IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3377 OF 2018

. Reliance General Insurance Company,
Through its Manager,
R/o. Reliance General Insurance Company,
Adalat Road, Aurangabad. ..Appellant
(Orig. Opponent No.2)

Versus

1) Raisa W/o. Tajoddin Pirjade @ Shaikh
Age: 29 years, Occu.: Household,
R/o. Mirgali, Tq.Nilanga a/p Khunali,
Tq.Omerga, Dist.Osmanabad.

2) Saniya D/o. Tajoddin Pirjade @ Shaikh
Age: 8 yrs., Minor, Occu.: Education,
R/o. As above.

3) Umera D/o. Tajoddin Pirjade @ Shaikh
Age: 4 yrs., Minor,
R/o As above,
The claimant No.2 and 3 are minor under the
guardianship of their natural mother
claimant No.1 Raisa w/o. Tajoddin Pirjade @ Shaikh

4) Nizam S/o. Khudbuddin Pirjade @ Shaikh
Age: 84 yrs., Occu.: Nil,
R/o. Mirgali, Tq. Nilanga, Dist.Latur.

5) Joharabee W/o. Nizam Pirjade @ Shaikh
Age: 79 yrs., Occ.: Nil,
R/o. As above. ..Orig. Claimants

6) Sandip S/o. Pandurang Bhadgane
Age: Major, Occu.: Business,
R/o. RH6, Talegaon Station,
Flora City, Ordance DEP, Talegaon, Dabhade,
Pune, Tq.Mawal, Dist.Pune. .. (Orig. Opponent No.1)
..Respondents

...

Advocate for Appeal : Shri V. P. Raje
Advocate for Respondent Nos.1 to 5 : Shri Apparao Yenegure
...

CORAM : P.R.BORA, J.

DATE: 2nd November, 2018

ORAL JUDGMENT:-

1. Heard Shri V.P.Raje, learned Counsel for the appellant Insurance Company. The learned Counsel at the outset submitted that the impugned award is challenged only on the quantum. The learned Counsel submitted that the Tribunal without any cogent and sufficient evidence has held the income of the deceased to the tune of Rs.5,000/- per month. The learned Counsel submitted that admittedly, the deceased was working as a labour. In the circumstances, unless there is some documentary evidence or any other cogent evidence, the income of the deceased has to be determined on the criteria of notional income. The learned Counsel submitted that even if by applying the said criteria, the income of the deceased could not have been held more than Rs.4,000/- per month by the Tribunal.

2. The learned Counsel further submitted that the Tribunal has also erred in awarding exorbitant amount towards non-pecuniary damages to the tune of more than Rs.3,00,000/-. The learned Counsel relying upon the Judgment in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Ors.***

[(2017) 16 SCC, 680] submitted that the Tribunal could not have awarded a sum more than Rs.70,000/- towards the non-pecuniary damages. The learned Counsel, in the circumstances, prayed that the impugned award be modified to the aforesaid extent.

3. Shri A.P.Yenegure, learned Counsel appearing for the claimants supported the impugned Judgment and award. The learned Counsel submitted that on the contrary the Tribunal must have considered the future prospects of the deceased, which are not considered. The learned Counsel fairly conceded the legal position as settled by the Hon'ble Apex Court in the case of ***Pranay Sethi and others*** (supra) and submitted for passing appropriate order.

4. After having considered the submissions made by the learned Counsel for the parties, it appears to me that 'whether the amount of compensation is appropriately determined by the Tribunal ?' is the only point to be considered in the present appeal. There appears substance in the submissions made by learned Counsel appearing for the Insurance Company that without there being any documentary or any cogent and sufficient evidence, the Tribunal has held the income of the

deceased to the tune of Rs.5,000/- per month. It appears to me that it could not have been held more than Rs.4,000/- per month by applying the criteria of notional income. However, there is substance in the argument made by Shri Yenegure, learned Counsel appearing for the claimant that the Tribunal did not consider the future prospects while determining the amount of compensation.

5. The law as about future prospects is now settled by the Judgment of the Hon'ble Apex Court in the case of ***Pranay Sethi and others*** (supra). In view of the fact that age of the deceased was below 40 years and he was self employed, his future prospects can be considered by adding in his existing income 40% of the said income. If the income of the deceased by applying criteria of notional income is held to be Rs.4,000/- per month i.e. Rs.48,000/- per annum and if the future prospects are to be considered by adding 40% into his existing income, the amount of dependency compensation will have to be assessed on the amount of Rs.67,200/- (Rs.4,000 x 12 = Rs.48,000) + 40% added into that, it comes to Rs.67,200/-. Considering the age of the deceased, the Tribunal has appropriately applied multiplier of 16. By applying the said multiplier, the amount of compensation comes to Rs.10,75,200/-. Having regard to the

number of dependents on the deceased, only 1/4th amount will be liable to be deducted towards his personal expenses. By deducting 1/4th of his said income, the balance amount comes to Rs.8,06,400/-, which can be said to be the amount of compensation payable to the claimants under the head of dependency compensation. The Tribunal has committed error in awarding a sum of Rs.3,20,000/- towards non-pecuniary damages. The amount of Rs.70,000/- only can be granted towards non-pecuniary damages. By adding it, the amount comes to Rs.8,76,400/-. After having considered entire material on record, the claimants are found entitled for Rs.8,76,400/-. It appears to me that it would be the just and fair compensation payable to the claimants in the present matter. In the result the following order is passed:-

ORDER

I) The award impugned in the present appeal is modified only to the extent of amount of compensation as determined by the Tribunal and the claimants are held entitled to the total compensation of Rs.8,76,400/- instead of Rs.10,45,000/-.

II) The Insurance Company has already deposited the entire amount of compensation under the award in this Court.

III) The original claimants are permitted to withdraw the amount of compensation of Rs.8,76,400/- alongwith interest accrued thereon from the date of filing of the petition till the date of deposit of amount by the Insurance Company.

IV) Balance amount be refunded to the Insurance Company.

V) The appeal stands partly allowed in the aforesaid terms.

VI) Pending civil application, if any, stands disposed of.

(**P.R.BORA**)
JUDGE

SPT