IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1025 OF 2016

Shri Vijay Mansukhlal Goradia & anr. ... Appellants

Vs.

Municipal Corporation of Greater Mumbai … Respondent

Mr.G.S. Godbole i/b Drupad Patil and Sumit K. for the Appellants
Mr.S.S. Pakale with Ms.M.R. Bhoir for Respondent

CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: SEPTEMBER 20, 2017

P.C. :

1. Heard.

2. Admit. By consent of the parties, Appeal taken up for final hearing forthwith.

3. This appeal for enhancement is directed against the judgment and order dated 16.11.2015 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai, in MACP No.393 of 2010. The learned Member, Motor Accident Claims Tribunal, has granted award of Rs.5,57,000/- alongwith interest @ 7.5% p.a. from the date of the application.

4. The applicants are parents and their 26 year old son Shaishav died in an accident on 3.6.2009 when he was proceeding on his motor cycle on Mumbai-Thane highway. The offending motor tanker MH-01-L-5865 came from inside the service road of the highway in a high and excessive speed. The driver of the vehicle came in a rash and negligent manner and dashed the motor cycle from behind. Shaishav was severely injured. He was shifted to Lokmanya Tilak hospital at Sion, but he was declared dead. The parents filed a claim for Rs.25 lakhs. The deceased was working as a Director of a firm by name V.S.R. Shrink Pack Limited and was earning Rs.1,80,000/- per annum. The income-tax returns of the preceding three financial years were produced by the father. The father gave evidence to prove the claim. The claimants examined the Chartered Accountant, produced FIR, postmortem report. The opposite party insurance company examined one Shri Wakode, the driver of the offending vehicle, who denied negligence. The learned Judge after considering the oral and documentary evidence of both the sides awarded an amount of Rs.5,57,000/- with interest. Being aggrieved thereby, this appeal is preferred for enhancement.

5. The learned Counsel for the appellants has submitted that the compensation granted by the Tribunal is very less. The Tribunal has erred in fixing the notional income of the deceased at Rs.4,000/- per month. The learned Counsel has argued that the father has adduced oral as well as documentary evidence in support of his claim. The deceased had studied B.Com. and had taken admission for Management Course in a well known Mumbai based institute, namely, S.P. Welingkar Institute. In support of his submissions, he produced a receipt of admission in the said Institute. He submitted that the deceased was working with his father in their packing business. The claimants have produced Income Tax Returns (ITRs) of the deceased for the financial years 2006-2007 (exhibit 27), 2007-2008 (exhibit 28) and 2008-2009 (exhibit 29) and also the ITRs of the company namely V.S.R. Shink Pack Pvt. Ltd. for the said financial years at exhibits 30, 31 and 32. He submitted that the annual gross income as submitted in the ITRs of the deceased for the years 2006 to 2009 is as follows:

2006-2007 = Rs.37,500

2007-2008 = Rs.120,000

2008-2009 = Rs.156,000

6. He submitted that the income which is shown as last drawn by the deceased ought to have been taken into account which comes to Rs.13,000/- per month instead of Rs.4,000/- per month. The learned Counsel has further argued that the learned Tribunal has not considered compensation under the head of 'future prospects' at all which should have been granted considering the age of the deceased. He further submitted that the loss of parental love and affection is granted only Rs.1 lakh. No compensation is granted towards loss of estate. Thus, the amount of compensation is very less. In support of this submissions, he relied on the judgment of the hon'ble Supreme Court in the case of **Smt.Neeta w/o. Kallappa Kadolkar vs. The Divisional Manager, MSRTC, Kolhapur[1].** He submitted that the Supreme Court in the said judgment had awarded Rs.1 lakh to each of the children towards loss of love and affection of the deceased father; loss of estate was also granted at Rs.1 lakh. Thus, the learned Counsel submitted that the compensation is to be enhanced.

