IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1172 OF 2014
AND
CIVIL APPLICATION NO. 2577 OF 2016

United India Insurance Company Limited .. Appellant
vs.
Damayanti alias Manasi Ganesh Bhoir
and ors. .. Respondents

Mr. Mehta i/b M/s. KMC Legal Venture for the Appellant.
Mr. Vinod Sangvikar h/. Mr. Umesh R. Mankapure for Respondent Nos.1 to 3 and for the applicants in CA No. 2577 of 2016.

CORAM : M. S. SONAK, J.
DATE : 16 JANUARY 2017.

P.C. :-

1] With the consent of and at the request of learned counsel for the parties, the appeal is taken up for final disposal.

2] This appeal is directed against the judgment and award dated 22 May 2014 made by the Motor Accident Claims Tribunal (MACT) Kalyan. The operative portion of the award reads thus:

"Order

1] Motor Accident Claim Petition No. 177/2007 is partly allowed with proportionate costs.
2] The respondent nos.1 & 2 shall jointly and severally pay to the petitioners a sum of Rs. Rs. 13,74,000/- towards compensation amount (inclusive of NFL amount) along with interest thereon @ 7.5.% p.a. from the date of application till actual realization as follows:
i] Out of the total compensation amount, 40% be paid to the petitioner no.1 and 30% each be paid to the petitioner nos.2 and 3 along with interest accrued.
ii] On receipt of payment, the share of petitioner no.2 shall

be deposited in a Fixed Deposit Account of any Nationalized Bank as per the choice of petitioner no.1 in the name of petitioner no. 2 till he attains the age of majority with a direction to disburse the amount of interest on the Fixed Deposit to the petitioner no.1 till gaining of maturity and the amount of maturity along with interest accrued thereon to petitioner no.2 by account payee cheque only on proper identification, on his gaining majority.

3] Award be drawn up accordingly."

3] Mr Mehta, learned counsel for the appellant, has made the only following two submissions:

(a) That there was no material on record to sustain the finding that the monthly income of Mr. Ganesh Bhoir, the husband and father of the claimants had monthly income of Rs.6000/- per month;

(b) That in any case, in absence of any evidence as regards future prospects, there was no reason for the MACT to enhance the income of Mr.Ganesh Bhoir by 50% and determine compensation on the said basis. In support of such proposition, Mr. Mehta placed reliance upon the decisions of the Division bench of this Court in case of ***Royal Sundaram Alliance Insurance Company Ltd. Vs. Smt. Manisha Suyog Jagdale and ors. (First Appeal No. 376 of 2015 decided on 14 August 2015).***

4] Mr. Mehta, however, fairly pointed out that the appellant in the memo of appeal has raised the grounds 'O' and 'P', which read as under:

"o. The Learned Judge in the alternative utmost could have not given more then 30% rise towards future prospective income instead of 50% towards future prospects by applying the

principles as laid down in Santoshi Devi's case. Therefore the Tribunal has passed erroneous judgment firstly by taking income to the extent of Rs.6,000/- instead of Rs.3,000/- and thereafter applying 50% towards future prospective income instead of 30% and the quantum awarded in this matter is completely on the higher side in the present case.

p. The Learned Judge could have therefore utmost passed an Award by taking income to the extent of Rs.3,000 and by applying 30% rise, the calculation shall have been maximum to the amount of Rs.7,95,600/- (Rs. 3,000 + 30% rise = Rs 3900 x 12 x 17)"

5] Mr. Vinod Sangvikar, learned counsel for the claimants, submitted that Mr. Ganesh Bhoir was operating a grocery shop and in fact, had income of Rs.10,000/- to Rs.12,000/- per month. He submitted that the oral testimony in this regard has virtually gone unchallenged and therefore, the MACT should have in fact proceeded on the basis that the income was Rs.10,000/- to Rs.12,000/- per month. In any case, Mr. Sangvikar submitted that there is absolutely no reason to interfere with the findings of fact that the monthly income of the deceased was Rs.6,000/- per month, which works out to hardly Rs.200/- per day.

6] On the aspect of compensation towards future prospects, Mr.Sangvikar submitted that in this case the deceased was hardly 26 years of age at the time when he met with the fatal accident. Therefore, in terms of the decisions of the Hon'ble Supreme Court in case of ***Munna Lal Jain and anr. Vs. Vipin Kumar Sharma and ors – (2015) 6 SCC 347*** was quite justified in making an addition to the income by 50% towards future prospects. For these reasons, Mr.Sangvikar submitted that there is no case made out to interfere with the impugned award and the appeal may be dismissed with costs.

