IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO. 107 OF 2004

The Oriental Insurance Co. Ltd,
Through its Branch Manager,
Branch Office Sankrapa Market
Ist Floor, Gurugovind Singhji Road,
Nanded, District-Nanded. ..Appellant

Versus

1. Vasudha w/o Balwantrao Joshi
Age 50 years, Occ-Household.
R/o- Cidco and Kavtha, Nanded.

2. Rahimuddin s/o Shamsuddin,
Age Major, Occu. Transport business and
owner of Auto Rickshaw No. MH-26/B-5427,
r/o Degloor Naka Nanded,
Dist. Nanded. ..Respondents

...

Mr. Anil. A. Joshi, Advocate for the Appellant
Mr. S.S. Patnurkar h/f J.P. Legal Associates, Advocate for Respondent No.1.

...

CORAM : P.R. BORA, J.
DATE : 25th OCTOBER, 2018.

ORAL JUDGMENT:-

. The insurance company has preferred the present appeal in exception to the judgment and award passed by the Motor Accident Claims Tribunal at Nanded in Motor Accident Claim Petition No. 120 of 2000 decided on 25.09.2003..

2. The present respondent no.1 had preferred the aforesaid claim petition seeking compensation on account of death of her son namely Kalayan

alleging the same to have been caused in a vehicular accident happened on 24.07.1999. Respondent no.1 is hereinafter referred to as "the claimant".

3. It was the contention of the claimant that deceased Kalayan while was proceeding on his motorcycle, was dashed by an Auto Rickshaw owned by present respondent no.2 and insured with appellant-insurance company and in the accident so happened, he died on the spot. As stated in the petition, the age of deceased Kalayan at the time of his death was 26 years and he was working as a honorary lecturer and his income from all sources was stated to be Rs. 15,000/- to Rs. 20,000/-. Accordingly the compensation was claimed by respondent no.1.

4. The petition was resisted by the appellant-insurance company on various grounds. It was the contention of the insurance company that without adding the driver as a party, the petition was not maintainable. The age and income of deceased was also disputed. The plea of contributory negligence was also raised. The Tribunal, however, after having assessed the oral

and documentary evidence brought on record held the claimant entitled for the total compensation of Rs. 8,52,800/- inclusive of NFL compensation. Aggrieved by, the insurance company has preferred the present appeal.

5. Shri Joshi, the learned counsel appearing for the appellant-insurance company assailed the impugned judgment mainly on two grounds. The learned counsel submitted that when 'to prove the negligence' was the burden on the claimant, the driver of the offending vehicle was necessary party. In absence of the said driver being party to the present proceeding, the claim petition was liable to be rejected on that ground alone. The learned counsel further submitted that the Tribunal has also erred in holding the income of deceased without any concrete evidence therefore. The learned counsel submitted that deceased was in temporary employment and as such his income could not have been held to the tune of Rs. 4,500/- as has been held by the Tribunal. The learned counsel further submitted that even for future prospects, the lump-sum amount of compensation awarded by the

Tribunal is erroneous. On these grounds the learned counsel for the insurance company has sought modification in the order of compensation and to allow the appeal filed by the insurance company to the said extent.

6. Shri Patnurkar, the learned counsel appearing for the claimant supported the impugned judgment and submitted that a well reasoned order has been passed by the Tribunal and no interference is required in the judgment and award so passed.

7. I have given due consideration to the submissions made by the learned counsel for the parties. It is not in dispute that age of deceased Kalayan on the date of accident was 26 years. Though, the learned counsel has objected to for the income of deceased as has been held by the Tribunal to the tune of Rs. 4,500/-, I see no much substance in the argument so raised. Having regard to the qualification of the deceased and having regard to the further fact that he was in the employment as lecturer may be temporary, the salary of deceased as has been held by the Tribunal to the tune of Rs. 4,500/- cannot be in any way said to be on higher

side or unreasonable. The objection raised by the insurance as about non-making the driver as a party to the present petition, it need not be elaborated that the law is well settled that the claim petition cannot be dismissed for non joinder of the driver as a necessary party. In the circumstances, two modifications appear to be necessary in the impugned judgment and award and the impugned award needs to be modified to the aforesaid extent.

8. Considering the proved income of deceased Kalayan as has been held by the Tribunal to the tune of Rs. 4,500/-, his annual income was to the tune of Rs. 54,000/-. In view of the judgment of the Hon'ble Apex Court in the case of **"National Insurance Company Limited Vs. Pranay Sethi and Ors, (2017) 16 SCC 680"**, the future prospects are to be considered. In view of the fact that deceased was not in permanent employment but was in the private employment, 40% of his existing income will have to be added in his existing income so as to assess the dependency compensation. Adding the said 40% amount, the income of deceased for the purposes of calculating

the amount of dependency compensation comes to Rs. 75,600/-. Out of the said amount 1 ½ of the amount will have to be deducted towards the personal and living expenses of deceased since he was a bachelor on the date of accident. Remaining half of the amount i.e. Rs. 37,800/- thus can be held to be available with deceased to be spent on his dependents. As has come on record, mother was the only dependent who has filed the claim petition.

9. Having regard to the age of deceased, the appropriate multiplier will be of 17. By applying the said multiplier, the amount of compensation comes to Rs. 6,42,600/- (Rs.37,800 x 17 = Rs.6,42,600). In addition to the aforesaid amount, the claimant also has to be held entitled for further compensation of Rs. 70,000/- towards non-pecuniary damages in view of the judgment of the Hon'ble Apex Court in the case of **"National Insurance Company Limited Vs. Pranay Sethi and Ors, (2017) 16 SCC 680"**. The claimant is thus found entitled for the total compensation of Rs. 7,12,600/-. In the facts and circumstances of the case, it appears to me that this would be the just and fair compensation payable to the claimant. The

impugned award, therefore, needs to be modified to the aforesaid extent. Hence the following order:

ORDER

i) The award dated 25.09.2003 passed in Motor Accident Claim Petition No.120 of 2000 is modified to the extent that the appellant-insurance company is held liable to pay the compensation of Rs. 7,12,600/- to the claimants therein with interest thereon at the rate of 9% p.a. from the date of filing of the said petition till the date of deposit of the amount by the insurance company in this Court.

ii) The award be modified accordingly.

iii) It would be open for the claimants to withdraw the amount of compensation for which they are held entitled as per the modified award with interest accrued on the said amount from the date of deposit of the said amount by the insurance company in this Court till its actual withdrawal by the claimants.

iv) The balance amount with interest accrued thereon be refunded to the appellant-insurance company.

(P.R. BORA, J.)

Mujaheed//