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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1354 OF 2015

Laxmidevi Satish Gowda & Ors ...Appellants

Versuss

Kishor Bhawarlal Jain & Anr ...Respondents

Mr TJ Mendon, *for the Appellants.*
Mrs SS Dwivedi, *for Respondent No. 2.*

CORAM: G.S. PATEL, J
DATED: 14th July 2017

PC:-

1. **Admit**.

2. By consent, taken up for hearing and final disposal forthwith.

3. The Appeal can be disposed of one limited ground, viz., one part of the order under Appeal. The order is dated 20th June 2015 in an application for compensation of Rs. 50 lakhs under Section 166 of the Motor Vehicles Act, 1988. The deceased, Satish Gowda, the husband of the 1st Applicant, father of the 2nd Applicant and son of Applicants Nos. 3 and 4 had on 9th December 2011 at about 8.00 pm apparently parked his Innova No MH-01-JA-9833, when a Mahindra Xylo No. MH-01-AR-2988 coming from Virar to Mumbai crashed into it. Satish Gowda, who was standing beside his vehicle, was grievously injured. The Xylo driver ran away. Satish Gowda was admitted to the Orbit Hospital at Dahisar Check Naka but succumbed to his injuries that very day. Satish was then 30 years old and self-employed in a transport business, from which he earned, it was said, Rs 29,000/- per month.

4. The owner of Xylo car did not contest the proceedings. The police registered an offence against the driver, one Ayub Attaullah Khan. The death certificate shows significant injuries to Satish Gowda's head, skull and legs. It was also not disputed that Satish had parked his Innova, though of course the insurance company said he did so in a careless fashion. That will count for nothing today because the insurance company has paid the amount awarded and has not challenged it.

5. There is no quarrel with the computation by the MACT Mumbai except on the question of general damages for funeral expenses, loss of consortium, loss of estate and loss of love and affection, but I will turn to this presently. The real grievance that Mr Mendon for the Appellant seeking enhancement has is that without any reason at all, merely because the learned judge felt the computed amount was "very high", he has literally halved the compensation. It is best to set out the relevant portion of paragraph 10 of the impugned Award.

> "10. ... ... The income tax returns shows that the income was increasing every year from 2008-09 to 2011-12 i.e. in the year 2008-09 it was Rs 1,19,810/- and in the year

2011-12 it was Rs 3,28,050 and this income was earned from business entirely. There was three fold increased in income of the deceased. Therefore average of these 4 years is taken into consideration i.e. Rs 2,06,212/-. His age was 32 years admittedly on the date of accident which is backed by his PAN Card. His annual income is taken to be Rs. 2,06,212/- as noticed from the income tax returns. His dependents are his minor son, widow and two parents i.e. 4 dependents in all and therefore 1/4th is deducted towards personal expenses. After deducting 1/4th amount from his income, the loss of dependency comes to Rs. 1,54,659/- (Rs 2,06,212 minus Rs. 51,553/-). The deceased was 32 years of age, multiplier 16 would apply to the facts of this case. After applying multiplier 16, the loss of dependency comes to Rs. 24,74,544/-. In addition to that Rs. 75,000/- towards funeral, loss of love and affection and loss of consortium is granted. That brings the total to Rs. 25,49,544/-. **This amount is considered to be very high because this income tax returns though filed depends on the vagaries of the business and the business conditions. He was running the transport business. It is not shown how many vehicles he was owning. Merely showing that he was a Proprietor of proprietary concern is not enough. He must show how many vehicles he was owning personally and how did he compute his annual income. Merely income tax returns though exhibited and are public document is not sufficient to compute the actual income earned. If he had many vehicles the ownership of the same, expenses incurred on their depreciation, repairs, etc. ought to be produced. Moreover they are filed during his life time. Many other factors are taken into consideration.** The income tax returns for the year 2009-10, 2008-09, etc. are taken into consideration but that was a time when the economy was not in a sound and stable

> condition. Even then relying on the income tax returns, this court holds that entire aspect to be taken into consideration is the dependency on deceased who was a businessman. There might be ups and down in business in future years. Another aspect is dependency is taken into consideration. All that were dependent on the deceased were his widow who may remarry, a boy of 2 to 3 years and old parents who may not survive for long. This court holds that as compensation is meant to take place the loss caused due to untimely and sudden death of the deceased, it cannot be held to be a bonanza, lottery or a windfall and is meant to compensate the sudden death of the deceased. **This court holds the income of the deceased to be taken at Rs. 1,00,000/-. Out of which Rs. 25,000/- is deducted towards personal expenses. Dependency this works out to Rs. 75,000/-. Multiplier 16 is applicable to the facts of this case and therefore after applying multiplier 16, the loss of dependency works out to Rs. 12,00,000/-. Rs 1,00,000/- is granted in all towards loss of consortium, loss of love and affection and funeral expenses. The total compensation thus works out to Rs. 13,00,000/-**. This amount of compensation is including NFL amount of Rs. 50,000/- already paid. ... ..."

(*Emphasis added*)

6. I am unable to accept this. There is no reason why the Court should have taken Satish's income at Rs. 1 lakh when, on the basis of the disclosed income tax documents, and correctly applying a multiplier of 16, an amount of Rs. 24,74,544/- was reckoned. Mr Mendon does not urge, in my view correctly, that this amount of Rs. 24,74,544/- should itself be enhanced. He only submits that it could not have been randomly reduced in this entirely *ad hoc* manner. The reasons given regarding number of vehicles, repairs etc., are all irrelevant, since the tax returns were on record and were duly proved. I agree with Mr Mendon, and accept his submission.

7. The second aspect of the matter is that the amount taken towards the general damages of funeral expenses, loss of love and affection, loss of estate and loss of consortium is very low by any standards. At first the Tribunal took a figure of Rs. 75,000/- and then seems to have increased that to Rs. 1 lakh. Even that in my view is very much on the lower side. The claim was brought by the widow, the minor son and two parents. There were four Claimants in all. This is how I would make the distribution.

a)	Funeral expenses	25,000.00
b)	Loss of love and affection, for the minor son	1,00,000.00
c)	Loss of estate to each of the parents	2,00,000.00
d)	Loss of consortium to Applicant No. 1	1,00,000.00
	TOTAL	4,25,000.00

This amount of Rs. 4,25,000/- will have to be added to the correctly reckoned figure of Rs. 24,74,544/- making a total amount of compensation of Rs. 28,99,544/-, rounded off to Rs. 29 lakhs with accrued interest. The difference will now have to be computed on the base award, i.e., difference between Rs 29 lakhs and Rs. 13 lakhs, i.e., Rs 16 lakhs. This amount will also carry interest at the same rate as decreed.

8. The entire remaining amount will be deposited by the insurance company with the MACT within twelve weeks from today.

9. The MACT will permit the withdrawal of the entire amount with accrued interest on production of an authenticated copy of this order. Until then the amount so deposited will be invested by the MACT in a fixed deposit in any nationalized bank.

10. The First Appeal is disposed of in these terms with no order as to costs.

11. The R&P is to be sent back to the MACT Mumbai.

12. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J)