

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 570 OF 2018

The New India Assurance Co. Ltd.

....Appellant

V/s.

Sunil Ramavadh Gound and ors.

....Respondents

Ms. Poonam Mital for the appellant.

Ms. Varsha Chavan for the respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 25th SEPTEMBER, 2019

P.C. :-

. With consent, appeal is heard finally at the stage of admission.

2. The appellant herein has challenged the judgment dated 20/09/2011 passed by the learned Member, MACT, Mumbai in Application No.1997/2006.

3. The respondent nos.1 and 2 are the parents of the deceased Akash who expired in a motor vehicular accident on 19/06/2006 involving a tempo bearing registration no.MH-04-GG-3684. It was the case of the respondent nos.1 and 2 that while Akash was walking along Balbhatt Road, the offending vehicle dashed against him. Said Akash succumbed to the injuries sustained in the said accident. The respondent nos.1 and 2 claimed that the accident was caused solely

due to rash and negligent driving by the driver of the offending vehicle. The respondent nos.1 and 2 therefore filed an application under Section 166 of the Motor Vehicles Act claiming total compensation of Rs.2,00,000/-.

4. The owner of the offending vehicle did not contest the proceedings. The appellant – insurance company claimed that the accident was caused due to negligent act of the deceased.

5. The Tribunal, after considering the evidence adduced by the respondent nos.1 and 2 / claimants awarded total compensation of Rs.2,30,000/- with interest @ 9.25% p.a. from 11.07.2008 till final realization. Being aggrieved by the said judgment, the appellant – insurance company has preferred this appeal under Section 173 of the Motor Vehicles Act.

6. Ms. Poonam Mital, the learned counsel for the appellant states that though the appellant – insurance company has raised several grounds in the appeal memo, the challenge is restricted only to the quantum of compensation awarded by the Tribunal for pain and suffering and loss of expectancy of life. It is seen that the Tribunal has

awarded total sum of Rs.75,000/- for pain and suffering. In ***National Insurance Co. Ltd. v/s. Pranay Sethi and ors. 2017 ACJ 2700***, the Constitution Bench of the Apex Court has set out the quantum of compensation to be awarded under the conventional heads viz. Loss of consortium, loss of estate and funeral expenses. The Apex Court has quantified Rs.40,000/- towards loss of consortium. In ***Magma General Insurance Co. Ltd. V/s. Nanu Ram alias Chuhru Ram and ors. 2018 SCC Online SC 1546***, the Apex Court has explained that :-

“ In legal parlance “consortium” is a compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family.

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit. ”

7. The Apex Court has laid down that the amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under ‘loss of consortium’ as laid down in ***Pranay Sethi*** (supra).

8. In the present case, the respondent nos.1 and 2 are the parents of the deceased Akash. They were deprived of love and affection of their child due to his untimely death. The respondent nos.1 and 2 who have suffered pain, agony and trauma due to accidental death of their child would be entitled to Filial Consortium of Rs.80,000/-. Considering the above facts and circumstances, I am not inclined to interfere with the impugned judgment and award dated 20/09/2011 passed by the MACT, Mumbai in Application No.1997/2006. The Appeal has no merits and is accordingly dismissed.

Preeti
H.
Jayani

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(SMT. ANUJA PRABHUDESSAI, J.)