IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST.) NO. 34455 OF 2018
WITH
CIVIL APPLICATION NO. 1968 OF 2019
WITH
CIVIL APPLICATION NO. 1969 OF 2019
IN
FIRST APPEAL (ST.) NO. 34455 OF 2018

Reliance General Insurance Co. Ltd. ….Appellant
V/s.
Ramesh Ananda Kamble and ors. ….Respondents

Ms. Shalini Shankar for the appellant.
Mr. Bhushan Walimbe for the respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 16th OCTOBER, 2019

ORAL JUDGMENT :-

. At the outset, it may be mentioned that the parties had submitted before me that they have entered into an amicable settlement. The respondent nos.1 and 2 who are the original claimants had consented to accept the compensation of Rs.13,85,000/ and agreed to waive the interest component solely on the ground that they were told that it would take several years for the appeal to come up for hearing and that they will have to wait indefinitely to get the money in hand. It is evident that the original claimant had agreed to enter into a settlement, on an apprehension that they will not get speedy justice, either due to failure of the system or any other probable cause. Such settlement cannot be considered as voluntary and consequently cannot be accepted.

2. The learned counsel for the appellant – insurance company states that no statutory defense is raised. Hence, notice to respondent nos.3 and 4 is dispensed with. Considering the fact that the challenge in the appeal is only to the quantum of compensation, with consent of the learned counsel for the respective parties, the appeal is heard finally at the stage of admission.

3. The appellant – insurance company has challenged the judgment and award dated 11/06/2018 passed by the learned Member, MACT, Kolhapur in MACP No.431/2015. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.13,85,000/- with interest @ 9% p.a. from the date of the application till realization of the amount.

4. The respondent nos.1 and 2 who shall be hereinafter referred to as 'the claimants' are the parents of the deceased Atish Ramesh Kamble who expired on 01/08/2015 due to the injuries sustained in a motor

vehicular accident involving Truck bearing No.MH-17/K-7686 and Motor cycle No.MH-10/AP-9448. The motor cycle involved in the accident was driven by the deceased whereas the offending vehicle i.e., Truck was driven by the respondent no.4 – Balasaheb Vishnu Shinde. The collusion between the said motor cycle and the truck on Gaganbavda – Kolhapur road resulted in death of Atish Kamble, the rider of said motor cycle. Said Atish Kamble was a bachelor of 25 years of age. He was employed as a lecturer in S.S.P.M. College of Engineering at Kankawali and was earning Rs.24,800/- per month. The claimants claimed that the accident was caused solely due to rash and negligent driving by the driver of the truck. They claim that they were entirely dependent on the income of the deceased. The claimants therefore filed an application under Section 166 of the Motor Vehicles Act claiming compensation of Rs.56,25,000/-.

5. The driver and owner of the offending vehicle did not contest the proceedings. The appellant – insurance company denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The appellant – insurance company raised the defense that the deceased was solely responsible for the accident and hence they are not liable to pay any compensation to the claimants.

6. The Tribunal, upon considering the evidence adduced by the claimants, recorded a finding that the driver of the offending vehicle i.e., Truck No.MH-17/K-7686 as well as the deceased Atish were responsible for the accident and thus recorded a finding that it was a case of contributory negligence. While computing the quantum of compensation, the Tribunal noted that the deceased was earning Rs.25,000/- per month. Upon applying multiplier of 18, the Tribunal assessed loss of dependency to Rs.27,00,000/-. The Tribunal further held that the claimants are entitled for compensation of Rs.70,000/- on other conventional heads viz., funeral expenses, loss of estate and loss of love and affection. The Tribunal therefore assessed the total compensation to Rs.27,70,000/-. The Tribunal deducted 50% of the compensation in view of the contributory negligence of the deceased and awarded compensation of Rs.13,85,000/- to the claimants. Being aggrieved by the quantum of compensation, the appellant – insurance company has filed this appeal under Section 173 of the Motor Vehicles Act.

7. Ms. Shalini Shankar, the learned counsel for the appellant contends that the deceased was a temporary employee and as such, the Tribunal was not justified in considering the monthly income of the

deceased as Rs.25,000/- for the purpose of computing loss of dependency. She submits that the compensation awarded by the Tribunal is excessive and exorbitant.

8. Per contra, Mr. Bhushan Walimbe, the learned counsel for the claimants submits that the deceased was in employment for over two years. He was paid Rs.25,000/- per month since he was a temporary employee. Considering the age and qualifications of the deceased, there was every possibility of the deceased being absorbed on a permanent post and in that event, he would have drawn a higher salary and would have been entitled to much more compensation. He further submits that the Tribunal has not made any allowance towards future prospects. He submits that though the appellants has not filed any cross appeal or cross objection, this Court is under statutory obligation to consider just and reasonable compensation and can enhance the compensation even in the absence of cross objection or cross appeals.

9. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

10. It is not in dispute that the deceased Atish had expired as a result

of the injuries sustained in the motor vehicular accident. There is no challenge to the finding on the issue of contributory negligence. The only issue raised in this appeal is regarding the quantum of compensation payable to the claimants.

11. It is not in dispute that the deceased was 25 years of age and was employed as a lecturer in S.S.P.M. College of Engineering at Kankawali. He was appointed on a temporary post and hence was earning Rs.24,800/- per month. There can be no dispute that had he been employed on a permanent position, he would have earned a much higher salary. Hence, in my considered view, the Tribunal has not committed any error in computing loss of dependency on the basis of the actual income of the deceased as on the date of the accident.

