

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 526 OF 2016
WITH
CIVIL APPLICATION NO. 3134 OF 2014
IN
FIRST APPEAL NO. 526 OF 2016
WITH
CIVIL APPLICATION NO. 1277 OF 2016
IN
FIRST APPEAL NO. 526 OF 2016
WITH
CROSS OBJECTION (STAMP) NO. 6497 OF 2017
IN
FIRST APPEAL NO. 526 OF 2016

The Divisional Manager,
The New India Assurance Co. Ltd. .. Appellant
vs.
Narmadabai K. Khandagale & Anr. .. Respondents

Ms. Jyoti Bajpayee for Appellant and for Applicant in CAF 3134 of 2014.

Mr. S. R. Ganbavale with Mr. S. Yadav for Respondent Nos. 1 and 2 and for Applicant in CAF 1277 of 2016 and Cross Objection (Stamp) No. 6497 of 2017.

CORAM : M. S. SONAK, J.
DATE : 09 MARCH 2017

P.C :

- 1] Heard learned counsel for the parties.
- 2] With the consent of and at the request of learned counsel for the parties, the appeal as well as the cross objections are disposed of finally at the stage of admission.
- 3] The operative portion of the judgment and award dated 16 July 2013, reads thus :

"ORDER

1] The opponent Nos. 1 and 2 to pay jointly and severally an amount of Rs.1,37,000/- with interest @ 7% p.a., thereon from the date of application until the compensation amount is paid to the applicants.

2] The amount of compensation be paid equally to the applicant Nos. 1 and 2 by account payee cheques only.

3] An award be drawn up accordingly."

4] Thereafter, the respondents / claimants applied for review and the same was allowed by order dated 6 December 2013, the operative portion of which, reads thus :

"ORDER

a] The order and award dt. 16/7/2013 passed by this Court is reviewed and instead of passing an award for Rs.1,37,000/- the award of Rs.3,25,000/- shall be passed and rest of the order shall continue to remain in existence.

b] An award be modified accordingly."

5] Ms Bajpayee, learned counsel for the appellant / insurance company has made the following submissions in support of the appeal :

(A) That the MACT has no powers of substantive review and therefore, the order dated 6 December 2013 made in exercise of purported substantive review, is a nullity;

(B) That on the basis of evidence on record referred by the claimants, it was clear that the deceased who was 85 years of age, had contributed to the accident from which the claim arises. Therefore, even otherwise, there was no case of review made out;

(C) The compensation awarded is excessive. There is absolutely no evidence as regards medical expenses. There is also no material to hold that the deceased who was 85 years of age was earning any income at all. In such circumstances, the MACT erred in taking the notional income at Rs.5,000/- per month. The award towards mental shock was also not maintainable and in any case, excessive.

For these reasons, she submits that the compensation awarded, is liable to be reduced to about Rs.1,50,000/- at the highest.

6] Mr. Ganbavale, learned counsel for the respondents / claimants submits that the respondents have filed cross objections against the judgment and award dated 16 July 2013 and therefore, the issue as to whether the MACT has the power of substantive review or not, is merely an academic in the facts and circumstances of the present case. Even otherwise, Mr. Ganbavale submits that the MACT does have powers of review and therefore there is no infirmity in the order dated 6 December 2013 made by the MACT. Mr. Ganbavale submits that an amount of Rs.1,00,000/- was required to be awarded to the claimant no. 2, the son of the deceased. For all these reasons, Mr. Ganbavale submits that the amount of compensation awarded by the MACT, even after review, is inadequate and the same is required to be enhanced.

7] Rival contentions fall for determination.

8] In this case, there is no necessity to go into the issue as to whether MACT has a jurisdiction to exercise powers of substantive review or not. Even if the order dated 6 December 2013 made by the MACT in the purported exercise of its review jurisdiction is left

out of consideration, the case of the respondents / claimants will have to be considered at this stage, since, they have lodged cross objections, *inter alia* challenging the judgment and award dated 16 July 2013.

9] Ms Bajpayee is right in her submission that the monthly income in the present case should be maximum of Rs.3,000/- per month and not Rs.5,000/- per month. This is because the deceased was admittedly 85 years of age and there is really no evidence on record that he was actively involved in operations of agriculture or at the saw mill. This means that the annual income of the deceased could be taken as Rs.36,000/- per annum and not Rs.60,000/- per annum. Upon deduction of 1/3rd amount towards his personal expenses, the yearly dependency comes to Rs.24,000/- per annum. Applying the multiplier as prescribed in the case of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.**¹ the dependency amount comes to Rs.1,20,000/-. To this, an amount of Rs.75,000/- can be added by way of loss of consortium to the widow of the deceased and another Rs.75,000/- to the son towards loss of love and affection. This makes the compensation amount to Rs.2,70,000/-. Ms Bajpayee is right that the amount awarded towards medical expenses and mental shock and suffering is excessive. Altogether, an amount of Rs.30,000/- can be awarded against these heads. This means that the total compensation can be determined at Rs.3,00,000/-.

10] The appeal as well as the cross objections are partly allowed to the aforesaid extent. The compensation is determined at Rs.3,00,000/-, which shall be payable with interest at the rate of 7% per annum from the date of application. The rest of the directions in

1 (2009) 6 SCC 121

the order dated 16 July 2013 as to the manner of payment are left as it is. Each of the parties shall bear their own costs.

11] The amount of Rs.25,000/- deposited by the appellant in this court has to be transferred by the Registry to the concerned MACT within a period of two weeks from today, so that the claimants can withdraw the same.

12] In view of disposal of the appeal and the cross objections, civil applications do not survive and are disposed of accordingly.

(M. S. SONAK, J.)

Chandka