

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL (ST) NO.6470 OF 2017
WITH
CIVIL APPLICATION NO.676 OF 2017
IN
FIRST APPEAL (ST) NO.6470 OF 2017**

Bajaj Allianz General
Insurance Company Ltd.

..Appellant/Applicant

V/s.

Smt.Shailaja Bhalchandra Deshmukh
& Ors.

..Respondents

Mr.D.S. Joshi for the Appellant/Applicant.

Mr.R.S. Alange for Respondent Nos.1 to 4.

CORAM : M. S. SONAK, J.

DATE : 15 MARCH 2017.

P.C.

1. Heard Mr.D.S. Joshi, learned counsel for the appellant and Mr.Alange, learned counsel for the respondent Nos.1 to 4-Claimants.

2. There is no necessity to issue notice to respondent No.7, the owner of the jeep bearing No.MH-13/R-9699 since, there is merit in the ground raised by the appellant-Insurance Company, that the said jeep was not at all involved in the accident, which

ultimately led to demise of Mr.B.N. Deshmukh.

3. With the consent and at the request of the the learned counsel for the parties, this appeal is disposed of finally at the stage of admission, since, apart from the ground of non-involvement of the jeep, the only other major ground raised in this appeal relates to the quantum of compensation.

4. The learned counsel for the appellant has also placed on record the deposition/notes of evidence and documents in order to assist the final disposal of the appeal.

5. Mr.Joshi, learned counsel for the appellant-Insurance Company submits that in this case the FIR was lodged six days after the date of alleged accident. He further submits that the so called eye witness who deposed to the accident was completely untrustworthy and his deposition ought not to have been relied upon. Mr.Joshi submits that P.W.No.4 Mr.Kiran Mali has deposed that he was driving a two wheeler when he witnessed the accident. However, the RTO Inspector who was examined on behalf of the Insurance Company has clearly deposed that the registration number indicated by Mr.Kiran Mali was not a number which could

have been allotted to two wheeler. The RTO Inspector also deposed that the number stated by Mr.Kiran Mali was infact assigned to some other four wheeler owned by one Mr.Ajay Rawlani. On this ground, Mr.Joshi submits that the testimony of the Mr.Kiran Mali, who is the sole eye witness to the accident was required to be rejected. He submits that such rejection, there is no evidence on record to show that the jeep was involved in the accident. In such circumstances, neither the owner of the jeep nor the Insurance Company would have at all been made liable in the matter of this nature.

6. Without prejudice, Mr.Joshi submits that the compensation awarded by the MACT is excessive because the MACT has failed to make any deduction towards Income Tax, while considering the salary of deceased Mr.B.N. Deshmukh. He submits that the MACT has taken into consideration gross salary instead of net salary and on this ground the compensation amount is liable to be reduced.

7. Mr.Alange, the learned counsel for the respondents-claimants submits that the owner of the jeep was very much party to the proceedings and such owner, has not denied that the jeep was involved in the accident which led to the demise of Mr.B.N.

Deshmukh. That a part, even the Insurance Company did not examine the owner or the driver of the vehicle in order to establish that the jeep was not at all involved in the accident. Mr. Alange points out that there is material on record to indicate that the driver of the jeep was actually prosecuted by the State for rash and negligent driving which led to the accident, in which Mr. B.N. Deshmukh lost his life. Mr. Alange submits that all these materials are more than sufficient to establish the involvement of the jeep in the accident.

8. On the aspect of quantum of compensation, Mr. Alange submits that the MACT has erred in awarding compensation of Rs.55,39,140/- and that the compensation amount should have been greater. He submits that the compensation awarded to the aged parents and the minor children towards loss of love and affection is too meager and contrary to the law laid down by the Hon'ble Supreme Court in the case of *Sarla Verma (Smt) & Ors. V/s. Delhi Transport Corporation & Anr. (2009) 6 SCC 121*. For these reasons, Mr. Alange submits that this Court may not interfere with the impugned award.

9. Rival contentions now fall for my determination.

10. There is absolutely no merit in the contentions of Mr.Joshi that the jeep insured by the appellant was not involved in the accident. The circumstance that the FIR was lodged after six days is hardly a circumstance which supports this ground raised by the Insurance Company, more so because there is no dispute that the driver of the jeep was actually prosecuted by the State in pursuance of the FIR. That a part, the Insurance Company, did not choose to examine the driver who would have been in the best position to depose upon the involvement or non-involvement of the jeep in the accident, which was one of the issues raised in the claim petition. The owner of the jeep was a party and has not disputed the factum of the accident or the involvement of the jeep. All these circumstances are sufficient to reject the first contention of Mr.Joshi.

11. On the aspect of quantum of compensation, however, there is merit in the submission of the Mr.Joshi that it is the net income which was required to be taken into consideration and not gross income. Further, deduction to the extent of 10% was required to be made towards income tax, particularly, since, the material on record indicates that the gross income of deceased Mr.B.N. Deshmukh was Rs.3,63,360/- per annum. After such deduction, the net annual income would come to Rs.3,27,024/-.

12. Taking into consideration the number of dependents, deduction to the extent of $\frac{1}{4}^{\text{th}}$ is required to be made towards the personal expenses which the deceased is presumed to have normally incurred. Upon such deduction, the compensation towards loss of dependency comes to Rs.2,45,268/- per annum. There is no dispute that the deceased was 40 years of age at the time of the unfortunate accident. Therefore, the appropriate multiplier in terms of the decision of the Hon'ble Supreme Court in the case of ***Sarla Verma (Supra)*** will be 15. The compensation towards dependency would therefore come to Rs.36,79,020/-. Applying the law laid down by the Hon'ble Supreme Court in the case of ***Munna Lal Jain & Anr. V/s. Vipin Kumar Sharma & Ors. (2015) 6 SCC 347***, further, addition of 30% is required to be made on account of future prospects. This brings the total compensation towards loss of dependency to Rs.47,82,726/-.

13. In this case, the learned MACT, has awarded compensation of hardly Rs.20,000/- per person with regard to the minor children and the aged parents. This is improper and contrary to the law laid down by the Hon'ble Supreme Court in the case of ***Rajesh & Ors. V/s. Rajbir Singh & Ors. (2013 9 SCC 54)*** and ***Neeta W/o Kallappa Kadolkar & Ors. V/s. Divisional Manager***

***Maharashtra State Road Transport Corporation, Kolhapur
(2015-3-SCC-590).***

14. In the case of this nature, atleast an amount of Rs.1 lakh was required to be awarded to each of the minor children towards loss of love and affection. It is also a fit case were an amount of Rs.75,000/- should have been awarded to the aged parents towards loss of love and affection, taking into consideration the circumstance that they have lost their son in the evening of their life. The MACT has rightly awarded Rs.1,00,000/- to the widow of the deceased for loss of consortium and an amount of Rs.25,000/- towards funeral expenses. This means that to the amount of Rs.47,82,726/-, a further addition of Rs.5,75,000/- will have to be made. This takes the total amount of compensation Rs.53,57,726/-.

15. It is the duty of the Tribunal as well as the Appellate Court to award just compensation. For the aforesaid reasons, the appeal is partly allowed. The compensation amount is determined at Rs.53,57,726/- in place of Rs.55,39,140/- as determined by MACT in the impugned judgment and award. There is no case made out to interfere with the other directions in the impugned judgment and order, which are accordingly, maintained.

16. The appeal is accordingly disposed of in the aforesaid terms. Upon disposal of the main Appeal, Civil Application for stay does not survive and the same is also disposed of.

17. In the facts and circumstances of the present case, there shall be no order as to costs.

(M. S. SONAK, J.)