

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 861 OF 2012

ICICI Lombard General Insurance
Company Limited

...Appellant

Versus

Smt. Nalini Vitthal Palande & Ors.

...Respondents

.....

Mr.Nikhil Mehta i/b. KMC Legal Venture for the Appellant.
Mr.R.S.Pachundkar for Respondent Nos. 1 to 3.

.....

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **FEBRUARY 07, 2018**

P.C.:

1. Admit. By consent of the parties, the First Appeal is heard finally and decided at the stage of admission.

2. This Appeal is directed against the judgment and award dated 19.11.2011 passed by the learned Additional Member, Motor Accident Claims Tribunal, Pune in M.A.C.P. No. 1221 of 2017 thereby

granting compensation of Rs. 4,98,000/- including NFL with interest @ 9% p.a. from the date of the Application.

3. The claim application is filed by the applicant / widow and two children of deceased Vitthal Gulabrao Palande, who was 45 years old and died in road accident on 27.04.2007 when he was proceeding from Mundhwa to Chandannagar via Nagar-Pune Road by his motorcycle. The offending vehicle i.e. a truck, TATA Concrete Mixer bearing registration no. MH-12-DG-6227 came from opposite direction in rash and negligent manner and dashed the motorcycle. Due to the dash, Vitthal Palande succumbed to the injuries. Therefore, the applicants have filed the claim application, which was allowed to the extent of Rs. 4,98,000/-. The appellant/ insurance company appeared in the matter and filed written statement challenging the income of the deceased. On the basis of oral and documentary evidence, the learned Member of the tribunal granted compensation of Rs. 4,98,000/- with interest @ 9% p.a. Being aggrieved by the judgment and award passed by the learned Member of the tribunal, the appellant/insurance company has filed this Appeal.

4. The learned Counsel for the appellant has submitted that the insurance company has filed this Appeal on the point of quantum and also on the point of multiplier. The amount of compensation granted by the tribunal is excessive. He has further submitted that the learned Member of the tribunal has wrongly adopted multiplier 13 in view of the age of the deceased, who was 52 years old at the time of accident. The learned Member of the tribunal ought to have been adopted multiplier 11.

5. The learned Counsel for respondent nos. 1 to 3 opposed this Appeal. He has submitted that the judgment and award passed by the learned Member of the tribunal on all the grounds is correct and the Appeal be dismissed.

6. After perusal of the impugned judgment and award, it is found that the appellant/insurance company has taken defence of the contributory negligence, wrong multiplier and also income of the deceased. The original claimants have tendered evidence on the point of income and the learned Member of the tribunal has

considered the income i.e. contribution of the deceased in agricultural income upto Rs. 4000/- p.m., which is found reasonable. The learned Member of the tribunal has deducted 1/3rd amount and considered the contribution of the deceased to the family income was Rs. 36,000/- per annum. Nothing can be faulted with the order passed by the learned Member of the tribunal on the point of negligence and also on the point of income. However, in para 12 of the said judgment and award, the learned Member has mentioned that the deceased was 52 years old and by applying the provisions laid down by the Supreme Court in the case of *Sarla Varma and others V/s. Delhi Transport Corporation and another* reported in *2009 ACJ 1298*, he has adopted multiplier 13 instead of 11. Hence, the judgment and award passed by the learned Member of the tribunal in respect of the amount of compensation is to be modified accordingly by applying multiplier 11 instead of 13 and thus, the amount of compensation comes to Rs. 3,96,000/- instead of Rs. 4,98,000/- and the remaining amount of the compensation and the rate of interest is maintained. Hence, First Appeal is partly allowed.

7. The statutory amount of Rs.25,000/- deposited in this Court at the time of filing of appeal shall be transferred to the Motor Accident Claims Tribunal, Pune.

(MRIDULA BHATKAR, J.)