12. While dealing with the issue of future prospects, the Apex Court in ***National Insurance Co. Ltd. v/s. Pranay Sethi and ors. (2017 ACJ 2700),*** has held that when the deceased was self-employed or was on fixed salary, an addition of 40% of the established income, when the deceased is below 40 yrs and an addition of 25% when the deceased was between the age group of 40-50 years would be reasonable.

13. In the instant case, the Tribunal has not awarded any compensation towards future prospects. The deceased was 25 years of age. He was well qualified and was serving as a lecturer in the Engineering College. He would have certainly strived hard to better his prospects and enhance his income. Considering these factors, the Tribunal ought to have added 40% of the established income towards future prospects.

14. The deceased was earning Rs.24,800/- per month. After adding 40% to the established income towards future prospects, his income works out to Rs.34,720/- per month. The deceased was a bachelor and after deducting 50% towards his personal expenses, his monthly income works out to Rs.17,360/- i.e., Rs.2,08,320/- per annum. The appropriate multiplier for the persons within the age group of 21-25 is 18. Upon applying the multiplier of 18, loss of dependency works out to Rs.37,49,760/-.

15. The claimants who are parents of the deceased have lost their only son. Hence, in view of the judgment of the Apex Court in ***Magma General Insurance Co. Ltd. v/s. Nanu Ram Alias Chuhru Ram and ors. 2018 SCC Online SC 1546,*** the claimants would also be entitled for

compensation of Rs.40,000/- each towards loss of filial consortium and Rs.30,000/- towards loss of estate and funeral expenses. Thus, the total compensation works out to Rs.38,19,760/-. As stated earlier, the Tribunal has deducted 50% of the compensation on account of contributory negligence on part of the deceased. There is no challenge to this finding. Hence, after deducting 50% from the total compensation, the claimants would be entitled to compensation of Rs.19,09,880/- which can be rounded of to Rs.19,10,000/-.

16. The next question which arises is whether this Court can enhance the compensation in the absence of cross appeal or cross objection. In this regard, it would be advantageous to refer to the decision of the Apex Court in ***A.P.S.R.T.C. Rep. by its General Manager and anr. V/s. M. Ramadevi and ors. 2008(1) T.A.C. 714 (S.C.),*** wherein while considering the question whether the High Court could have enhanced the compensation in the absence of an appeal by the claimant, reiterated the principles in ***Nagappa (supra)*** that under Motor Vehicles Act there is no restriction that the Tribunal Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal Court is to award 'just compensation' which is reasonable

on the basis of evidence produced on record.

17. The Division Bench of this Court in ***National Insurance Co. Ltd. v/s. Vaishali Harish Devare and ors. in First Appeal No.1068 of 2012,*** has also observe thus :-

> *" 16.....The claim petition filed under section 166 of the said Act is not in the nature of a suit. Under section 168 of the said Act, the Tribunal is duty bound to hold an inquiry to determine the amount of compensation which appears to be just. Thus, the concept of just compensation has been incorporated in section 168 of the said Act. It is well settled that the Tribunal constituted under the said Act is not bound by the strict rules of the evidence. As we have stated earlier, the claim petition under section 166 is not a suit . While deciding the claim petition, the Tribunal is under an obligation to determine just compensation payable to the Claimants. This appeal being the continuation of the claim petition, even this Court is under an obligation to determine the just compensation payable to the claimants. Even if there is no cross appeal or cross - objection preferred by the claimants, the exercise of determining the just compensation will have to be carried out. After carrying out the said exercise if it is found that the claimants are entitled to more amount than what is granted under the impugned Judgment and Award, in absence of appeal or cross objection, this Court may not enhance the compensation amount payable. Therefore, while deciding this appeal, an adjudication is required to be made whether the compensation granted by the Tribunal is a just compensation. Such adjudication can be made even without taking recourse to Rule 33 of Order XLI of the said Code. "*

18. Similar view has been taken by the Single Judge of this Court in ***The State of Maharashtra (Through the Collector of Nashik) and ors. v/s. Smt. Kamaladevi Kailashchandra Kaushal and ors. in First Appeal No.103 of 2017*** and in ***New India Assurance Company Ltd. v/s. Smt. Seema Sudam Auti and ors. 2017(5) ALL MR 552.***

19. The principles laid down by the Apex Court as well as by the Division Bench of this Court would indicate that there is no embargo in enhancing the compensation in the absence of appeal or cross objection, when the evidence which is brought on record is sufficient to pass such award. It is infact a statutory responsibility of the Tribunal / Court to grant just and fair compensation. In the instant case, the claimants have lost their son, at a prime of age of 25, in a motor vehicle accident. Their shattered dreams and broken hearts cannot be mended and the loss of human life cannot be measured in terms of money. But all the same, the Court can only try to alleviate the intensity of the pain and suffering and mitigate the hardship that has been caused due to sudden demise of their son. Though there is no standard rule to measure the value of human life, considering the age, income and other surrounding circumstances, an amount of Rs.19,10,000/- can be said to be just and reasonable compensation.

20. Considering the facts and circumstances of the present case, the following order is passed :-

(a) The appeal is dismissed.

(b) The compensation determined by the Claims Tribunal is enhanced from Rs.13,85,000/- to Rs.19,10,000/-.

(c) The appellant – insurance company is directed to deposit the balance amount of Rs.5,25,000/- along with interest @ 9% p.a. from the date of the application till actual realization of the amount, before the Claims Tribunal within a period of six weeks from the date of uploading of this order. Award stands modified accordingly.

(d) Liberty is granted to the respondent nos.1 and 2 to apply for withdrawal of the compensation before the Tribunal.

21. Record and proceedings be returned to the Tribunal.

(SMT. ANUJA PRABHUDESSAI, J.)