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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 522 OF 2017
IN
FIRST APPEAL (ST) NO. 6982 OF 2016
WITH
FIRST APPEAL (ST) NO. 6992 OF 2016

Mrs Jyoti Gurunath Pashte & Ors. ...Applicants
In the matter between
The New India Assurance Co. Ltd. ...Appellant.
vs
Mrs Jyoti Gurunath Pashte & Ors. ...Respondents.
.....
Mr D.R.Mahadik for the Appellant.
Mr Ramesh Chavanke for the Applicants/Respondent Nos.1 and 2.
.....

CORAM : M. S. SONAK, *J.*
27 FEBRUARY, 2017

P.C. :

At the request of learned counsel for parties, the appeal is taken up for final disposal at this stage itself.

2 Mr Mahadik, learned counsel for the Appellant urges, the following grounds in support of his appeal and submits that they raise substantial question of law:-

(a) That there was no permit to ply the tempo in the State of Maharashtra where the accident took place, since, the permit for the tempo was only restricted to the State of Gujarat. He submits that this is a breach of essential term of the Insurance Policy, and therefore, the Insurance Company ought not to have been held liable;

(b) That this is a case where the deceased was driving the motorcycle and there was head-on collision with the tempo. This means that, this is a case where the deceased has also contributed to the negligence, resulting in the accident. He submits that some contributory negligence was required to be contributed to the deceased;

(c) That in determining the salary, the amounts toward Professional Tax, has not been deducted. Further, the deceased was 45 years of age at the time of accident and the M.A.C.T. has erred in making addition to the extent of 50 % to his annual income on account of future prospects. He submits that this is in a breach of law as laid down by the Supreme Court in the case of **Sarla Varma & Ors.** Vs. **Delhi Transport Corporation & Anr.**[1]**.**

3 Insofar as first two grounds are concerned, it is to be noted that such grounds were not even raised before the M.A.C.T. Neither the Insurance Company nor the owner of the tempo have led any evidence in the matter. The onus was certainly upon the Insurance Company to plead and prove breach of any term of the Insurance Policy. If this has not been done, it is not possible to entertain any such plea at this stage. Again, there is no evidence on record in support of the contention now raised in the context of contributory negligence. If the Insurance Company, was indeed serious about this contention, then, the Insurance Company was required to examine the

1 2009(6) Supreme Court Cases, 121.

driver of the tempo or any other independent witness in order to make good the same. Accordingly, there is no merit in first two grounds raised in support of this appeal.

4 Insofar as the third ground is concerned, there is no merit in the submission that some deductions were required to be made towards the professional tax. In this case the deceased was a school teacher. The Head Master of the school has been examined and he has submitted the necessary details with regard to the monthly income of the deceased being Rs.18,840/- per month. It does not appear that there was any challenge to even the expenses of this figure before the M.A.C.T. Therefore, there is nothing wrong in the M.A.C.T. treating the monthly income of the deceased at Rs.18,840/- per month.

5 There is, however, merit in the submissions of Mr Mahadik that addition towards the future prospects, in the present case, could not have been 50 % in view of the law laid down in the case of Sarla Verma (supra). Admittedly, the deceased was over 40 years of age at the time of his demise. In fact the deceased was 45 years old at the time of his demise, and therefore, the addition towards the future prospects could have been only to the extent of 30 % and not 50 %. On this ground, the modification is warranted in the impugned Judgment and Award. On the basis of addition of 30 % towards future prospects, the position towards dependency comes to Rs.27,27,984/- and not Rs.31,65,120/- as determined by the M.A.C.T.

6 However, the M.A.C.T. has clearly erred in awarding the

compensation of only Rs.25,000/- towards the loss of love and affection and loss of estate. In the matter of this nature, an amount of at least Rs.2 Lacs and Rs.1 Lacs respectively ought to have been awarded under the said heads.

7 In this case the deceased left behind two minor children and an amount of Rs.1 Lac each towards loss of love and affection was required to be awarded. Similarly, as has been held in the case of **Kalpana Raj & Ors Vs. Tamil Nadu State Transport Corpn.**[2] an amount of Rs.1 Lac towards the loss of estate was required to be awarded. Further, in the facts and circumstances of this case, an additional compensation of Rs.1 Lac towards the loss of expectation of love of the deceased was also required to be awarded as held in the case of Kalpana Raj (supra). An amount of Rs.1 Lac has already been awarded towards the loss of consortium, which is quite correct.

8 Therefore, even if the submission of Mr Mahadik is accepted, that the addition towards future prospects should have been only 30 % and not 50 %, still the just compensation comes to Rs.32,32,984/-.

9 In this case, even though, the claimants have not instituted an appeal or lodged any cross-objections, it is the duty of this Court to determine the just compensation in terms of the law laid down by the Supreme Court in the case of **Nagappa Vs. Gurudayal Singh and Ors.**[3]**.**

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2 2014(2) T.A.C. 744 (S.C.)

3 AIR 2003 Supreme Court 674

10 Accordingly, this appeal is partly allowed and the compensation amount is determined at Rs.32,27,984/-. Save and except such modification, there is no necessity to interfere with the other directions issued in the impugned award.

11 The appeal is partly allowed. There shall be no order as to costs.

12 Both the parties to act on the duly authenticated copy of this order.

13 Civil Application No. 522 of 2017 for withdrawal of amount is to be considered by the concerned M.A.C.T. where this amount has been deposited. The withdrawal shall be strictly in accordance with the directions contained in the impugned award dated 10.3.2015, as modified by this order. The amount of Rs.25,000/- deposited by the appellant in this Court should be transferred by the Registrar to the concerned M.A.C.T. within a period of four weeks from today. The concerned M.A.C.T. to refund the balance amount to the appellant – Insurance Company. As such, Civil Application No.522 of 2017 does not survive and the same is disposed of accordingly.

(M. S. SONAK, J.)