

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 2611 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. Rani Gopal Katkar
Age 27 Year, Occu: Household
R/o Dudhodi Tq. Karjat,
District Ahmdnagar
2. Bhagyashri Gopal Katkar,
Age 08 years, Occu: Nil,
3. Rajashri Gopal Katkar,
Age 06 Year, Occu: Nil,
4. Arvind Gopal Katkar
Age 04 Years, Occu: Nil,

No. 2 to 4 are minors through
their natural guardian-mother
Respondent no. 1

5. Vishwanath s/o Mahadeo Parkale
Age 44 year, Occu: Business,
R/o Supekarwadi, Tq. Karjat,
District Ahmednagar
6. The Manager, National Insurance Company
Ltd., Ambar Plaza, Station Road,
Ahmednagar Dist. Ahmednagar

7. Dattatray Barku Katkar,
Age 66 Years, Occu: Nil,
R/o Dudhodi Beradi, Tq. Karjat,
District Ahmednagar ...Respondents

Mr. M. M. Ambhore, Advocate for appellant.

Mr. Abhijit C. Darandale, Advocate for respondents
no. 1 to 4.

Mr. Avinash Patil h/f Mr. S. P. Chapalgaonkar, Advocate
for respondent no. 6.

Mr. Avinash A. Phad h/f Mr. N. V. Gaware, Advocate
for respondent no. 7.

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[CORAM: SUNIL P. DESHMUKH, J.]

Date: 24th February, 2018

ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. This first appeal is preferred against judgment and decree dated 2nd May, 2015 passed by the Member, Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claim Petition bearing no. 372 of 2011.
3. On 25th March, 2011, Tractor bearing registration no. MH-16-F-8769 along with Trailer bearing registration no. MH-16-H-7457 had fallen on Gopal Katkar and one Kiran Jadhav causing their deaths. Wife and children of Gopal Katkar and parents of Kiran Jadhav had thus

instituted proceedings bearing Motor Accident Claim Petitions no. 372 of 2011 and 373 of 2011, respectively before Motor Accident Claims Tribunal, Ahmednagar.

4. Under aforesaid judgment and award dated 2nd May, 2015 in MACP no. 372 of 2011, Motor Accident Claims Tribunal, Ahmednagar has granted compensation of Rs. 17,82,000/- (Rs. Seventeen lakh eighty two thousand only) exclusive of 'no fault liability' with interest at the rate of 9% per annum from the date of petition till the date of depositing of the amount in the tribunal.

5. In the aforesaid MACP no. 372 of 2011 present appellant had been original opponent / respondent no. 3 – New India Assurance Company Limited before tribunal whereas present respondent no. 6 was original opponent / respondent no. 2 in the same. Motor Accident Claims Tribunal has passed aforesaid award making original opponents / respondents no. 1, 2 and 3 jointly and severally liable to pay amount of compensation with interest.

6. There is no dispute among parties in present appeal that first appeal no. 1967 of 2015 had been preferred by National Insurance Company (present respondent no. 6 – original opponent no. 2) against aforesaid award of tribunal in MACP no. 372 of 2011. Compensation awarded by the tribunal under order dated 2nd May, 2015, had undergone downward modification in respect of quantum of income of deceased Gopal Katkar under judgment of this court. This court had considered under paragraph no. 9 of said order as;

“ 9. On careful perusal of the judgment and award passed by the Tribunal in M.A.C.P. no. 372/2011, which is the subject matter of First Appeal No. 1967/2015, it appears that the Tribunal has considered the income of deceased Gopal at higher side. There is no income proof and though there may not be any document supporting the case of the claimants that deceased Gopal was a fisherman, the claimants could have examined the other companion fishermen of deceased Gopal to substantiate their contention about his occupation and monthly earning from the said occupation. In absence of any such evidence, the earning of the deceased Gopal could have been considered as of doing labour work. In the given set of facts it would be just and appropriate if the monthly

income of deceased is considered at Rs. 4500/-, with 50 per cent of the income to be added towards future prospects.”

7. Learned counsel for appellant purports to make submissions on aforesaid decision. However, learned counsel for the appellant also fairly refers to that appellant was not exactly satisfied with the extent of reduction in computation of income of Gopal and review application had been preferred. He further refers to that Review Application Stamp no. 33562 of 2017 in respect of decision in First Appeal no. 1967 of 2015, has been rejected.

