

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4018 OF 2008
IN
FIRST APPEAL (STAMP) NO. 17845 OF 2008
WITH
CIVIL APPLICATION NO. 4019 OF 2008
IN
FIRST APPEAL (STAMP) NO. 17845 OF 2008

National Insurance Co. Ltd. .. Applicant / Appellant
vs.
Shri Arvind R. Dalvi & Ors. .. Respondents

Ms S. S. Dwivedi for Applicant / Appellant.
Mr. T. J. Mendon for Respondent Nos. 1 to 3.

CORAM : M. S. SONAK, J.
DATE: 30 JANUARY 2017

P.C :

1] Learned counsel for the applicant / appellant submits that notice upon respondent no. 4 was served by publication. However, the affidavit of service was not filed. As a result of which, the Registrar (Judicial) has dismissed the civil application as against respondent no. 4.

2] Learned counsel for the applicant produced the newspaper publication. This means that publication was indeed carried out and service is complete. In such circumstances, the order of the Registrar (Judicial) dismissing the civil application as against respondent no. 4 is hereby set aside and the civil application is restored as against respondent no. 4.

3] For the reasons set out in the civil application, delay of 56 days in instituting the appeal is condoned. Learned counsel for the applicant states that in the appeal, the appellant wishes to raise only one ground and therefore, the appeal itself may be taken up for final disposal. Learned counsel appearing for respondent nos. 1 to 3 (claimants) also submits that the first appeal itself be taken up for final disposal.

4] Ms Dwivedi, learned counsel for the appellant submits that MACT in this case, has taken the multiplier as 15, when, in fact, in terms of the decision of the Hon'ble Supreme Court in case of **Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation**¹, the multiplier should have been taken as 14. She submits that the age of the deceased in the present case was 45 and therefore, in terms of the law laid down in paragraph 42 of *Sarla Verma* (supra), the multiplier should have been taken as 14 and not as 15. This, she submits, is an error apparent on face of record and the compensation amount is liable to be reduced by an amount of Rs.24,000/- on this basis.

5] Mr. Mendon, learned counsel for respondent nos. 1 to 3 submits that although the submission of learned counsel for the appellant on the aspect of proper multiplier may be right, this is not a fit case to interfere with the impugned award and reduce the amount of compensation by an amount of Rs.24,000/-. He submits

1 2009 (6) SCC 121

that in this case the MACT has by, ignoring the judgment of the Hon'ble Apex Court in ***Arun Kumar Agrawal & Anr. vs. National Insurance Co. Ltd. & Ors.***², taken the income of the deceased as Rs.3,000/- per month when in fact, the income should have been taken at least Rs.5,000/- per month. Further, Mr. Mendon points out that towards loss of consortium and towards loss of love and affection the amount of only Rs.10,000/- and Rs.5,000/- respectively has been awarded. When in fact, it was necessary to award a sum of Rs.1,00,000/-, each against the two heads. Mr. Mendon points out that even towards expenses for funeral only amount of Rs.2,000/- has been awarded, when, in fact, at least Rs.25,000/- ought to have been awarded. For all these reasons, Mr. Mendon submits that there is no case made out to interfere with the impugned order.

6] There is merit in the submission of Ms Dwivedi that correct multiplier in this case should have been 14. However, in the peculiar facts and circumstances of this case, the impugned award need not be interfered and the compensation amount awarded to be reduced by an amount of Rs.24,000/-. This is because, the MACT, in this case has really awarded meager amount towards loss of consortium, loss of love and affection and towards funeral expenses. If the correct amounts were to be awarded as against these heads, then, the same would far surpass the amount of

2 2010 ACJ 2161

Rs.24,000/-, which would have to be reduced had the correct multiplier of 14 been applied. The MACT has ignored the decision of the Apex Court in the case of ***Arun Kumar Agrawal*** (supra) as also other decisions when it comes to award of compensation towards loss of consortium, love and affection and funeral expenses. Therefore, upon cumulative consideration of the material on record, there is no case made out to interfere with the impugned award.

7] This appeal is accordingly dismissed. There shall be no order as to costs. In view of dismissal of the appeal, civil applications pending therein also stand disposed of.

8] The amount of Rs.25,000/- which the appellant has deposited in this court to be transmitted to the concerned MACT, along with accrued interest which may have accrued thereon. The original applicants shall be entitled to withdraw the amount of compensation.

9] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)