7. Per contra, Mr.Pakale appearing for the respondent, submitted that the trial Court has correctly held the notional income of the deceased as Rs.4,000/- per month. He submitted that at the

1 SLP(C) Nos.4897-4898 of 2014 decided on 13.1.2015

most, the average of the income which is shown as gross income in the Tax returns is to be taken and it comes to not more than Rs.9,000/-. One half of the said income comes to Rs.4,500/-. He submitted that at the most, only that much enhancement can be granted. He challenged the income shown for the year 2008-2009 as Rs.156,000/-. He submitted that this return is filed after the death of the deceased i.e., 3.6.2009. He submitted that the original claimant - father in the cross-examination gave admission that he and his son were not taking salary in their company. He submitted that the insurance company seriously challenges the enhancement in the income of the deceased. He has further argued that in fact, though the insurance company has not filed the appeal challenging the judgment and award, there is an error in applying the multiplier of 18 on the basis of the age of the deceased. Instead, the multiplier should have been applied at 12.

8. Heard submissions. Perused the judgment and award. The submission of the learned Counsel for the respondent is that the Tribunal has erroneously applied the multiplier at 18 on the basis of the age of the deceased in view of the judgment of the Division Bench of this Court in the case of **The New India Assurance Co.**

Ltd. vs. Smt.Alpa Rajesh Shah[2]**,** the age of the multiplier is to be adopted on the basis of the age of the parents. In the present case, the deceased Shaishav was 26 years old. However, at the time of the filing of the application, the father Vijay was 55 and mother Raksha was 49 years old. So, the multiplier is to be fixed on the basis of the age of the mother, which will come to 13. Therefore, that should be reduced.

9. The appellants have challenged the judgment and award mainly on the ground of income of the deceased. On perusal of the evidence of the original claimant, it is found that though the learned Member, Motor Accident Claims Tribunal, has considered evidence of the applicant Vijay Goradia, the witness No.2 Jitesh Jain and also the documents produced by the claimants on proof of income of the deceased, the learned Member has committed error in assessing those documents. The deceased was working in his father's company, namely, V.S.R. Shrink Pack Pvt. Ltd., which was doing a business of packing.

10. There were three Directors in the company and Shaishav was holding 1000 shares. It was deposed that Shaishav was on

2 2014 (4) ALL MR 172

plans of expanding the firm and, therefore, he would have taken admission in the reputed Welingkar Institute for a Management course. The learned Judge ought to have considered that the evidence of Vijay Goradia is corroborated with the evidence of income tax returns of 2006-2007 and 2007-2008. The deceased joined the business in 2005 in 2006-2007, the annual gross income of the deceased was Rs.37,500/-. Within a year, there was a considerable hike in his income which went upto Rs.120,000/-, then, in the year 2008-2009, his income is shown as Rs.156,000/-. Thus, at the time of his death, the income was approximately Rs.13,000/- per months, which is found quite reasonable. His admission in the Welingkar Institute shows that he wanted to take better education and was a hard worker and would have definitely contributed in the business of his father.

11. Thus, considering these factors and circumstances, I am of the view that instead of taking an average of last three years, in this case, an average of the income of the last two years is to be taken as the income of the deceased.

12. In the present case, the Tribunal has failed to consider the future prospects. The deceased was not a salaried person. On

taking into account his progressive income, 40% as future prospects, can be fixed. Thus, deducting 50% from the average salary, adding 40% as future prospects and taking the multiplier at 13, the calculations are as under:

Sr. No.	Heads	Amount by taking average annual income of two years: Rs.1,20,000 + Rs.1,56,000 i.e., Rs.1,38,000/-
1.	Loss of dependency	12,55,800/- (138,000 minus 50% = 69000 X 40% X 13)
2.	Loss of Love & Affection	2,00,000/-
3.	Loss of Estate	1,00,000/-
4.	Funeral expenses	25,000/-
	Total	15,80,800/-

13. Accordingly, the appellants shall be paid the amount of Rs.15,80,800 with interest @ 7.5% p.a. till realisation.

14. First Appeal is disposed of in the above terms.

(MRIDULA BHATKAR, J.)