8. Learned counsel for respondents submit that there is no serious objection to the downward modification taking place in respect of consideration of income of deceased Gopal as considered in decision of high court recorded in first appeal no. 1967 of 2015.

9. Learned counsel for respondents further refer to that although there is downward modification in computation of income of Gopal in the decision in first appeal no.1967 of 2015, yet, it may be taken into account

that review had been preferred by the insurance company and the same has been dismissed.

10. It appears that this court has taken proper stock of the situation and had modified computation of income downward. Considerations which had weighed with this court while deciding first appeal no. 1967 of 2015, do not appear to be in any way improper. The appellant is not in a position to show extent downward modification is unjustifiable and ought to have been further reduced.

11. In paragraph No. 19 of the judgment, though the Tribunal has observed about apportionment of the liability amongst joint tort feasons, it does not find specific mention in the operative part of the judgment in MACP No. 372 of 2011. MACP no. 373 of 2011 arises out of one and the same accident, the same learned Member of the Tribunal, in the operative part of the judgment, has apportioned the liability amongst the joint tort feasons.

12. In paragraph no. 19 of award the tribunal has specifically observed that opponent / respondent no. 1

and opponent no. 2 are jointly and severally liable to the extent of 50% of the awarded compensation and opponent / respondent no. 1 and opponent / respondent no. 3 (present appellant) to pay rest of the 50% of the awarded compensation and has further specifically observed that liability of opponents no. 2 and 3 is 50% each.

13. Clause 1 of the operative part of common order passed in first appeals no. 1967 of 2015 and 1968 of 2015 reads thus;

“ 1. First Appeal No. 1967/2015 (National Insurance Company Ltd., Vs. Rani Gopal Katkar and others) is hereby partly allowed with proportionate costs. The judgment and award passed by the Member, Motor Accident Claims Tribunal, Ahmednager, in M.A.C.P. No. 372/2011 is hereby modified in the following manner:

(i) The petitioners and Opponent no. 4 are entitled to an amount of Rs. 16,02,500/- (Rs. Sixteen lacs, two thousand, five hundred) as compensation, inclusive of the amount of No Fault Liability and Opponent Nos. 1 and 2 and Opponent no. 1 and 3, do pay, jointly and severally, in proportion of 50:50, the amount of Rs. 16,02,500/- (Rs. Sixteen lacs, two thousand, five hundred) to the petitioner and opponent no. 4, inclusive of Rs. 50,000/- (Rs. Fifty

thousand), the amount of No Fault Liability, with interest at the rate of 9 per cent per annum from the date of filing of the petition i.e. 1st June, 2011, till realization of the said amount.

(ii) Rest of the judgment and award stands confirmed.

(iii) Award be drawn as per the above modification.”

14. First Appeals no. 1967 of 2015 and 1968 of 2015 had been filed by original opponent / respondent no. 2, National Insurance Company in respect of the same incident which were decided under common judgment and order dated 27th February, 2017 by this court. First appeal no. 1967 of 2015 was preferred by National Insurance Company against decision in MACP no. 372 of 2015 whereas first appeal no. 1968 of 2015 had been preferred by same National Insurance Company against decision in MACP no. 373 of 2011. First appeal no. 1967 of 2015 had been partly allowed, whereas first appeal no. 1968 of 2015, had been dismissed in toto.

15. Present first appeal has been preferred by original opponent / respondent no. 3 - the New India Assurance company in respect of same incident, against same computation and on similar grounds. Decision rendered in

the first appeal no. 1967 of 2015 by this court dated 27th February, 2017, considering the facts, would largely impact present decision. Observations in said decision would apply on all fours in present matter. As such, present matter can be expeditiously disposed of in same terms.

16. In the facts and circumstances and in the background, the impugned judgment and award in MACP No. 372 of 2011, to the extent of the earning of deceased Gopal would require modification, as also reference to proportion of liability and sharing of present appellant is required.

17. As such, the present appeal is partly allowed in the same terms according to and as appearing under clause no. 1 of judgment and order of this court dated 27th February, 2017 in first appeal no. 1967 of 2015.

18. Rest of the judgment and award impugned in this appeal remains undisturbed.

19. Award be drawn accordingly. Amount 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 2nd May, 2015 in MACP no. 372 of 2011.

20. First appeal stands disposed of.

[SUNIL P. DESHMUKH, J.]

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