IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAF) NO. 4902/2017
IN
FIRST APPEAL NO. 986 OF 2018

The Oriental Insurance Company Ltd.,
Through Divisional Manager,
Amravati through Incharge- T.P. Hub,
A.D. Complex, Mount Road Extension,
Sadar, Nagpur.

….**APPELLANT**
ORI. RESPONDENT NO.3.

VERSUS

1] Mangesh s/o Wasudevrao Bhute,
Aged – Major, Occu: Driver,
R/o at Dhoterkheda, Post- Paratwada,
Tq. Achalpur, Dist. Amravati.
[ORI. RESPONDENT NO.1.]

2] Raju s/o Ramkrushna Rithe,
Age- Major, Occu: Not known
R/o at Post Teosa, Tq. Teosa,
Dist. Amravati.
[ORI. RESPONDENT NO.2]

3] Mansingh s/o Narsing Jadhav,
Age- Major, Occupation : Business,
R/o Salegaon (Post Salegaon) (SP)
Tq. Ashti, Dist. Wardha (Mah.)
[ORI. RESPONDENT NO.4]

4] Sunanda wd/o Manohar Borkhade,
Aged-41 years, Occu: Household worker.
[ORI. CLAIMANTS NOS. 1 TO 4]

5] Arti d/o Manohar Borkhade,
Aged 20 years, Occu: Education.

6] Aayush s/o Manohar Borkhade,
Aged-15 years, Occu: Education.

Ms. Anita Mategaonkar, Advocate for the appellant.
Shri Mahesh Vasant Rai, Advocate for the respondent No.1.

CORAM: Z.A. HAQ, J.
DATE: 19th SEPTEMBER, 2018.

None appears for the non-applicant / respondent Nos. 4 to 6 (claimants) though served.

Accepting the explanation given in the application, the delay of 206 days in filing the appeal is condoned.

The civil application is allowed accordingly. No costs.

FIRST APPEAL NO. 986/2018

ORAL JUDGMENT

1] Heard.

2] Taken up for hearing.

3] Though the respondent Nos. 4 to 6 are served with notice of the Civil Application (CAF) No. 4902/2017 and are aware about pendency of this proceedings, none appears for them.

4] This appeal is filed by the Insurance Company to challenge the award passed by the Motor Accident Claims Tribunal, Nagpur upholding the claim of the claimants for Rs. 9,35,000/- towards compensation, with interest. As per the award passed by the Tribunal, the driver of the vehicle involved in the accident, the appellant / Insurance Company and the present respondent No.3-Mansingh s/o Narsing Jadhav are jointly and severally held liable to pay the amount of compensation.

5] The award is challenged on the following grounds:-

(i) The Tribunal has committed an error in determining the amount of compensation considering the notional income of Manohar Bapurao Borkhede (deceased) as Rs.4,500/- per month and then granting additional compensation towards future prospects by adding 50% of the notional income.

(ii) The Tribunal has granted Rs. 1,25,000/- under the conventional heads which is higher than the amount for which the claimants are entitled under those heads.

6] As the points raised by the appellant / Insurance Company can easily be answered in the light of the proposition laid down in the judgment given in the case of ***National Insurance Company Limited -vs- Pranay Sethi and others*** reported in 2017 (16) SCC at page 680, the appeal is taken up for final disposal.

7] As far as contention of the appellant / Insurance Company that the notional income of the deceased - Manohar Bapurao Borkhede, could not have been taken as Rs. 4,500/- per month and at the most, it could have been taken as Rs. 3,000/- per month, cannot be considered. The Tribunal has assessed the notional income of the deceased- Manohar Bapurao Borkhede after examining the relevant factors and the evidence on record, the conclusions being recorded in paragraph no.21 of the award.

8] As far as addition towards future prospects is concerned, the Tribunal has committed an error by determining the amount of compensation adding 50% of the notional income towards future prospects. As the deceased - Manohar Bapurao Borkhede was below 40 years of age and was self employed, addition towards future prospects has to be 40%.

9] Similarly, the Tribunal has committed an error in awarding Rs. 1,25,000/- under the conventional heads. As per the judgment given in the case of ***National Insurance Company Ltd., vs Pranay Sethi and others,*** the claimants would be entitled for Rs. 70,000/- under the conventional heads.

The appellant / Insurance Company and the present respondent Nos. 1 and 3 are jointly and severely liable to pay the following amount towards compensation with interest @ 8% per annum, the interest being chargeable from the date of filing of the claim petition till the amount is deposited with the Registry of this Court.

Calculations of the income of deceased

Monthly income considered by Tribunal		Rs.4,500/- p.m.
1/3rd deduction	(-)	Rs. 1,500/-
		Rs.3,000/-
40% future prospects	(+)	Rs. 1,200/-
		Rs. 4,200/-
	(x)	12
		Rs.50,400/- yearly
Multiplier	(x)	15
		Rs.7,56,000/-
Consortium	(+)	Rs. 70,000/-
		Rs. 8,26,000/-

with interest @ 8% p.a. the interest being chargeable from the date of filing of the petition.

10] As the claimants have not put in appearance before this Court, the amount deposited alongwith interest by the appellant / Insurance Company with the Registry of this Court be transmitted to the Motor Accident Claims Tribunal, Achalpur.

Out of the amount deposited by the appellant / Insurance Company, the respondent No.4 / Sunanda wd/o Manohar Borkhade be given Rs. 1,00,000/-.

The balance amount be kept in Nationalized Bank in fixed deposit which would fetch the maximum interest.

After the respondent No.6 / Aayush s/o Manohar Borkhade becomes major, the claimants would be at liberty to withdraw the amount. At that stage, the Tribunal shall pass appropriate orders regarding disbursal of the amount.

If any excess amount is deposited by the appellant / Insurance Company, it be given back to the appellant / Insurance Company.

11] The appeal is disposed in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE

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