IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL ST. NO. 29716 OF 2017

M/s Shriram General Insurance company Ltd.
Through The Manager
A/P RICO, Industrial Areal, Sitapura
Jaipur

Through its Branch Manager / Authorised Signatory
Branch at Aurangabad Appellant

Versus

1. Chhaya Machchhindra Lokhande
age 38 years, occ. housewife

2. Puja Machchhindra Lokhande
age 18 years, occ. nil

3. Tejas Machchhindra Lokhande
age 17 years, occ. nil

4. Dipali Machchhindra Lokhande
age 16 years, occ. nil

5. pratikshah Machchhindra Lokhande
age 14 years, occ. nil.

6. Mayuri Machchhindra Lokhande
age 12 years, occ. nil

7. Vishnawi Machchindra Lokhande
age 9 years, occ. nil

(Respondents nos. 3 to 7 are minor
through their natural legal guardian
mother=respondent no. 1.)

8. Rama Dada Lokhande } Deleted vide Court order
age 80 years, occ. nil } dated 11.02.2019.

9. Subhadra Rama Lokhande } Deleted vide Court order
age 75 years, occ. nil } dated 11.02.2019.

10. Babasaheb Dattatraya Wagh
age 45 years, occ. business
r/o 261-1, Nagar Karmala Road,
Shiradhon Tq. Nagar
Dist. Ahmednagar Respondents.

Mr. S.G. Chapalgaonkar, advocate for appellant.
Mr. A.C. Darandale, advocate for respondents no. 1 to 8.

CORAM : P.R. BORA, J.
DATE : 11th FEBRUARY, 2019

JUDGMENT :

1. Learned counsel for appellant seeks leave to delete names of respondents no. 8 and 9. Leave granted. Necessary amendment be carried out forthwith.

2. Issue notice to respondents. Learned counsel Mr. A.C. Darandale waives service of notice on behalf of respondents no. 1 to 8.

3. Service to respondent no. 10 is exempted since the main objection seems to be about the quantum of compensation.

4. Service complete.

5. With the consent of learned counsel for the parties, the appeal is taken up for final disposal at admission stage.

6. Being aggrieved by the judgment and award passed by Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claim

Petition no. 419/2012 on 09.11.2016, the appellant-insurance company has preferred the present appeal. Respondents 1 to 8 (hereinafter referred to as 'claimants') had filed the aforesaid claim petition claiming compensation on account of death of Machchhindra Lokhande alleging the same to have been caused in a vehicular accident happened on 14.06.2012 having involvement of motorcycle insured with the appellant-insurance company.

7. It was the contention of the claimants that deceased Machchhindra who was crossing the road was dashed by a motorcycle and in the accident so happened, ultimately he suffered death. It was the further contention of the claimants that the accident in question happened because of the sole negligence of the motorcyclist. The age of deceased was stated to be 40 years and his income was stated to be Rs. 9,000/- per month. The claimants had therefore claimed compensation amounting to Rs. 23,00,000/- jointly and severally from the owner and insurer of the motorcycle.

8. The petition was resisted by the insurance company. The insurance company had raised a plea of contributory negligence and had also disputed the income of the deceased. The tribunal, after having assessed the oral and documentary evidence brought on record, held the claimants entitled for total compensation of Rs. 16,47,680/-. Aggrieved by the same, the insurance company has preferred the present appeal.

