IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2734 OF 2013
(FOR DELAY CONDONATION)
IN
FIRST APPEAL (ST) NO. 20732 OF 2013
AND
CIVIL APPLICATION NO. 2735 OF 2013
(FOR STAY)

National Insurance Co. Ltd. .. Applicant
vs.
Smt. Sulochana K. Gurjar and ors. .. Respondents

Mr. Atul B. Gatne for the Applicant.
Mr. T.J. Mendon for Respondent Nos.1 to 3.

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

P.C. :-

1] Heard learned counsel for the parties.

2] The delay in institution of the appeal is condoned, since sufficient cause has been shown in the civil application seeking condonation of delay.

3] With the consent of and at the request of learned counsel for the parties, the appeal is admitted and taken up for final disposal, since the issue is only on the quantum of compensation.

4] The appeal already stands dismissed as against respondent Nos.4 and 5. Mr. Mendon, learned counsel for respondent Nos.1 to 3, i.e., claimants, states that the claimants do not intend to file cross-objections in the matter. However, Mr. Mendon states that he will point out the errors in the impugned award.

5] Mr. Gatne, learned counsel for the appellant, submits that in this case, the Motor Accident Claims Tribunal (MACT) has incorrectly taken into consideration the gross salary of the deceased, instead of net salary. He submits that the gross salary of the deceased as per the certificate issued by the Mumbai Port Trust (MPT) was Rs.13,098/-. However, the net salary came to Rs.6621/-. Mr. Gatne submits that it is this net salary, which was required to be taken into consideration. In the alternate, he submits that at least deductions were liable to be made towards society maintenance, sport club charges, income tax, P/Tax and even VPF. All these deductions, according to him, comes to Rs.3000/- and therefore, the net salary could have been taken at Rs.10,000/- per month and not Rs.13098/-. Mr. Gatne has handed in salary certificate issued by Mumbai Port Trust Docks.

6] The certificate, provides the following details.

MUMBAI PORT TRUST DOCKS
Salary Particulars of late Shri Sanjay Krishnarao Gurjar, Clerk Gr.II for the month of May-2004

Date of Appointment - 14.01.1986
P.F.No. - DOO10042, TKT No – 076116482
Pay Scale - 4300-12—5260-130-8120
Basic – Rs. 7,210.00
Gross – Rs.13,098.00
Deduction – Rs. 6,621.00
Net Salary – Rs.6,477 (through Elec. Clearing System)

Earning Rs.		Deductions Rs.	
Basic	7210.00	P.F.	1046.00
D.A.	3245.00	VPF	1000.00

H.R.A.	2163.00	P.F. Loan	430.00
Port Allowance	300.00	Housing Loan	700.00
TR	180.00	LIC	543.00
		Society No.1	1837.00
		Sports Club	200.00
		Income Tax	665.00
		P/Tax	200.00
Total Earning Rs.	13098.00	Total Deduction Rs.	6621.00

This certificate is being issued to Registrar, Motor Accident Claim Tribunal, Mumbai Code No. 774 vide their reference No.MACT/C.R.8/1501/2012 dated 16.06.2012. In case No. 8 (594/2005).

7] At least *prima facie,* there is no case made out to make any deductions towards VPF, i.e., Voluntary Provident Fund and society charges, which comes to Rs.2837/-. However, even if, the contention of Mr. Gatne is to be accepted and net salary is to be taken as Rs.10,000/- and not Rs.13098/-, it is quite clear from the material on record that the just compensation in the present case is in excess of what has been awarded by the MACT, i.e., Rs.19,93,000/-.

8] Even if, the net salary of the deceased is taken as Rs.10,000/-, the addition up to 50% will have to be made towards future prospects on the basis of law laid down by the Hon'ble Supreme

Court in ***Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors. - (2015) 6 SCC 347.*** Mr. Gatne, however, submits that the issue of compensation towards future prospects has been referred to the Larger Bench in ***Shashikala and ors. Vs. Gangalashmama & anr. - (2015) 9 SCC 150.*** Even though, the reference may have been made to the Larger Bench, that by itself does not mean that the decision in *Munna Lal Jain (supra),* looses its precedential authority. Therefore, addition of 50% will have to be made towards future prospects and this will take the annual dependency to Rs.18,00,000/-. There is no dispute with regard to age of the deceased and the multiplier adopted. There is also no dispute with regard to deduction towards personal expenses of the deceased.

9] Even though, in this case, the MACT, has referred to the decision of the Hon'ble Supreme Court in ***Sarla Verma (Smt.) & ors. vs. Delhi Transport Corporation and anr. - (2009) 6 SCC 121,*** yet it has awarded a meagre amount of Rs.10,000/- towards loss of consortium and Rs.2,500/- towards funeral expenses. The amount of at least Rs.1,00,000/- was required to be awarded towards loss of consortium and Rs.25,000/- towards funeral expenses. Besides, to the minor child and the aged mother, no compensation has been awarded towards loss of love and affection, which on the conservative basis would come to another Rs.1,50,000/-. If these components are added, the just compensation exceeds Rs.20,00,000/-.

10] In the aforesaid circumstances, there is no case made out to vary the amount of compensation awarded by the MACT and the appeal is liable to be dismissed. The appeal is accordingly, dismissed with costs assessed at Rs.15,000/-. In view of disposal of main appeal, the application seeking stay does not survive and the same is also disposed of.

11] The Registry is directed to transmit the amount of Rs.25,000/- deposited by the appellant in this court to the concerned MACT within four weeks from today. The appellant to deposit the costs before the concerned MACT within a period of four weeks from today.

(M. S. SONAK, J.)

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