IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (STAMP) NO. 35285 OF 2015
WITH
CIVIL APPLICATION NO. 2140 OF 2016

United India Insurance Company Ltd. ..Appellant
vs.
Mr. Jamiullah H. Shah & Ors. .. Respondents

Mr. R. Mehta i/b. KMC Legal Venture for Appellant.
Mr. S. V. Chaugule for Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.
DATE: 27 JANUARY 2017

P.C :

1] At the request and with the consent of learned counsel for the parties, the appeal is taken up for final disposal considering short point involved.

2] Mr. Mehta, learned counsel for the appellant has submitted that an addition of 50% to the notional income to the extent of 50% is on account of future prospects is excessive and therefore, such deduction should not have been made in the facts and circumstances of the present case. In support of this submission, Mr. Mehta relies upon the decision in the case of ***Royal Sundaram Alliance Insurance Ltd. vs. Smt. Manisha Suyog Jagdale[1].***

1 First Appeal No. 376 of 2015 decided on 14.8.2015.

3] On the other hand, Mr. Chaugule, learned counsel for the respondent nos. 1 and 3 – claimants submit that the claimant was less than 40 years of age and addition of 50% was legal and proper. He has placed reliance upon the decision of the Hon'ble Apex Court in the case of ***Munna Lal Jain & Anr. vs. Vipin Kumar Sharma & Ors***.[2]

4] In *Royal Sundaram* (supra), this Court has held that increase in future prospects cannot be considered unless there is cogent material on record to prove that there was likelihood of steady increase in the income of the deceased.

5] In this case, the deceased was 16 years on the date of the accident. There is evidence that he was working as a plumber. The fact that he was working as a plumber was even disputed in the course of cross-examination. What was disputed was the quantum of income which was stated as Rs.5,000/- per month. The MACT, in this case, has treated the income as Rs.3,000/- per month. In such circumstances, the ratio in the case of *Munna Lal Jain* (supra) will apply.

6] In paragraphs 9 and 10, the Hon'ble Apex Court has observed as under:

2 (2015) 6 SCC 347

> *"9. In the case before us, there are no such exceptional circumstances or compelling reasons for deviation on the basis of evidence and therefore deduction of 50% towards the personal and living expenses is not to be disturbed.*
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> *10. As far as future prospects are concerned, in Rajesh v. Rajbir Singh, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote (SCC p. 61, para 8):*
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>> *"8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."*
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> *The deceased being of the age of 30 years, 50% is the required addition."*

7] Applying the law laid down by the Hon'ble Apex Court to the facts and circumstances on record, there is no reason to accept the only contention raised on behalf of the appellant. This appeal is therefore dismissed. The civil application no. 2140 of 2016 for stay does not survive and the same is disposed of.

8] Mr. Mehta, learned counsel for the appellant states that the awarded amount will be deposited before the MACT within a period of two weeks from today. On such basis, learned counsel for the respondents states that the respondents will not apply for execution for a period of two weeks from today. Once the amount is deposited, the MACT to permit the respondents / claimants withdrawal in terms of impugned award.

9] Amount of Rs.25,000/- deposited in this court shall also be transmitted to the concerned MACT within a period of two weeks from today.

10] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka