IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

972 FIRST APPEAL NO.278 OF 2015

The New India Assurance Company Ltd.
Through its Divisional Manager,
Adalat Road, Aurangabad. … Appellant
(Orig. Opp. No.2)

Versus

1. Mrs. Malabai Hemsing Chavan
Age : 74 years, Occupation: Household

2. Shri Hemsing Pandit Chavan
Age : 49 years, Occupation: Agriculture

Both residents of : At Jaru Tanda,
Taluka Kinwat, District Nanded.

3. Shri Narayan Marotirao Pisal
Age : Adult, Occupation: Business
Owner of MTS 3354 truck
Resident of : C/o Pisal Bandu
Kavalgaonkar at Kavalgaon,
Taluka Purna, District Parbhani. … Respondents.
(No.1 & 2 Orig. Claimants, No.3 Orig. Opp. No.1)

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Mr. Mohit R. Deshmukh, Advocate for Appellant.
Mr. Manoj Shinde H/f Mr. A.M. Kakade, Advocate for Respondent Nos.1 and 2.

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CORAM : P.R. BORA, J.

DATED : 17th JANUARY, 2019

ORAL JUDGMENT:-

1. The Insurance Company has filed the present appeal, challenging the judgment and order passed by the Motor Accident Claim Tribunal in Motor Accident Claim Petition No.548/2007 decided on 26.09.2013.

2. The present respondent nos.1 and 2 had filed the aforesaid claim petition claiming compensation on account of the death of one Sudhir Hemsing Chavan alleging the same to have been caused in a vehicular accident happened on 07.01.2007, having involvement of a truck bearing Registration No. MTS/3354 owned by present respondent no.3 and insured with the present appellant.

3. As contended in the claim petition, deceased Sudhir Chavan was aged about 27 years at the time of his death and was earning Rs.7,500/- per month by way of his salary. It was further contention of the claimants that the accident happened because of the sole negligence on the part of the driver of the offending truck. The claimants had therefore claimed compensation of Rs.25,000,000/- from the owner and the insurer of the said truck.

4. The claim petition was resisted by the appellant-insurance company on various grounds. It was contended by the insurance company that in occurrence of the alleged accident, deceased Sudhir had also contributed by his negligence. According to the insurance company, deceased Sudhir was equally responsible for occurrence of the alleged accident. In order to substantiate the contentions raised in the petition, on of the claimants testified before the Court and one more witness was examined to prove the salary of the deceased. No witness was examined by the

insurance company. The Tribunal after having assessed the oral and documentary evidence brought on record by the parties, held the claimants entitled for the total compensation of Rs.16,85,824/- jointly and severally from the owner and insurer of the offending truck. Aggrieved there-by, the insurance company has preferred the present appeal.

5. Heard Shri M.R. Deshmukh, the learned counsel appearing for the appellant-insurance company. The learned counsel assailed the impugned judgment mainly on three grounds; first that the Tribunal has failed in properly appreciating the evidence on record as about the manner of occurrence of alleged accident and the factum of negligence as alleged by the insurance company on the part of deceased Sudhir. The learned counsel submitted that there was head on collusion and in such circumstances, no further evidence was required to arrive at the conclusion that in occurrence of the alleged accident, the deceased had also contributed by his negligence. The learned counsel submitted that the Tribunal has ignored the said aspect and has wrongly held the truck driver solely responsible for occurrence of the alleged accident. According to the learned counsel, the Tribunal must have held the deceased also responsible for occurrence of the alleged accident to the equal extent i.e. 50%.

6. Second objection raised by the appellant is that the Tribunal has wrongly added 100% income of deceased Sudhir into his existing income, while determining the amount of dependency compensation. The learned counsel submitted that in no case 100% of the existing income of the deceased could have been added by the Tribunal. It is the third objection that the Tribunal has erred in awarding the non-pecuniary damages to the tune of Rs.1,75,000/-. The learned counsel submitted that at the most, the Tribunal could have awarded the amount of Rs.70,000/- on all three counts. The learned counsel, therefore, prayed for modification of the award and to adequately decrease the amount of compensation.

7. Shri Manoj Shinde, the learned counsel appearing for the claimants resisted the contentions raised on behalf of the appellant-insurance company. The learned counsel, taking me through the spot panchanama submitted that the spot panchanama clearly demonstrates that there was no negligence on the part of the deceased-motorcyclist and the entire negligence has been rightly attributed by the Tribunal on the part of the driver of the offending truck.

