IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1633 OF 2017

United India Insurance Company Ltd.,
through its Administrative Officer (T.P.Hub),
Shri Mahendra Pratapsinh Virat,
age: 49 years, Occ: service,
R/o Divisional Office-I,
Osmanpura, Aurangabad. Appellant

Versus

01 Maimuna wd/o Shaikh Ateeq Tamboli,
age: 33 years, Occ: Household,
R/o Harshnagar,
Labour Colony, Aurangabad.

02 Faizan s/o Shaikh Ateeq Tamboli,
age: 15 yeasrs, Occ: Student,
R/o as above.

03 Rizwan s/o Shaikh Ateeq Tamboli,
age: 13 years, Occ: Student,
R/o as above.

04 Affan s/o Shaikh Ateeq Tamboli,
age: 12 years, Occ: Student,
R/o as above.

05 Ali s/o Shaikh Ateeq Tamboli,
age: 5 years, Occ: Nil,
R/o as above.

Respondent Nos.2 to 6, being
minor, through their natural
guardian i.e. mother Respondent
No.1 herein.

07 Jubeda Begum Bashir Shaikh,
age: 72 years, R/o as above.

08 Dy. Commissioner (M.C.A.),

Municipal Corporation,
Town Hall, Aurangabad.

09 Arif Khan s/o Masood Khan,
age: major, Occ: Driver,
R/o House No.31146, Kile Ark,
Panchakki, Aurangabad. Respondents

Mr.Swapnil S. Rathi, advocate for appellant.
Mr.Z.R.Sayed, advocate holding for Mr.G.R.Sayed, advocate for Respondents No.1 to 7.
Mr.Mohit Deshmukh, advocate holding for Mr.S.G.Chapalgaonkar, advocate for Respondent No.8.
Mr.N.T.Tribhuwan, advocate for Respondent No.9.

CORAM : M.S.SONAK, J.
DATE : 11th January, 2018.

ORAL JUDGMENT :

1 Since, learned Counsel for the parties requested that this matter be disposed of finally at the stage of admission, record and proceedings have been called for and same have been perused.

2 The appellant disputes quantum of compensation by submitting that the total amount of compensation awarded deserves to be reduced by Rs.4,60,800/-. The appellant has accordingly valued the appeal and paid Court fees on the amount of Rs.4,60,800/-.

3 Mr.Rathi, learned Counsel for the appellant submits that in this case, there was no evidence on record to sustain the finding that the deceased was drawing an income of Rs.6000/- per month. In the absence of any evidence, Mr.Rathi submits that income of deceased could have been taken at Rs.4500/- per

month, at the highest.

4 Mr.Rathi relies upon decision of the Constitution Bench of the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi & others**, 2017 (13) SCALE 12, to submit that addition towards future prospects can be maximum 40% and not 50%, as held by the MACT. He submits that the MACT has correctly determined the multiplier 16 but, possibly by way of inadvertent error, multiplied annual income, less the deduction towards personal expenses, by 17. Mr.Rathi submits that this is an error apparent on record.

5 Mr.Rathi further submits that in terms of the ruling in *Pranay Sethi (supra),* including the particular observations in paragraphs no.54 and 61(vii), compensation towards conventional heads ought not to have exceeded in all Rs.70,000/-. He also refers to paragraph no.51 of the ruling to submit that Second Schedule to the Motor Vehicles Act, which deals with the aspect of "General Damages" makes no reference to the heading of loss of "Love and affection". He, therefore, submits that no award is liable to be made towards loss of love and affection.

6 Mr.Rathi, on the basis of aforesaid, submits that deduction of more than Rs.4,60,800/- is due from out of compensation awarded by the MACT. However, since the appeal is restricted to the amount of Rs.4,60,800/-, such deduction be ordered and the impugned award may be modified accordingly.

7 Mr.Rathi also submits that award of interest @ 9% p.a. is quite excessive than the current rate of interest of 7.5%. He submits that modification is due on this aspect as well.

8 Mr.Sayed, learned Counsel for Respondents No.1to 7 – claimants, submits that there is evidence on record that the deceased was working as Supervisor on construction site and was also engaged in part-time business of sale of imitation jewellery. He submits that evidence of the claimants, in this regard, has gone unchallenged and there is really no reason to interfere with the determination by the MACT.

9 Mr.Sayed submits that the decision of the Constitution Bench in **Pranay Sethi** *(supra),* is no bar for making an award under the head of "Loss of Love and affection" to the parents and children. He submits that the award made by the MACT is consistent with the decision of the Hon'ble Supreme Court and, therefore, the same may not be interfered with. He submits that the appeal may be dismissed.

