IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1116 OF 2017
with
CAF/702/2016

Oriental Insurance Co. Ltd. ... Appellant

Vs.

Chadarani Sunilkumar Prasadgupta & Ors. ... Respondents

Mr.S.S. Vidyarthi for the Appellant
Mr.T.J. Mendon for Respondents

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **NOVEMBER 21, 2017**

P.C.:

1. This appeal is directed against the judgment and award dated 26.2.2015 passed by the learned Member, Motor Accident Claims Tribunal, Raigad-Alibag in MACP No.375 of 2011. The challenge is given only in respect of the quantum. The applicants are widow and four children of the deceased Sunilkumar Prasadgupta, who on 26.12.2010 while walking, was dashed from backside by a water tanker at Kharghar. The deceased was a practising advocate. The original applicants made a claim of income of the deceased as Rs.35,000/- per month and they produced his LL.B. Certificate and Sanad. The trial Court considering the evidence tendered by the

claimants, fixed the income of the deceased at Rs.10,000/- per month and then granted compensation of RS.9,80,000/- with interest @ 7.5%.

2. Learned Counsel for the appellant has submitted that no evidence was produced to fix the income of Rs.10,000/- per month. So also, nothing was deducted from the said amount. He submitted that it was necessary for the Tribunal to deduct $1/4^{th}$ of the monthly income and should have granted the compensation.

3. The learned Counsel for the claimants submitted that the deceased was a practising advocate. So, he was earning and, therefore, his notional income was considered as Rs.10,000/-, which is on a lesser side. He pointed out that the deceased died at the age of 55 years and the Tribunal has erroneously adopted the multiplier as 8 instead of 11.

4. After hearing the submissions and on going through the record and the impugned judgment and award, it is found that the applicant did not produce any evidence to show the income of Rs.35,000/- per month. The trial Court has taken a correct view that the deceased was a practising advocate and, therefore, may be earning amount of

Rs.10,000/-. It is a reasonable view of fixing the income. However, the ¼th portion of the said income was required to be deducted which comes to Rs.7,500/- per month. Although it is not an appeal by the insurance company, while considering the calculations, it is necessary for the appellate Court to examine whether the Tribunal has adopted the correct multiplier or not, irrespective of who is the appellant. If the fixed multiplier, which is set in the law laid down in the case of **Sarla Verma & Ors. vs. Delhi Transport Corporation (2009) 6 SCC 121,** is not followed, then, it is the duty of the appellate Court to rectify the said anomaly or illegality. Thus, for the deceased falling in the age group 51 – 55, as per **Sarla Verma's case (supra),** the multiplier is 11 and, therefore, in the present case, instead of 8, 11 is fixed as the multiplier. Accordingly, if the calculations are made, it approximately comes to Rs.9,90,000/- and thus, considering this, no change is required in the impugned order of the Tribunal.

5. It is also pointed out that the Division Bench of this Court has taken a view in the case of **Bajaj Allianz General Insurance Co. Ltd. vs. Bipin Laxmichand Mehta & Ors.**[1] that the rate of interest in the said judgment was increased from 7.5% to 9% and, therefore, in

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the present appeal, the rate of interest of 7.5% is also increased to 9% from the date of the award. Further, the amount of Rs.25,000/- which was deposited at the time of filing the appeal be transferred to the concerned Motor Accident Claims Tribunal.

6. Appeal is disposed of accordingly. Civil Application also stands disposed of accordingly.

(MRIDULA BHATKAR, J.)