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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1012 OF 2018

Bajaj Allianz General Insurance Co.Ltd ... Appellant.
V/s.
Smt. Meenakshi Manohar Tardekar
and others ... Respondents

Mr. Devendranath S. Joshi, for Appellant
Mr.T.J. Mendon, for respondent Nos. 1 & 2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the appellant and respondent.

2] This Appeal is directed against the judgment and award dated 21st January, 2017, passed by M.A.C.T., Mumbai, in Claim Application No.2667 of 2011.

3] The appellant Insurance Company, is challenging this award on the ground that it was a case of negligence on the part of motorcyclist with whom deceased was travelling on his pillion seat and secondly, that the amount of compensation awarded to the respondent claimant is on higher side.

4] As regards the issue of negligence, perusal of the impugned judgment passed by the Tribunal goes to show that the appellant has examined the driver of the offending vehicle, witness namely Respondent No.1 Vijay Vaity. In his examination-in-chief, he has stated that the motorcycle on which deceased was the pillion rider, came from the opposite side on the turning, from left to right; at that time he could not control his car as the motor cycle came suddenly. In view of his admission that he could not control his car, there is no question of any negligence on the part of the motorcyclist. Apart from that, as the deceased was a pillion rider, it cannot be said that it was a case of contributory negligence.

5] The only issue that remains for consideration is about the quantum of compensation. Admittedly, the deceased was of the age of 58 to 60 years at the time of accident. He was working as an Agent of the L.I.C. He would have worked as L.I.C. agent at least for 15 years more. Respondent claimant had given the chart of the commission earned by him from the year 2007-08 to 2012-2013. The said chart alongwith the income tax returns at Exh.29 and 30 go to show that, after the deduction which he has shown in the income tax return for the year 2011-12, he was getting income of Rs.2,11,767/- per annum. In view thereof, it was not proper on the part of Tribunal to hold that his last drawn annual income after deduction of tax was Rs.4,44,855/-. That finding of the Tribunal cannot be sustainable in law. The amount of compensation thereof has to be calculated holding the income of the deceased as Rs.2,11,767/- per annum.

6] Moreover, the Tribunal has granted future prospects at the rate of 15%. However, considering the latest position of law laid down by the Hon'ble Supreme Court, in the case of **National Insurance Co.Ltd -vs- Pranay Sethi and ors [2017 ACJ 2700]; the** amount of future prospects has to be considered on the basis of 10% of the income having regard to the age of the deceased and the fact that he was doing private business as L.I.C. Agent. As regards the amount awarded by the Tribunal towards conventional heads of Rs.2,50,000/-, I do not find any reason to disturb the said finding.

7] According to learned counsel for appellant, however, the chart produced by the respondent shows that, even after the death of the deceased, respondent claimants are getting commission and in fact their income is increased now than the income deceased was earlier getting as commission. It is submitted that the income tax return filed by the deceased for the year 2011-12, shows net income of Rs.2,11,767/- ; whereas for the assessment year 2012-13, income tax return filed by the claimant shows their income as Rs.1,85,140/- and for the assessment year 2013-14, the said income is shown as Rs.2,06,370/-. Thus, it is submitted that respondent claimants are receiving commission more than the one drawn by the deceased. Hence, there is no loss, as such suffered by them.

8] However, in this respect, learned counsel for respondents has rightly placed reliance on the judgment of Calcutta High Court, in the case of **National Insurance Co.Ltd -vs- Ayesha Sekh and ors, 2016 [2016 ACJ 1063];** wherein similar contention was raised and it was held that as there is no nexus between the accident and receiving of commission by claimants which would have been receivable by them even otherwise on the death of the victim though the receipt of hereditary commission was accelerated due to the premature death of the deceased; such commission cannot be taken into consideration for deciding the loss of income suffered by the claimants.

9] The judgment and award passed by the Tribunal needs to be modified to the extent that the appellant is directed to pay to the respondents claimants amount of compensation of Rs.2,11,767/- p.a. + Rs.21,768/- towards future prospects at the rate of 10% = Rs.2,33,535/-, 1/3rd deduction thereof towards the personal expenses of the deceased comes to Rs.77,845/-. Thus the loss of dependency comes to Rs.1,55,690/- p.a. Applying the multiplier of "9", the net loss of income comes to Rs.14,01,210/- plus Rs.2,50,000/- awarded by the Tribunal towards conventional heads.

10] As a result the appeal is allowed to the extent that the appellant is directed to pay to the respondents total amount of

Rs.16,51,210/- with interest thereon at the rate of 9% per annum as awarded by the Tribunal from the date of application till realization of the amount.

11] The rest of the order of Tribunal stands confirmed.

12] As appellant has deposited the entire amount of compensation in the Tribunal, Appellant is entitled and at liberty to withdraw the excess amount with proportionate interest accrued thereon.

[DR.SHALINI PHANSALKAR-JOSHI, J.]