IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 FIRST APPEAL NO. 3256 OF 2018
WITH
CA/4553/2018 IN FA/3256/2018
WITH
CA/13094/2018 IN FA/3256/2018

. ICICI Lombard General Insurance Company Ltd., Through its Manager, Alaknanda Complex, Adalat Road, Aurangabad. ..Appellant
(Ori. Resp. No.2)

Versus

1. Sau.Nakubai Ramesh Valvi
Age: 44 years, Occu.: Nil.

2. Shri Ramesh Kattu Valvi
Age: 46 years, Occu.: Nil.

Both R/o. Somawal, Ta.Taloda, Dist.Nandurbar.

3. Niraj Omprakash Navka
Age: Major, Occu.: Vehicle Owner, R/o. 3011, Annapurna Textile, Millennium Market, Ring Road, Surat – 395997. ..Respondents
(Resp. No. 1 & 2 Ori. Claimants & Resp.3 Ori. Resp. No.1)

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Advocate for Appellant : Shri Abhijit G. Choudhari
Advocate for Respondent Nos.1 & 2 : Shri S.S.Dargad h/f. Shri Santosh G. Chapalgaonkar

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CORAM : P.R.BORA, J.

DATE: 26th October, 2018

ORAL JUDGMENT:-

1. The Insurance Company has preferred the present appeal against the Judgment and award passed in Motor Accident Claim Petition No.109 of 2015 by the Motor Accidents Claim Tribunal at Shahada decided on 31.07.2017. Present respondent Nos.1 and 2 had filed the aforesaid claim petition claiming compensation on account of death of their only son namely Mahesh Ramesh Valvi in a vehicular accident happened on 17.05.2015 having involvement of Maruti Desire Car bearing registration No.GJ-05-JB-287. The claimants had claimed the compensation of Rs.6,00,000/- from the owner and insurer of the said Maruti Desire Car. The petition was resisted by the opponents therein on various grounds. The learned Tribunal after having assessed oral and documentary evidence brought on record, awarded compensation of Rs.10,35,000/- inclusive of no fault liability compensation. At the time of death, deceased Mahesh was aged about 21 years and his income was stated to be of Rs.6,000/-. Respondents - claimants are the parents of the deceased Mahesh.

2. When the present matter is taken up for hearing, though, other grounds are raised in exception to the impugned Judgment and award, the learned Counsel appearing for the appellant

Insurance Company restricted his argument only on two grounds of objections; first that the Tribunal has wrongly considered future prospects of the deceased @ 50% of his existing income and the other that non-pecuniary damages are awarded by the Tribunal on higher side. The learned Counsel in the circumstances, prayed for suitable modification in the impugned Judgment and award to the aforesaid extent.

3. Shri S.S.Dargad, learned Counsel appearing for the original claimants supported the impugned Judgment and award. The learned Counsel submitted that the Tribunal has passed a well reasoned order and no interference is required in the award so passed.

4. The learned Counsel for the Insurance Company has placed his reliance on two Judgments of the Hon'ble Apex Court; first in the case of ***Sarla Verma and Others Vs. Delhi Transport Corporation and another [2009) 6 SCC, 121]*** and other in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Others [2017 SCC OnLine SC 1270]*** . The learned Counsel submitted that the Hon'ble Apex Court has laid down certain guidelines to maintain uniformity as about considering the future prospects of the deceased in the vehicular accident. The learned Counsel submitted that in view of the Judgment in the case of ***Pranay***

Sethi and others (supra), in the instant matter, the future prospects of the deceased could not have been considered @ 50% as has been considered by the Tribunal, but it must have been 40% of his existing income. The learned Counsel further submitted that the Tribunal has awarded excessive amount towards non-pecuniary damages. The learned Counsel submitted that in light of the Judgment delivered by the Hon'ble Apex Court in the case of ***Pranay Sethi and others*** (supra), towards non-pecuniary damages, the maximum amount, which can be granted is Rs.70,000/-.

5. In the present matter, the Tribunal has held the salary of the deceased to the tune of Rs.5,000/- per month. On perusal of the discussion made by the Tribunal in that regard, I do not see any infirmity in the observations made and the finding recorded by the Tribunal as about monthly income of the deceased to the extent of Rs.5,000/- per month. The Tribunal has awarded 50% of the annual income towards amount of future prospects of the deceased. Here the Tribunal has committed mistake. In view of the Judgment of the Hon'ble Apex Court in the case of ***Pranay Sethi and others*** (supra), having regard to the fact that the deceased was working in private employment, no amount more than 40% of his existing income could have been added towards

future prospects to arrive at his prospective income for determination of dependency compensation. If the monthly income of the deceased is held to Rs.5,000/- per month, which yearly comes to Rs.60,000/- and a sum of Rs.24,000/- is added in such amount, total of which comes to Rs.84,000/-, the amount of dependency compensation can be determined. In view of of the fact that the claimants are parents of deceased, half of his income will have to be deducted from his total income towards personal expenses. Thus, Rs.42,000/- will be deducted towards personal expenses of the deceased and dependency compensation needs to be computed on Rs.42,000/-. Having regard to the age of the deceased, the multiplier of 18 would apply. By applying the said multiplier, amount of compensation comes to Rs.7,56,000/-. In the said amount, the further amount of Rs.70,000/- has to be added towards non-pecuniary damages. By adding the said amount, the total amount of compensation comes to Rs.8,26,000/-.

6. It was sought to be contended by the learned Counsel for the claimants that additional compensation for the claimants – parents, who have lost their only son, shall be held to the tune of Rs.2,00,000/-, in view of the Judgment of the Hon'ble Apex Court in the case of ***Magma General Insurance Co.Ltd., Vs. Nanu Ram***

[2018 SCC OnLine SC 1546]. The learned Counsel invited my attention to the discussions made by Hon'ble Apex Court in paragraph Nos.8.5, 8.6 and 8.7 of the Judgment and paragraph No.11 of the said Judgment, and submitted that the said criteria needs to applied in the present case also. I am, however, not convinced by the submissions made by the learned Counsel because facts of the aforesaid case and facts of the present case are quite distinguishable. I, therefore, hold the claimants entitled for the compensation of Rs.8,26,000/-. It appears to me that in the facts and circumstances of the present case, this would be the just and proper compensation payable to the claimants. For the reasons stated above, the appeal deserves to be partly allowed and accordingly the following order is passed:-

ORDER

I) The amount of total compensation is determined to the tune of Rs.8,26,000/-. Save and except the modification in the amount of compensation, the other part of the award is maintained as it is.

II) The appeal is thus, partly allowed in the aforesaid terms.

III) Amount deposited by the appellant Insurance Company is permitted to be withdrawn by the claimants in terms of the award passed by the Motor Accident Claims Tribunal. The balance amount be refunded to the appellant Insurance Company.

IV) Pending civil applications stand disposed of.

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

SPT