IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 962 OF 2016

NATIONAL Insurance Company Limited .. Appellant
vs.
Indumati P. Gaikwad and anr. .. Respondents

WITH

CIVIL APPLICATION NO. 4112 OF 2016
IN
FIRST APPEAL NO. 962 OF 2016

Smt. Indumati P. Gaikwad .. Applicants

In the matter between

NATIONAL Insurance Company Limited .. Appellant
vs.
Indumati P. Gaikwad and anr. .. Respondents

Mr. Mehta i/b KMC Legal Venture for the Appellant.
Mr. V.S. Talkute for the Respondent No.1- Claimant (Indumati Gaikwad).

CORAM : M. S. SONAK, J.
DATE : 17 FEBRUARY 2017.

P.C. :-

1] On 27 September 2016, this court made the following order:

"With the consent of learned counsels for both the parties, First Appeal No. 962 of 2016 is placed for final hearing, at the stage of admission itself, on 5th October 2016, to be listed on the Supplementary Board."

2] Even today, learned counsel for the parties request that this appeal be disposed of finally, taking into consideration that the dispute is only on the issue of quantum of compensation.

3] The appeal instituted by the Insurance Company challenges the award dated 1 March 2014 made by the Motor Accident Claim Tribunal (MACT), Satara.

4] Mr. Mehta, learned counsel for the appellant - Insurance Company, has made the following submissions in support of the appeal:

a] That there is no credible evidence on record to establish that the earnings of deceased were Rs.5000/- per month. He submits that in fact, in the impugned award, learned Trial Judge has itself believed that the two witnesses produced on behalf of the claimant, since both the witnesses deposed in contradictory terms. Despite this, learned Trial Judge has erred in accepting the income of deceased was at Rs.5000/- per month. At the highest, the notional income of Rs.3000/- per month would have been considered, in the facts and circumstances of the present case;

b] In this case, learned Trial Judge has applied the incorrect multiplier on the basis of age of the deceased, who died as a bachelor. In terms of the decision of this Court in ***United India Insurance Company Ltd. ; New India Assurance Co. Ltd. vs. Sobha Amarsingh Rajput – 2016(4) ACC 407,*** the correct multiplier to be applied was with reference to the age of dependent mother, who was 53 years. Accordingly, the correct multiplier would be ‘11’ and not ‘18’; and

c] In this case, the deceased was a bachelor and therefore, the deduction towards his personal expenses should have been to the extent of 50% (1/2) and not (1/3rd) as has been held by learned Trial Judge.

5] Mr. Mehta submits that if aforesaid grounds are upheld, then, it is apparent that the award of compensation in the present case is quite excessive and warrants interference.

6] Mr. V.S. Talkute, learned counsel for respondent No.1-claimant, who has also filed cross-objections, submits that the deceased was holding a driving licence and therefore, was a skilled person. The deceased was 24 years at the time of his unfortunate demise. There is no inconsistency between the deposition of the two witnesses, since distribution of milk usually takes place in the morning and / or in the late evening. In the spare time, the deceased was driving Tractor and therefore, the income of deceased ought to have been held as much higher. Further, Mr. Talkute submits that in this case no adequate compensation has been awarded towards the loss of love and affection. No compensation whatsoever has been awarded towards funeral expenses. In such circumstances, there is no case made out to modify the impugned award on the basis of ground urged by the Insurance Company. Rather, this is a fit case where additional compensation must be awarded to the respondent-claimant, who is mother of the deceased Sachin.

7] The rival contentions now fall for my determination.

8] On the aspect of income of deceased Sachin, there is no case made out to interfere with the finding of fact recorded by the learned Trial Judge. No doubt, learned Trial Judge has commented upon the evidence of the two witnesses, who deposed on behalf of the claimant. However, taking into consideration, what the learned

Trial Judge observed, was improbable, the income has been conservatively determined at Rs. 5000/- per month. Mr. Talkute is however, right that there is no serious inconsistency or contradiction in the evidence of the two witnesses taking into consideration that the deceased was said to be supplying milk and driving a Tractor. Both these activities can always be undertaken in the course of day and therefore, in the facts and circumstances of the present case, there is no reason to accept Mr. Mehta's contention that the income of the deceased should not have been taken as Rs.5000/- per month.

9] Mr. Mehta is, however, right in his submission that the multiplier in the present case, could not have been applied on the basis of age of the deceased Sachin, who, unfortunately, died as a bachelor. This court, in case of *Sobha Rajput (supra),* has held that in such a situation, it is the age of the dependent, which in the present case, is the mother, which is what would be relevant for determining the appropriate multiplier. The age of the mother in the present case was 53 years. Therefore, in terms of the decision of the Hon'ble Supreme Court in ***Sarla Verma (Smt) and ors. v. Delhi Transport Corporation and anr. - (2009) 6 SCC 121 (see. para 42),*** the appropriate multiplier would be '11' and not '18' as held in the impugned award.

10] Again, Mr. Mehta is right in his submission that in this case, the deceased Sachin being a bachelor, the deduction towards his personal expenses should have been ½ and not 1/3rd as held in case of *Sarla Verma (supra)* ***(see. para 14)***.

11] On basis of the aforesaid, some deductions are in order. However, as contended by Mr. Talkute, there is no compensation awarded towards loss of love and affection to the claimant mother for the loss of her only son. Similarly, no compensation has been awarded towards funeral charges. This means that there has to be an addition of Rs.1 lakh towards loss of love and affection and Rs.25000/- towards funeral expenses.

12] This is consistent with the law laid down by the Hon'ble Supreme Court in ***Reshma Kumari and ors. v. Madan Mohan and anr. - (2013) 9 SCC 65 = 2013 STPL (Web) 262.*** Similarly, the interest at the rate of 6% is also on the lower side and is required to be revised to 8% per annum.

13] On the aforesaid basis and calculation, after upholding the respective contentions of learned counsel for the parties to the extent indicated, the total compensation would work out to Rs.6,70,000/-.

14] The appeal and the cross-objections are disposed of with the following order:

(a) The appellant and respondent No.2 to pay jointly and severally Rs.6,70,000/- to respondent No.1-claimant together with interest at the rate of 8% per annum from the date of application till the date of deposit of the awarded amount in the MACT, Satara. The awarded amount is stated to be deposited before the MACT, Satara;

(b) From out of deposited amount, respondent No.1 shall be entitled to withdraw a sum of Rs.4 Lakhs forthwith. However, the remaining amount, shall be invested in a Fixed Deposit Scheme with a Nationalised Bank for an initial period of five years in the name of respondent No.1. In case, respondent No.1 requires the interest on this amount, the same shall be paid to her on yearly basis;

(c) It is clarified that the total amount awarded is Rs.6,70-,000/- together with interest thereon at the rate of 8% per annum. Therefore, the excess amount deposited by the appellant - Insurance Company before the MACT to be refunded to the appellant – Insurance Company forthwith;

(d) The amount of Rs.25,000/- deposited by the appellant-Insurance Company in this court, at the time of filing of this appeal, is ordered to be transferred to the MACT, Satara;

15] The civil application for withdrawal is also disposed of in the aforesaid terms.

(M. S. SONAK, J.)

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