if this amount is deducted, then the quantum of compensation as awarded by the MACT would reduce considerably and it is this reduced compensation, which is just compensation, in the facts and circumstances of the present case.

4] Without adverting to the issue as to whether the submission of Mr. Kulkarni, on the aspect of overtime, bonus and incentive is correct or not, it is required to be noted that even after excluding these components, the just compensation, in the facts and circumstances of the present case would be higher than the compensation already awarded by the MACT. Therefore, there is no case made out to interfere with the impugned award in this appeal.

5] The MACT has itself determined the annual income of the deceased at Rs.2,22,138/-before addition of amount of Rs.6000/- towards bonus and an amount of Rs.21,792/- towards incentive. In computing the figure of Rs.2,22,138/-, the MACT has taken into account an amount of Rs.24,000/- towards overtime (I.e. Rs.1,964 x 12). If this is deducted, the round figure of the annual income of the deceased Rajesh would come to Rs.2 Lacks per annum. This means that even if the contention of Mr. Kulkarni is accepted, the annual income of the deceased Rajesh comes to Rs.2 Lakhs per annum.

6] The MACT, in this case, has deducted 1/4th amount towards personal expenses of Rajesh, which means that the dependency amount per annum would come to Rs.1,50,000/-. Rajesh was 40 years old at the time of accident. He had studied up to M.Sc. in Microbiology and was working as 'skilled II' in GlaxoSmithKlin Pharmaceuticals Ltd. Amabad, Nashik. There is ample material on record on the aspect of future prospects. Taking into consideration his age and the law laid down in ***Rajesh and ors. vs. Rajbir Singh and ors. - (2013) 9 SCC 54*** and in ***Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors. - (2015) 6 SCC 347*** an addition of 50% is required to be made to his annual income and on account of future prospects. This means that the dependency amount comes to Rs.2,25,000/- per annum. The multiplier adopted in this case by the MACT, as per the ruling in ***Sarla Verma (Smt) vs. Delhi Transport Corporation and anr. - (2009) 6 SCC 121*** is '*15*'. Accordingly, the compensation towards dependancy would comes to Rs.33,75,000/-.

7] In this case, the MACT, has awarded hardly Rs.10,000/- towards funeral expenses, when the correct figures ought to be at least Rs.25,000/-. Similarly, the MACT has awarded only Rs.10,000/- each to the claimants towards loss of love and affection. In fact, Vaishali, the widow was required to be awarded at least a sum of Rs.1 Lakh towards loss of consortium. Similarly, the two minor children, Agraja and Anuja, were required to be awarded Rs. 1 Lakh each towards loss of love and affection. The parents were also required to be awarded compensation towards loss of love and affection, which may be conservatively estimated at Rs.50,000/- each. This means that to the amount of Rs.33,75,000/- further addition of Rs.4 Lakhs and 25,000/- is due. This takes the compensation amount to Rs.38 Lakhs. The MACT has awarded only Rs.36,85,230/-, even after taking into consideration the income towards bonus, overtime and incentive. Even if the contention of Mr.Kulkari that these amounts are to be excluded, is to be accepted, just compensation payable comes to Rs.38 Lakhs. In these circumstances, there is no case made out to interfere with the impugned judgment and award. The appeal is therefore, dismissed.

8] In view of dismissal of the appeal, the civil application seeking restoration of the appeal against respondent No.6 (which is not on board), whose presence, in any case, was not necessary for deciding the issue of quantum as well as civil application seeking stay do not survive and the same are also dismissed. The interim order, if any, is vacated. The amount of Rs.25,000/- deposited in this case be transmitted to the concerned MACT.

(M. S. SONAK, J.)