IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.177 OF 2010

Tarabai Vishnu Yadav
Aged about 61 years,
R/o Yelavi, Tal. Palus,
District Sangli. … Appellant

-vs-

1. Jetaram Nrisinharam
   Age Major,
   R/o Mandpura (Barwara),
   Tal. Batiyu, Dist. Barner,
   (Rajasthan)
2. The New India Assurance Co. Ltd.
   Division Office, East Coast Chamber,
   First floor, No.92, G. N. Chetti Road,
   T. Nagar, Chennai 600 017
   Branch at Jodhpur,
   (through Sangli Office
   415, Mata Building, Dr Ambedkar Road,
   Sangli)
3. Vishnaram Gomaram Jat,
   Age 31 years, Occ. Driver,
   R/o Bhagai Ki Kothi, Bhunka Buda,
   Malani, Jodhpur, District Baner,
   (Rajasthan) … Respondents.

Ms Aakanksha Helaskar, Advocate along with Shri A. M. Kulkarni, Advocate for appellant.

CORAM : A. S CHANDURKAR, J.
DATE : December 17, 2018

Oral Judgment :

The original claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, the said Act) as she is aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal by its judgment dated 02/09/2009 that was filed under Section 166 of the said Act.

2. On 15/10/2006 one Bhaskar Yadav along with his wife Tanushree were proceeding on a motorcycle when they met with an accident with a truck. As a result of that accident the said couple expired. The mother of Bhaskar thus filed Claim Petition under Section 166 of the said Act seeking compensation for the death of her daughter-in-law. According to the claimant the offending truck was insured by the respondent No.2 herein. In the claim petition it was pleaded that the deceased was well qualified having obtained degrees of B.Com and M.Com. She was prosecuting her studies for obtaining further professional qualifications. She was registered with the Institute of Chartered Accounts at Mumbai. Considering the age of the deceased a claim for compensation of an amount of Rs.13,25,000/- came to be made.

3. The owner and driver of the offending vehicle were duly served but they remained absent. The claim petition proceeded ex-parte against the respondent No.2-Insurance Company. The Insurance Company filed its written statement at Exhibit-15 and did not dispute the fact that the

offending truck was insured by it. It further pleaded that the accident occurred on account of the rash and negligent driving by the deceased. It was thus pleaded that no compensation was liable to be granted in view of the fact that the owner of the vehicle had violated the conditions of the Insurance Policy. The claimant examined herself but the Insurance Company did not examine any witness. After considering the evidence on record the Claims Tribunal awarded compensation of Rs.1,40,000/- with interest at the rate of 7.5% per annum from the date of filing of the petition. Being aggrieved by the quantum of compensation as granted, the claimant has filed this appeal.

By order dated 09/02/2010 the hearing of the appeal was expedited. Despite due service the respondents have not entered appearance.

4. It is submitted by Ms A. Helaskar, the learned counsel for the appellant that the compensation as awarded by the Claims Tribunal was on a lower side and the same requires enhancement. Referring to the documents at Exhibits-32 to 35 on record it was submitted that the same indicate the qualifications acquired by the deceased. As per document at Exhibit-35 the deceased was pursuing the professional course for becoming a Chartered Accountant just prior to her death in the accident. On aforesaid basis it was submitted that the notional income of the deceased ought to be

determined at Rs.6000/- and not Rs.5000/- as taken by the Claims Tribunal. For that purpose learned counsel referred to the decision in ***Savita and ors. vs. Divisional Manager (2018) 12 SCC 24.***

It was then submitted that in the light of the decision in ***Joseph Philip C. J. and anr. vs. Judies and ors. (2018) 11 SCC 638.*** The multiplier as per the age of the deceased ought to be taken. As the deceased was aged about 25 years multiplier of 18 ought to be applied. It was further submitted by referring to the decision in ***National Insurance Company Ltd. vs. Pranay Sethi 2017 SCC Online 1270*** that the future prospects of the deceased ought to be worked out by addition of 40% of income. After deducting 1/3rd amount towards personal expenses in the light of the fact that the deceased was not having any child, the annual dependency ought to be calculated. Similarly, the amounts towards loss of love and affection, loss of assets as well as for funeral expenses ought to be calculated in the light of the decision in ***Pranay Sethi*** (supra). On the aforesaid basis it was submitted that the amount of compensation would come to Rs.10,48,000/- . The learned counsel also placed reliance on the decision in ***Sarla Verma (Smt) and ors. vs. Delhi Transport Corporation and anr. (2009) 6 SCC 121.*** It was thus submitted that the impugned award deserves to be suitably modified.