7] The rival contentions now fall for my determination.

8] In this case, there is no dispute that on 28 April 2007, the claimant's husband/father suffered fatal injuries on account of accident involving motor vehicles, which were insured by the appellant-Insurance Company. There is no challenge to the liability raised in this appeal. The challenge is restricted only to the quantum of compensation. Here again, the challenge is restricted to the aforesaid two submissions on the issue of income and addition towards future prospects.

9] On the issue of income there is evidence which establishes that the deceased was running a grocery shop. In the course of cross-examination, the questions basically posed were whether there was any valid licence for operating a grocery shop. The factum of deceased actually operating a grocery shop was not seriously questioned. In such circumstances, the MACT was quite justified in concluding that the monthly income of deceased was Rs.6,000/- per month, which works out to hardly Rs.200/- per day. It is to be noted that the grocery shop in question was in the district of Thane and the inference that the deceased must have been earning at least Rs.200/- per day cannot be regarded any unreasonable inference, in the facts and circumstances of the present case. The finding that income of the deceased was Rs.6,000/- per month cannot be said to be one based upon no evidence. It is not possible to hold that the deceased was earning any amount less than Rs.6,000/- per month, even by way of preponderance of probabilities. Accordingly, there is no merit in the first submission of Mr. Mehta.

10] Insofar as second submission is concerned, from the grounds raised by the appellant at "O" and "P", it is evident that the real grievance of the appellant is the addition of 50% to the monthly income, instead of 30%. Mr. Mehta placed reliance upon the decisions of the Hon'ble Supreme Court in case of ***Sarla Verma (Smt.) and ors. Vs. Delhi Transport Corporation and anr. - (2009) 6 SCC 121*** and ***Santosh Devi Vs. National Insurance Company Limited and ors. - (2012) 6 SCC 421*** to submit that addition towards future prospects could have been only 30% and not 50% in a matter of this nature.

11] The decisions in case of *Sarla Verma (supra)* and *Santosh Devi (supra),* which were delivered by the Division Bench of the Hon'ble Supreme Court were considered by the Bench of Three Benches of the Hon'ble Supreme Court in *Munna Lal (supra).* At paragraphs 10, 11 and 12, the Hon'ble Supreme Court has observed thus:

> *"10. As far as future prospects are concerned, in Rajesh v. Rajbir Singh, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote: (SCC p.61, para 8)*
>
> > *"8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, <u>it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to</u>*

<u>the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects.</u> Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

<u>The deceased being of the age of 30 years, 50% is the required addition.</u>

11. The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari. It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote: (Reshma Kumari case, SCC p.88, para 36)

> *"36. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma."*

12. In Sarla Verma (supra), at paragraph-19, a two-Judge Bench dealt with this aspect in Step 2. To quote: (SCC p.133)

> *"19. .. Step 2 (Ascertaining the multiplier)*
> *Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased."*
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> *(emphasis suppled)*

12] In this case, according to Mr. Sangvikar, the deceased was aged 26 years on the date of the accident. The impugned award refers to the age of the deceased as 28 years. In either case, there is no dispute that the deceased was less than 30 years on the date on which he met with fatal accident. Therefore, applying the law laid down in case of *Munna Lal Jain (supra),* it cannot be said that the MACT was not justified in making an addition of 50% to the actual income of the deceased whilst computing future prospects. Accordingly, there is no reason to accept even the second submission of Mr. Mehta.

13] In the facts and circumstances of the present case since, it is established that the deceased was in the grocery business and he was only 26 or 28 years old at the time of his demise, it cannot be said that this is the case where there was no evidence on the aspect of future prospects. In such matters, some reasonable inferences are permissible. The decisions in case of *Munna Lal Jain (supra)*, clearly supports the addition of 50% to the actual income of the deceased. The MACT, in this case, has in fact, acted quite conservatively in treating the income of deceased only at Rs.6,000/-, which corresponds to hardly Rs.200/- per day.

14] For the aforesaid reasons, the appeal is dismissed. There shall, however, be no order as to costs.

15] Since the appeal is dismissed, withdrawal of compensation is permitted strictly in terms of the impugned award dated 22 May 2014, the operative portion of which is transcribed in paragraph 2 of this order. This is necessary because one of the claimant was a minor and it is necessary that the interest of the minor is suitably protected.

16] The appeal is dismissed and the civil application for withdrawal is disposed of in the aforesaid terms.

(M. S. SONAK, J.)

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