9. Mr. Chapalgaonkar, learned counsel for the insurance company submits that the challenge to the impugned judgment by

the insurance company is mainly on three grounds. First that the tribunal has failed in appreciating that in occurrence of the alleged accident, negligence on the part of the deceased was in equal proportion whereas the tribunal has held negligence on the part of the deceased to the extent of 20%. The second objection is as about the income as has been held by the tribunal to the extent of Rs. 9,000/- per month and, third objection is as about the non-pecuniary damages awarded by the tribunal to the extent of more than Rs. 6,00,000/-. Learned counsel submits that though the tribunal has observed that the deceased abruptly came on the road, while making the apportionment, negligence on the part of the deceased is wrongly held only to the extent of 20%. Learned counsel submits that from the evidence on record, negligence of the deceased appears to be in equal proportion. Learned counsel further submits that though there was no cogent and sufficient proof as about the income of the deceased, the tribunal has held it to the tune of Rs. 9,000/- per month. Learned counsel further submits that in the absence of any documentary evidence, the tribunal must have applied the criteria of notional income and could not have held income of the deceased more than Rs.6,000/- per month. Learned counsel further submits that the tribunal has wrongly awarded the compensation towards non-pecuniary damages. Learned counsel pointed out that the non-pecuniary damages awarded by the tribunal are more than Rs. 6,00,000/-.

10. Learned counsel for the original claimants supported the impugned judgment and award and prayed for dismissal of the appeal filed by the insurance company.

11. I have given due consideration to the submissions made by learned counsel Mr. Chapalgaonkar for the insurance company and learned counsel Mr. Darandale appearing for the claimants. I have perused the impugned judgment. First I would like to deal with the objection as about negligence. On perusal of the discussion made by the reference Court in this regard apparently, it does not appear to me that there is any scope for causing any interference in the finding so recorded as the tribunal has properly considered the evidence and has duly apportioned negligence interse deceased Machchhindra and the motorcyclist. Second objection also does not seem to be sustainable in view of the fact that ample evidence has been brought on record by the claimants showing that deceased was working as a mason and in the relevant period average income of the mason was in the same range. I, therefore, see no reason to interfere with the findings so recorded. However, there appears substance in the third objection raised by the learned counsel. The Tribunal has awarded non-pecuniary damages of around Rs. 8,00,000/- and 20% out of the said amount is deducted considering negligence on the part of the motorcyclist. Non-pecuniary damages as awarded by the Tribunal are partly unsustainable. The Honourable Apex Court in the judgment of *National Insurance Company Ltd. vs. Pranay Sethi and others* reported in **(2017) 16 SCC 80** has settled the controversy as about grant of non-pecuniary damages. As has been held by the Honourable Apex Court in the aforesaid judgment, the non-pecuniary damages are to be restricted to Rs. 70,000/-. In the present case, only that much of amount was liable to be paid whereas the tribunal has awarded much more amount. To that extent, the award needs modification.

12. It is brought to my notice that the tribunal has awarded amount of Rs. 50,000/- towards medical expenses. It does not appear to me that said amount has been unreasonably awarded. The claimants are entitled to receive said amount. After having considered the entire material on record, it appears to me that the tribunal has correctly worked out dependency compensation to the tune of Rs. 12,09,600/-. In addition to it, the claimants are also entitled to receive Rs. 50,000/- towards medical expenses and Rs. 70,000/- towards non-pecuniary damages. Total amount therefore comes to Rs. 13,29,600/-. Out of the said amount, the owner and insurer of the offending vehicle can be held liable to pay 80% amount as compensation which comes to Rs. 10,63,680/-. The appellant-insurance company has deposited in this Court the entire amount of compensation as per the award. It appears to me that in the facts and circumstances of the case, this much would be the just and fair compensation payable to the claimants.

13. Claimants are held entitled to receive amount of Rs. 10,63,680/- towards compensation jointly and severally from the owner and insurer of the motorcycle with interest at the rate of 9% per annum from the date of filing of the claim petition till its realisation. Out of the aforesaid amount, 60% amount shall be invested in the names of the minor claimants in equal proportion for the period till each of them attains age of majority. Remaining 40% amount be paid to the widow of the deceased i.e. claimant no. 1 Chhaya Machchhindra Lokhande. Claimant no. 1 shall be entitled to receive quarterly interest on the amount deposited in Fixed Deposit Receipt in the name of the minors. Out of the

amount already deposited by the insurance company, balance amount if any, be refunded to the appellant-insurance company with interest accrued thereon. Appeal is allowed in aforesaid terms.

14. Civil application if any, does not survive and stands disposed of.

(P. R. BORA, J)

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