Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 382 OF 2015
WITH
CIVIL APPLICATION NO. 1352 OF 2015
AND
CIVIL APPLICATION NO. 1913 OF 2017

The New India Assurance Co Ltd ...Appellant
Versus
Mahadev Dhakata Manjrekar & Ors ...Respondents

Mr Devendranath S Joshi, *for the Appellant.*
Mr Jitendra Gor, *for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 26th July 2017

PC:-

1. This is the insurance company's first appeal against an award dated 20th March 2014 of the Motor Accident Claims Tribunal, Mumbai in a vehicular fatal accident claim under Section 166 of the Motor Vehicles Act 1988.

2. The deceased Mahendra Mahadev Manjrekar was in a Maruti van No. NH-04-BK-7293 on the Shirdi road. This was on 24th November 2007. At about 5.35 pm, the van driver attempted to overtake a vehicle in front of it. At just that moment there was a Tavera motor vehicle No. MH-04-CB-7820 approaching in the opposite direction. On seeing that the Maruti van was attempting an overtaking manoeuvre, the driver of the Tavera tried to slow his own car. As he braked, a truck No. MH-15-G-4155, which was behind the Tavera, and driving at some speed, rear-ended the Tavera. The impact was severe enough to push the Tavera along in a forward direction. This caused a head-on collision between the Tavera and the Maruti van then attempting the overtaking manoeuvre.

3. Mahendra was severely injured. He died on account of those injuries.

4. The original claim filed was for Rs. 16 lakhs. The claimants were his parents, his brother and sister. The brother and sister were both adults. The Tribunal held them not to be the dependents.

5. Before the Tribunal it was claimed that Mahendra worked with ICICI Bank at Mahalaxmi Branch and earned Rs. 8,500/- per month. There was no proof of this either in the form of a tax statement, salary certificate or any other document. Faced with this, the Court was forced to adopt a notional income of Rs. 4,000/- per month.

6. This has not been challenged by the claimants at any stage. I am, therefore, unable to interfere with this finding.

7. The argument that Mahendra had no future prospects is one that I will discard out of hand. The Tribunal took 30% which is not unreasonable given his age. The real difficulty is in the multiplier that was adopted. The Tribunal looked only at the age of the deceased, 30 years, and took a multiplier of 17. What it seems to have overlooked is that the claim was brought by Mahendra's parents, aged 60 and 55 respectively at the time of the claim, the other two claimants, brother and sister being held not to be dependent. The result would be that the correct multiplier to be applied ought to have been reckoned as 9.

8. In its computation, the Tribunal took the notional income of Rs. 4,000/- per month, added 30% as future prospects or Rs. 1,200/- per month, making a total of Rs. 5,200/- per month or Rs. 62,400/- per annum. The deduction taken was 50% — this too is not challenged — yielding a yearly dependency of Rs. 31,200/-. To this applied was a multiplier of 17 to yield a total compensation for dependency of Rs. 5,30,400/-. If this is corrected to 9, the appropriate multiplicand then the total amount of dependency would be Rs. 31,200/- x 9, which is Rs. 2,80,800/-.

9. The Tribunal correctly awarded Rs. 25,000/- towards funeral expenses. However, towards loss of love and affection for the two parents, the amount awarded is extremely low taken at Rs. 50,000/-, and nothing at all has been awarded to the brother and sister for the loss of estate. These figures will need correction and each parent should receive Rs. 1,00,000/- each for loss of love and affection and each of the siblings should receive Rs. 50,000/- towards loss of estate.

10. Thus the total would come to Rs. 2,80,800/- + Rs. 2,00,000/= + Rs. 1,00,000/- and Rs. 25,000/-, which comes to Rs. 6,05,800/-. Out of these, Rs. 50,000/- each is payable to original claimants Nos. 3 and 4. The rest is payable to claimants Nos. 1 and 2. The decree is modified accordingly.

11. The statutory deposit of Rs. 25,000/- is also to be transferred to the MACT within two weeks from today.

12. It may be noted that the award as computed by the MACT was Rs. 6,05,400/-. The entire amount has been deposited. The claimants are entitled to withdraw the entire amount with all accrued interest. The MACT will permit such withdrawal on production of an authenticated copy of this.

13. The first appeal and the civil applications are disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)