5. As noted above the respondents have not chosen to contest the appeal. Hence with the assistance of the learned counsel for the appellant I have perused the records of the case and I have given due consideration to the submissions as made.

6. The findings recorded by the Claims Tribunal in so far as the negligence of the driver of the truck which was owned by the respondent No.1 has not been challenged and hence the appeal would have to proceed on the basis that accident occurred on account of rash and negligent driving of the respondent No.3-Driver. The only aspect to be considered is whether the just compensation has been awarded to the claimant. The age of the deceased is shown to be 25 years as per the School Leaving Certificate at Exhibit-30. As per the document at Exhibits-32 to 35 it can be seen that the deceased had acquired a Bachelor's degree as well as Master's degree in Commerce. She had also completed Diploma in Income Tax and Sales Tax. As per the document at Exhibit-35 she was registered with the Board of Studies of the Institute of Chartered Accountants for its second course. These documents on record clearly indicate that the deceased was well qualified and was pursuing further professional courses. It is on that basis that the Claims Tribunal in paragraph 18 of its judgment has taken an amount of Rs.5000/- as the notional income. That figure in the light of qualifications of the deceased appears to be a correct figure.

7. The Claims Tribunal has applied the multiplier of five. However, in the light of the decision in ***Pranay Sethi*** (supra) the age of the deceased has to be taken as the basis of applying an appropriate multiplier. Considering the fact that the age of the deceased was 25 years, multiplier of 18 would be applicable as held in ***Sarla Verma*** (supra).

From the evidence of the claimant it is seen that the couple did not have any issue. The claimant was the only other member of the family and therefore deduction of $1/3^{rd}$ amount for personal expenses deserves to be granted. On aforesaid basis if the amount of compensation is worked out, the annual income by taking a notional income of Rs.5000/- per month would be Rs.60,000/-. After deducting $1/3^{rd}$ amount same would come to Rs.40,000/- per annum. Future prospects to the extent of 40% would require addition of Rs.16,000/- to that figure. Thus the amount of annual income on that basis would come to Rs.56,000/-. By applying multiplier of 18 figure of Rs.10,08,000/- is arrived at. As regards other heads of compensation the observations in ***Pranay Sethi*** (supra) can be taken into consideration. On that count towards loss of love and affection Rs.10,000/- towards loss of estate Rs.15,000/-, for funeral expenses Rs.15,000/- thus making a total of Rs.10,48,000/-. It is seen that the Claims Tribunal has awarded interest at the rate of 7.5% per annum from the date of filing of the petition. It is on the aforesaid basis that the appellant would be entitled to enhancement in the amount of compensation.

8. The Claims Tribunal wrongly applied the multiplier of 5 by considering the age of the claimant and not the deceased. This has resulted in granting a lessor amount of compensation to the claimant.

9. In the light of aforesaid discussion it is held that the appellant is entitled for further compensation. Accordingly the order dated 02/09/2009 passed in MACP No.342 of 2006 is partly modified. It is held that the claimant is entitled for an amount of compensation of Rs.10,48,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition from the respondents jointly and severally. This amount shall include the amount of compensation received towards No-fault liability. The respondent Nos.1 to 3 shall pay the balance amount of compensation in terms of this judgment with interest at the rate of 7.5% per annum to the appellant.

The First Appeal is accordingly allowed in aforesaid terms. There would be no order as to costs.

(A. S. CHANDURKAR,J.)