

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2612 OF 2017

New India Assurance Co. Ltd.,
Through its Manager (Legal Hub),
D. O. No. I, Adalat Road, Aurangabad
Through its authorized Signatory
Ravikant Yadav R/o Aurangabad. ...Appellant

Versus

1. Anjana Bhau Jadhav
Age 46 Years, Occu: Household,
R/o Dudhodi Tq. Karjat,
District Ahmednagar
2. Bhau Gangaram Jadhav
Age 52 Years, Occu: Labour work,
R/o Dudhodi Tq. Karjat,
District Ahmednagar
3. Vishwanath s/o Mahadeo Parkale,
Age 44 Years, Occu: Business,
R/o Supekarwadi, Tq. Karjat,
District Ahmednagar
4. The Manager,
National Insurance Company Ltd.,
Ambar Plaza, Station Road,
Ahmednagar Dist Ahmednagar

...

Mr. M. M. Ambhore, Advocate for appellant.
Mr. Abhijit C. Darandale, Advocate for respondent
no. 1 and 2.
Mr. A. R. Tapse h/f Mr. P.D. Suryawanshi, Advocate
for respondent no. 3.
Mr. Avinash Patil h/f Mr. S. P. Chapalgaonkar, Advocate
for respondent no. 4.

[CORAM: SUNIL P. DESHMUKH, J.]

Date: 24th February, 2018

ORDER :

1. Heard learned counsel for the parties.
2. Present first appeal is preferred by New India Assurance Company-original opponent no.3, against the judgment and award passed by the member, motor accident claims tribunal, Ahmednagar, dated 30th April, 2015, in Motor Accident Claim Petition bearing no. 373 of 2011. The appellant challenges the said decision in motor accident claim petition rendered by the member, motor accident claims tribunal, Ahmednagar, whereunder appellant along with original opponent no. 1, had been held liable to pay 50% of compensation of Rs. 4,75,000/- (Rupees four lakh seventy five thousand only) along with interest thereon at the rate of 9% per annum from the date of petition till realization of the amount.
3. Learned counsel for parties, however, refer to common order dated 27th February, 2017 in first appeals

no. 1967 of 2015 and 1968 of 2015 filed by National Insurance Company (original opponent no.2 in MACP no. 373 of 2011) to the extent of its 50% liability under the award and state that first appeal no. 1968 of 2015 has been dismissed and further point out that review petitions against dismissal of said first appeals have also been dismissed.

4. Perusal of observations in respect of first appeal no. 1968 of 2015, in common order of this court dated 27th February, 2017, in first appeals no. 1967 of 2015 and 1968 of 2015, shows that it has been considered that the deceased, namely, Kiran was doing labour work and was earning around Rs.3000/- per month. Instead of considering said income of the deceased, the tribunal has considered his notional income in the range of Rs. 30,000/- per annum, and by applying multiplier of 15, compensation has been worked out. The exception to the same under first appeal no. 1968 of 2015 has been turned down.

5. According to learned counsel for the appellant, the compensation claim under this appeal is for death of a

child, aged 15 years at the time of accident. Deceased child, namely, Kiran was doing seasonal labour and was earning Rs. 3000/- per month. Instead of considering said income of deceased child, tribunal has erroneously considered notional income as 30,000/- per annum, and by applying multiplier of 15, worked out the compensation. He submits that the tribunal ought to have considered his income as claimed by the respondents-claimants and awarded compensation accordingly.

6. Learned counsel appearing for respondents-claimants no. 1 and 2, Mr. A. C. Darandale, on the other hand, submits that the tribunal has rightly considered notional income of deceased Kiran. He submits that tribunal has taken decision in the light of ratio laid down in the case of *Kishan Gopal and another vs. Lala and others* reported in ((2014) 1 SCC 244), and without any deductions awarded the compensation by applying the multiplier in consonance with the age of the parents and, therefore, no interference is called for in the impugned decision. He further goes on to submit that the tribunal has, however, granted a meagre amount under the heads

of loss of love and affection and loss of estate. He, therefore, submits that present appeal be dismissed.

7. In the case of Kishan Gopal and another vs. Lala and others (supra), in paragraphs no. 38 and 39 of the judgment, the Supreme Court has made the following observations;

“ 38. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa’s case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years’ old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs. 15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard.

39. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs. 30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal

principles laid down in the case of Sarla Verma v. Delhi Transport Corporation, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000/- and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC v. Susamma Thomas, which is referred to in Lata Wadhwas's case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs. 50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants."

8. In view of aforesaid judgment, observations and consideration in the judgment of this court in first appeal no. 1968 of 2015 would not only be relevant but would apply on all fours to present appeal. Additionally, it would be pertinent to note that even review application by the appellant against decision in first appeal no. 1968 of 2015 has also been dismissed.

9. Having regard to facts and circumstances and the background, the decision impugned is hardly amenable to any interference.

10. In the circumstances, appeal is dismissed with no order as to costs. Amounts in proportion of the shares as awarded be allowed to be withdrawn by the claimants, subject to same terms as in the award by Motor Accident Claims Tribunal dated 30th April, 2015 in MACP no. 373 of 2011.

11. First appeal is accordingly disposed of.

[SUNIL P. DESHMUKH, J.]