

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL LNO.3959 OF 2016

United India Insurance Company Ltd.,
through its Branch Manager,
Branch at Chatrapati Sankul,
Subhash Road, Beed,
Taluka & District Beed,
through its Authorised Signatory,
Divisional Office,
New Osmanpura, Aurangabad.

Appellant

Versus

01 Bhanudas s/o Gulab Chavan,
age: 49 years, Occ: Agriculture,

02 Janabai w/o Bhanudas Chavan,
age: 44 years, Occ: Household,

Both R/o Poi Tanda, Taluka Georai,
District Beed.

03 Jyotiram s/o Narayan Bhosale,
age: major, Occ: Business,
R/o Kavitgaon, Taluka Karmala,
District Solapur.

04 Subhash s/o Sahebrao Chikne,
age: major, Occ: Agriculture,
R/o Chavanwadi, Taluka Georai,
District Beed.

Respondents

Mr.S.G.Chapalgaonkar, advocate for the appellant
Mr.P.C.Mayure, advocate for Respondents No.1 & 2.

CORAM : M.S.SONAK, J.
DATE : 05th February, 2018.

ORAL JUDGMENT :

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

2 Mr.Chapalgaonkar, learned Counsel for the appellant submits that in this case, the Tribunal has made an addition of 50% towards future prospects by relying upon the decision of the Hon'ble Supreme Court in the case of **Rajesh & others Vs. Rajbir Singh & others**, 2013 ACJ 1403 (SC). He submits that the Constitution Bench of the Hon'ble Supreme Court in the case of of **National Insurance Company Limited Vs. Pranay Sethi & others**, 2017 (13) SCALE 12, has held that where age of the deceased is up to 40 years, an amount of maximum 40% can be added towards future prospects. He submits that if this modification is made, then, the award will have to be reduced to Rs.2,41,800/- in place of Rs.2,80,500/-, as awarded by the Tribunal.

3 Mr.P.C.Mayure, learned Counsel for Respondents No.1 & 2-claimants, points out that in the present case, no award has been made towards loss of love and affection, even though, Santosh, son of the claimants expired in the accident. He submits that compensation of at least Rs.40,000/- is due and payable to the respondents-claimants on account of demise of their son Santosh. He submits that if this amount is added, then, there is no case made out to interfere with the impugned award.

4 Upon taking into consideration the record as well as decision of the Hon'ble Apex Court in the case of **Pranay Sethi**

(*supra*), the contentions of both, the appellant as well as respondents, will have to be upheld.

5 The addition towards future prospects will have to be 40% in stead of 50% as taken by the Tribunal. On this basis, the compensation will have to be re-worked to Rs.2,41,800/- in place of Rs.2,80,500/-. However, to the amount of Rs.2,41,800/- an addition of at least Rs.40,000/- is due to the compensation amount as and by way of loss of love and affection payable to the parents upon demise of their son Santosh.

6 Mr.Chapalgoankar, however, submits that in paragrpah 57 of **Pranay Sethi** (*supra*), the Constitution Bench has ruled that a maximum amount of Rs.70,000/- can be paid on the ground of non pecuniary loss. In the facts of the present case, without going into the issue as to whether this is the correct manner to read the observations in paragraph 57 of **Pranay Sethi** (*supra*), it is to be noted that even on addition of Rs.40,000/- towards loss of love and affection, the ceiling of Rs.70,000/- is not breached. The contention that, no compensation needs to be awarded towards loss of love and affection cannot be said to flow from paragraph 57 of **Pranay Sethi** (*supra*).

7 For the aforesaid reasons, though, the legal point raised by the appellant as regards addition of only 40% towards future prospects is upheld, there is no case made out to interfere with the final compensation amount determined by the Tribunal, though, for reasons other than those stated by the Tribunal, at least partially. The award of compensation of Rs.2,80,500/- is,

therefore, not disturbed.

8 The appeal is disposed of in aforesaid terms. There shall be no order as to costs. The respondents-claimants will be entitled to withdraw the balance amount unconditionally.

9 Pending Civil Applications, if any, do not survive and same are disposed of.

M.S.SONAK
JUDGE

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