10 The rival contentions now fall for consideration:

11 On the aspect of income of the deceased, on perusal of evidence on record, there is really no reason to interfere with the determination made by the MACT. The evidence on record indeed indicates that deceased Ateeq was employed on a construction site and may had part time business of dealing with imitation jewellery. No doubt, the witness, who is wife of deceased, has stated that she was engaged in the business of imitation jewellery. In the facts

and circumstances of this case, it is reasonable to proceed on the basis that Ateeq, by way of part-time, was involved in this business along with his wife. Besides, the MACT has determined monthly income of Ateeq at only Rs.6000/- per month, which comes to about Rs.200/- per day. Since, this determination is well within the bounds of reasonability and is even otherwise supported on the basis of evidence on record, there is no reason to disturb the finding as to the income of deceased Ateeq.

12 In terms of ruling of the Constitution Bench in the case of **Pranay Sethi** *(supra),* considering age of deceased i.e. 34 years, addition towards future prospects will have to be only 40% and not 50% , as awarded by the MACT. The impugned award calls for modification to that extent. Mr.Rathi is quite right in his submission that multiplier in this case should be only 16 and not 17. However, in the calculation column, there is reference to multiplier 17. On deeper scrutiny, however, it turns up that the actual multiplication is done on the basis of multiplier "16" only. Therefore, reference to multiplier "17", in the calculation chart, is only an inadvertent typographical error, which has not made any difference to the actual calculation. In terms of **Pranay Sethi** *(supra),* compensation towards loss of consortium will have to be reduced from Rs.1,00,000/- to Rs.40,000/- and compensation towards funeral expenses will have to be reduced from Rs.25,000/- to Rs.15,000/-. The MACT, in this case, has awarded compensation of Rs.50,000/- each to the minor children of deceased Ateeq towards loss of love and affection. Similarly, compensation of Rs.50,000/- each has also been awarded to the parents of Ateeq towards loss of love and affection.

13 On the basis of paragraph no.51 of the judgment in Pranay Sethi's case (supra), it is not possible to accept that since para 3 of the Second Schedule to Motor Vehicles Act makes no reference to the heading of loss of “Love and affection”, no compensation whatsoever can be awarded by the MACT towards loss of love and affection. Paragraph 54 of the judgment in the case of Pranay Sethi, does not say so. However, considering the observations in paragraph 57 of the said judgment and the principle that compensation towards non pecuniary loss may be fixed at reasonable basis, the award of compensation at Rs.50,000/- per claimant, appears to be quite excessive and the same is required to be reduced by at least 50%. Thus, the compensation towards loss of love and affection to each of the minor children and the parents will have to be assessed in its entirety at Rs.1,50,000/- and not at Rs.3,00,000/- as assessed in the impugned award. In this case, deceased Ateeq has four minor children and two parents living at the time of unfortunate accident, in which he lost his life.

14 If the calculations are made on the aforesaid basis, then, the total compensation amount comes to Rs.12,90,240/- towards pecuniary loss. This is because, annual income of Ateeq is required to be taken as Rs.72,000/-, to this, addition of 40% is required to be made towards future prospects, which comes to Rs.28,800/-. The annual income of deceased Ateeq is, therefore, required to be taken at Rs.1,00,800/-. Out of this, deduction of $1/5^{th}$ is due towards personal expenses. This means that Ateeq's contribution to the family would come to Rs.80,640/- per year.

Since the multiplier will be 16, the compensation towards dependency would come to Rs.12,90,240/-. To the aforesaid, amount towards non pecuniary loss, total amount of Rs.1,50,000/- will have to be added as compensation towards loss of love and affection to the four children and two parents. Compensation of Rs.40,000/- will have to be awarded to Ateeq's widow towards loss of consortium, Rs.15,000/- towards funeral expenses and Rs.3000/- towards transportation, etc. Further amount of Rs.15,000/- needs to be awarded towards loss of estate. This means that to the amount of Rs.12,90,240/-, further amount of Rs.2,23,000/- will have to be added. This takes the total compensation to Rs.15,13,240/- (Rs.Fifteen lakhs Thirteen Thousand Two Hundred Forty).

15 Taking into consideration peculiar facts and circumstances of this case, including the circumstance that income of the deceased has been assessed on conservative basis and deceased Ateeq, at the time of his demise, left behind four children, there is no case made out to interfere with the rate of interest determined by the MACT. The Appeal, will have, therefore, to be partly allowed. The total compensation amount will have to be determined at Rs.15,13,240/- in place of Rs.18,10,400/-, as determined by the MACT. Save and except this modification, there is no necessity to modify the impugned award any further.

16 Since, the appellant-Insurance Company has deposited, in this Court, entire awarded amount, the respondents-claimants no.1 to 7 shall be entitled to withdraw the compensation amount of Rs.14,63,240/- (Fourteen lakhs Sixty Three Thousand

Two Hundred Forty) since, respondents-claimants have already withdrawn a sum of Rs.50,000/- towards no fault liability. They shall also be entitled to withdraw amount towards proportionate interest, that may have accrued on the said amount. Balance amount to be refunded to the appellant-Insurance Company.

17 The appeal is partly allowed in the aforesaid terms. There shall be no order as to costs.

M.S.SONAK
JUDGE

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