8. The learned counsel further submitted that the Tribunal has not committed any error in considering the addition of 100% of existing income of the deceased towards future prospects. The learned counsel, however, fairly conceded that in view of the

judgment of the Hon'ble Apex Court in the case of ***National Insurance Company Limited versus Pranay Sethi and others (2017 SCC on line SC 1270)*** towards non pecuniary losses, the maximum amount payable shall be Rs.70,000/-. The learned counsel, in the circumstances, prayed for passing appropriate orders.

9. I have duly considered the submissions advanced by the learned counsel appearing for the parties. Though it is sought to be contended by the learned counsel appearing for the appellant that in occurrence of the alleged accident, some negligence was liable to be attributed on part of the deceased, after having perused the evidence on record and discussions made by the Tribunal in para 10 of its judgment, apparently there appears no substance in the objection so raised. As is reveling from the scene on spot of occurrence, the truck was noticed in the middle of the road. As has been observed by the Tribunal, from the situation on the sport and the position of the vehicles involved in the alleged accident, it was abundantly clear that the motorcycle was dragged by the truck up to the distance of 15 feet, and therefore, it was entangled into the truck. It is thus evident that it was not the case of head on collusion as argued by the learned counsel appearing for the appellant-insurance company. I therefore see no reason to cause any interference in the finding recorded by the Tribunal, thereby holding the driver of the offending truck to be

solely negligent in occurrence of the alleged accident.

10. There, however, appears substance in the objection raised by the appellant-insurance company that the Tribunal has manifestly erred in adding 100% existing income of the deceased towards his future prospects while calculating the amount of dependency compensation. There cannot be a dispute that the future prospects of the deceased are to be considered while assessing the amount of compensation payable to his dependents. The law in this regard has been settled by the Hon'ble Apex Court in the case of ***Pranay Sethi*** (cited supra). As per the guidelines laid down by the Apex Court in the said Judgment, having regard to the age of deceased Sudhir and the nature of his employment, in his existing income 50% of the said income was liable to be added for computing the amount of compensation payable to his dependents. The Tribunal has, however, added 100% of the income of the deceased while determining the amount of dependency compensation. The computations so made by the Tribunal cannot be sustained and deserve to be modified so as to be in tune with the guidelines laid down by the Hon'ble Apex Court in the Case of ***Pranay Sethi*** (cited supra).

11. The material on record, reveales that the proved income of deceased Sudhir was Rs.7,406/- per month, which annually comes to Rs.88,872/-. In his said existing income, 50% of it, i.e.

Rs.44,436/- will have to be added towards future prospects. Whereupon, his income to be considered fro assessment of compensation would be Rs.1,33,308/-. Deceased Sudhir being a bachelor, 50% of his aforesaid income would be liable to be deducted towards his personal and living expenses. Deducting the said amount, the net income of deceased Sudhir for the purpose of assessment of the amount of compensation comes to Rs.66,654/-. Having regard to the age of deceased Sudhir, the appropriate multiplier would be of 17. By applying the said multiplier, the amount of dependency compensation comes to Rs.11,33,118/- (Rs.66,654 x 17). In addition to the aforesaid amount, the claimants are also entitled for the non-pecuniary damages to the tune of Rs.70,000/- (Rs.15,000 towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- towards filial consortium to parents). The claimants are thus also entitled for the total compensation of Rs.12,03,118/- (Rs.11,33,118/- + Rs.70,000/-). In the facts and circumstances of the case, it appears to me that this would be the just and fair amount of compensation payable to the dependents of deceased Sudhir.

12. The award therefore needs to be modified to the aforesaid extent. The Tribunal, in the impugned judgment has held the claimants entitled for the total compensation of Rs.16,85,824/-. The amount of compensation so awarded has to be decreased to

Rs.12,03,118/-. Save and except the modification in the amount of compensation as aforesaid, the other part of the award is maintained as it is. From the amount deposited by the insurance company in this Court in the present appeal, the amount, which may be found payable to the claimants in view of the modified award, be paid to them with interest accrued thereon and the balance amount be refunded to the appellant-insurance company with interest accrued thereon.

13. The appeal thus stands partly allowed.

(P.R. BORA)
JUDGE

Sudhir Rane