IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.786 OF 2018

National Insurance Co. Ltd. …Appellant

Versus

1. Deepak Suresh Gandhi, father of the deceased- since died during the pendency of claim petition-deleted. ...Respondents
2. Smt. Inna Deepak Gandhi and Anr.

.....

Mr. Amol Gatne for the Appellant.
Ms Varsha Chavan with Mr. Hardik Sanghavi i/b. Agrud Partners for the Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 17th SEPTEMBER, 2019.

ORAL JUDGMENT:-

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

2. The Appellant herein has challenged the judgment and award dated 30th January, 2016 in M.A.C. No.3842 of 2008 passed by the learned Member of M.A.C.T., Mumbai. By the impugned judgment and award the Claims Tribunal

Mumbai has awarded compensation of Rs.58,95,000/- with interest @ 9% from the date of application till final realisation.

3. At the outset, Mr. Gatne, the learned counsel for the Appellant states that the challenge is restricted only to the quantum of compensation awarded by the Claims Tribunal and prayed for dispensation of service of the Respondent No.3. Relying upon the decision of this Court in ***United India Insurance v/s. Sobha Amarsingh Rajput 2016 SCC OnLine BOM 8996*** he submits that in the case of death of a bachelor, the choice of multiplier would depend on the average age of the parents and not on the age of the deceased. He submits that the issue relating to award of compensation to the parents of the deceased was neither dealt with nor decided in ***Sarla Varma Vs. Delhi Transport Corporation (2009) 2 SCC (Civ) 770.*** He has relied upon the decision of the Apex Court in ***Radhakrishna and Anr. vs. Gokul and Ors. 2013 (16) SCC 585*** wherein the compensation was computed on the basis of the age of the parents of the deceased. He further submits that considering contrary view on the issue, in ***Bajaj Allianz General Insurance Co. Ltd. V/s. Mangal Gana Jambekar and ors.***

(First Appeal No. 676 of 2013) Single Judge of this Court has referred the issue to the larger bench and that the said reference is still pending. He further submits that the decision of the Apex Court in ***National Insurance Co. Ltd. V/s. Pranay Sethi and ors.*** cannot be construed to be the ratio on the said question.

4. The learned counsel for the appellant contends that the Tribunal has erred in applying multiplier of 18 based on the age of the deceased. The learned counsel for the Appellant further submits that in view of the judgment in ***Pranay Sethi*** (supra), the Respondent Nos.1 and 3 were entitled for compensation of Rs.70,000/- on three conventional heads viz. filial consortium, funeral expenses and loss of estate as against Rs.2,25,000/- awarded by the Tribunal.

5. The learned counsel for the Respondent Nos.1 and 2 submits that the issue regarding applicability of multiplier in case of death of unmarried son is no longer res integra in view of the judgment of the Apex Court in ***Pranay Sethi*** (supra). Relying upon the decision of the Apex Court in

National Insurance Co. Limited .Vs Satish Kumar Verma and Anr. in Civil Appeal No.7032 of 2019, she submits that the excess amount awarded by the Tribunal need not be reduced.

6. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties. The records indicate that the deceased was a 25 year old unmarried son of the Respondent Nos.1 and 2. He expired on 21st March, 2008 as a result of the injuries sustained in a motor vehicular accident. There is no dispute that the deceased was employed with Unique System FZE at Sharjah, UAE as a Service Engineer and he was earning 6000/- dirham per month which is equivalent to Rs.70,000/- per month in the Indian currency.

7. While computing the loss of dependency, the Tribunal has held that the salary of the deceased was 3,500/- AED for August-2007. Said salary was not taxable. The Tribunal took note of the fact that there was rise in his salary to the extent of 1,000/- dirham during the period of four years. The Tribunal therefore added 50% of established

income towards future prospect and considered monthly income as 5,250/- AED, which works out to 63,000/-AED per annum, which is equivalent to Rs.6,30,000/- in Indian currency.

8. The deceased was a bachelor and upon deducting 50% of the income towards the personal expenses of the deceased, the income is assessed at Rs.3,15,000/-. Considering the age of the deceased the Tribunal applied multiplier of 18 and computed loss of dependency as Rs.56,50,000/-. There is apparently an error in calculation as the loss of dependency works out to Rs.56,70,000/- and not Rs.56,50,000/-.

9. In the case of ***Pranay Sethi*** (supra) the constitutional Bench of the Apex Court has held that the age of the deceased should be the basis for applying the multiplier. In the light of this judgment, I am unable to accept the contention of the learned counsel for the Appellant that the Tribunal should have applied multiplier on the basis of the age of the original claimants / parents of the deceased and/or that the Tribunal has committed error in applying multiplier of 18.

10. It is seen that the Tribunal has awarded total compensation of Rs.2,25,000/- on three conventional heads viz. Loss of consortium, funeral expenses and loss of love and affection. Considering the principles enunciated in the judgments of the Apex Court in ***Pranay Sethi*** (supra) and ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram, 2018 SCC OnLine SC 1546,*** the original Claimants are entitled for compensation of Rs.70,000/- towards filial consortium, loss of estate and funeral expenses as against Rs.2,25,000/-. Ms Varsha Chavan, the learned counsel for the Respondents states that the Respondent Nos.1 and 2 have lost a young son, who was barely 25 years of age. Relying upon the judgment of the Apex Court in ***National Insurance Co. Ltd. vs. Satishkumar Varma and Anr. Civil Appeal no.7032 of 2019,*** the learned counsel for the Respondent Nos.1 and 2 submits that the excess amount paid under non pecuniary heads need not be reduced. In ***Satishkumar Varma*** (supra) the court had not granted any compensation towards loss of filial consortium

and hence the Apex Court exercised its discretion not to reduce the amount. The said judgment therefore does not serve as a precedent.

11. Considering the loss of dependency as Rs.56,70,000/- and after adding Rs.70,000/- under these three conventional heads, total compensation comes to Rs.57,40,000/-. Hence, an amount of Rs.1,55,000/- needs to be reduced from the total compensation awarded by the Tribunal. The award to that extent needs to be modified. Hence, the following order:-

(i) The appeal is partly allowed;

(ii) It is held that the Respondent No.2-Claimant is entitled for total compensation of Rs.57,40,000/-is directed to be paid to the Claimants with interest @ 9% p.a. from the date of the application till final realisation.

(iii) Excess amount of Rs.1,55,000/- alongwith proportionate interest accrued thereon be refunded to the Appellant-Insurance Company.

(iv) Award stands modified accordingly.

(v) Liberty is granted to the Respondent No.2-Claimant to file necessary application before the Claims Tribunal for withdrawal of the compensation.

(vi) Statutory deposit, if any, be transferred to the Claims Tribunal, Mumbai.

(SMT. ANUJA PRABHUDESSAI, J.)

Megha Parab Digitally signed by Megha Parab Date: 2019.10.05 12:35:18 +0530