IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 820 OF 2016
WITH
CIVIL APPLICATION NO. 1939 OF 2016
WITH
CIVIL APPLICATION NO. 3546 OF 2017
WITH
CIVIL APPLICATION NO. 1292 OF 2019
IN
FIRST APPEAL NO. 820 OF 2016

United India Insurance Co. Ltd. ….Appellant
V/s.
Sunita Anant Kadmakar & ors. ….Respondents

Mr. Rahul Mehta i/b. KMC Legal Venture for the appellant in FA/820/2016 and for the applicant in CAF/1939/2016 and CAF/3546/2017 and for the respondent in CAF/1292/2019.
Ms. Kalpana Trivedi a/w. Sushma P. for the applicant in CAF/1292/2019.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 25th JUNE, 2019.

ORAL JUDGMENT :-

. At the outset, the learned counsel for respondent nos.1 to 4 who are the original claimants state that the original claimants do not wish to file cross objections or cross appeals. With consent of the parties, appeal is heard finally at the stage of admission.

2. The appellant – insurance company has challenged the judgment and award dated 22/09/2015 passed by the Motor Accident Claims

Tribunal, Mumbai in Application No.257 of 2008. By the impugned judgment and award, the learned Member, MACT has awarded compensation of Rs.6,28,000/- @ 9% p.a. from the date of filing of petition till actual realization.

3. The respondent no.1 is the widow and the respondent nos.2, 3 and 4 are the children of the deceased Anant Kadmakar who expired in a motor vehicular accident on 11/12/2007 involving a Motor Taxi bearing No.MMO-1992. It was the case of the respondent nos.1 to 4 that on 11/12/2007, while the deceased Anant Kadmakar was walking on Senapati Bapat Marg, Mahim, a taxi bearing No.MMO-1992 came at a fast speed and dashed against him. Said Anant Kadmakar expired as a result of the injuries sustained in the said accident. The respondent nos.1 to 4 claimed that the accident was caused solely due to rash and negligent driving by the driver of the said taxi. Said taxi was owned by the respondent no.5 and insured by the appellant – insurance company. The respondent nos.1 to 4, therefore, filed a petition under Section 166 of Motor Vehicles Act, claiming compensation of Rs.5,00,000/- from the insurer of the offending vehicle.

4. The respondent no.5 did not contest the proceedings despite due

service of notice. The appellant – insurance company denied that the accident was caused due to rash and negligent driving by the driver of the taxi. The appellant – insurance company also claimed that the driver was not holding a valid and effective driving license. Hence, it is not liable to indemnify the insured for breach of terms and conditions of the policy.

5. The Tribunal, after considering the police records as well as the oral evidence held that the accident was caused due to rash and negligent driving by the driver of the taxi. The Tribunal held that the deceased was a labourer and considered his monthly income as Rs.5,000/-. Upon adding 15% towards future prospects, the annual income was estimated as Rs.69,000/-. The Tribunal deducted 1/3rd towards the personal expenses of the deceased and applying the multiplier of 13, computed loss of dependency as Rs.5,98,000/-. The Tribunal awarded total Rs.30,000/- towards loss of consortium, loss of estate and funeral expenses and thus awarded total compensation of Rs.6,28,000/- with interest at the rate of 9% p.a. from the date of the petition till final payment. Being aggrieved by the judgment and award, the appellant – insurance company has preferred this appeal.

6. The learned counsel for the appellant – insurance company has restricted the challenge only to addition of 15% of income towards future prospects. He submits that the compensation towards loss of future prospects can be granted only on the basis of established income. He contends that the respondent nos.1 to 4 having failed to establish definite income earned by the deceased, the Tribunal was not justified in adding 15% of the notional income towards future prospects.

7. It may be noted that a similar question was raised in ***Reliance General Insurance Co. Ltd. V/s. Sujata Sadanand Mule and ors. in First Appeal No.550/2018***. After relying upon the decision of the Apex Court in ***National Insurance Company v/s. Pranay Sethi & ors. ACJ 2700,*** this Court has held thus :-

> *" 12. It is thus settled that in case of death of a self-employed person or a person on fixed salary an addition has to be made to the established income towards loss of future prospects. The rate of such addition towards future prospects would depend upon the age of the deceased. i.e. 40% of the established income in case of death of a person below 40 years, 25% when the deceased was in the age group of 40 to 50 years and 10% in case the deceased was in the age group of 50 to 60 years. The term 'established income' has also been clarified to mean income minus tax component.*
>
> *13 xxxx*
>
> *14 It is pertinent to note that as provided in clause 6 of second schedule to the Motor Vehicle Act 1988, the concept of 'notional income'*

> *applies to those who had no income prior to the accident. The concept of notional income cannot be made applicable in a case where the deceased was employed but was unable to prove income. Similar view has been taken by the Rajasthan High Court in Vishan Das and ors. vs. Suwa Lal and ors 2007 ACJ 1477..... "*

8. In the instant case, the deceased was working as a labourer. The respondent nos.1 to 4 had claimed that he was earning Rs.6000/- per month. Since the respondent nos.1 to 4 were unable to prove his actual income, the Tribunal had considered the monthly income of the deceased as Rs.5000/- per month and thus computed the total compensation on the basis of estimated income.

9. It has to be borne in mind that addition towards future prospect is made in view of likelihood of increase in salary or income considering the increase in the cost price, inflation and other factors. Furthermore, as held by the Apex Court in ***Pranay Sethi (supra)*** there is always an incessant effort to enhance ones income for sustenance. Hence, the fact that the claimants had failed to prove the actual income of the deceased does not lead to an inference that the income of the deceased would have remained static.

10. Considering the above facts and circumstances, in my considered view, I am not inclined to accept the contention that there should not

be any addition towards future prospects for the reason that the claimants were not able to establish the actual income earned by the deceased and that the compensation is computed on the basis of estimated compensation.

11. Under the circumstances and in view of discussion supra, there is no merit in the appeal. The Appeal is dismissed. Civil Applications stand disposed of in view of dismissal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)