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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1017 OF 2018

Reliance General Insurance Company Limited
Through its Corporate Office
4th Floor, Chintamani Avenue
Off Western Express Highway,
Goregaon – East, Mumbai ... Appellant

Versus

1. Smt. Kantabai Shankar Sawant
Aged about 45 years
(Mother of the deceased)

2. Shri Shankar Maruti Sawant
Aged about 49 years
(Father of the deceased)
All are residing at:
Sant Dnyaneshwar Nagar
Chawl No.41, Room No.6,
Kamgar Hospital Road,
Wagle Estate, Thane.

3. Shri Shambunath Parshuram Singh
14, Harinam Complex,
Opp. H.P. Petrol Pump,
Rehnal Village, Tal. Bhiwandi,
Dist. Thane.
(owner of the Motor Trailer bearing Registration No.
MH-04/FD-2322) ... Respondents

WITH
CIVIL APPLICATION NO. 2213 OF 2019

1. Smt. Kantabai Shankar Sawant
Aged about 45 years
(Mother of the deceased)

2. Shri Shankar Maruti Sawant
Aged about 49 years
(Father of the deceased)

Both applicants are residing at
Sant Dnyaneshwar Nagar
Chawl No.41, Room No.6,
Kamgar Hospital Road,
Wagle Estate, Thane. ... Applicants

Versus

1. Reliance General Insurance Company Limited
Through its Corporate Office
4th Floor, Chintamani Avenue
Off Western Express Highway,
Goregaon – East, Mumbai

2. Shri Shambunath Parshuram Singh
14, Harinam Complex, Opp. H.P. Petrol
Pump, Rehnal Village, Tal. Bhiwandi,
Dist. Thane. ... Respondents

…....

Mr. Nikhil Mehta along with Mr. Rahul Mehta i/by M/s. KMC Legal Venture for the Appellant.

Ms. Rina Kundu for the Respondent Nos. 1 and 2 and Applicant in CAF/2213/2012.

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CORAM : R.D. DHANUKA, J.

RESERVED ON : 27th NOVEMBER, 2019

PRONOUNCED ON : 19th DECEMBER, 2019

JUDGMENT :

. By this First Appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellant has impugned the judgment and award dated 11th January, 2018 passed by the Motor Accident Claim Tribunal (MACT), Thane in Motor Accident Claim Petition (MACP) No. 166 of 2014 filed by the respondent nos.1 and 2 (original petitioners) directing the appellant to pay sum of Rs.17,99,700/- inclusive of “no fault liability”. By consent of appellant and the contesting respondents, First Appeal is heard finally at the stage of admission. Some of the relevant facts for the purpose of deciding this First Appeal are as under:-

2. The respondent nos. 1 and 2 herein were the original petitioners and the appellant was the original respondent no.2 before the Tribunal. The original respondent no.1 was the owner of the offending vehicle. The respondent nos. 1 and 2 are mother and father of the deceased Vijay Shankar Sawant respectively. It is the case of the respondent nos. 1 and 2 that on 16th February, 2014 at about 00:45 hours, the said Vijay Shankar Sawant (hereinafter referred as “the said deceased” for short) was proceeding by his motor cycle having registration no. MH-04-ER-9375 on Mumbai-Nashik road along with his friend Raviprakash Harinandan Prajapati towards Thane. At that time, the said deceased was riding his motor cycle with slow and moderate speed with full care and caution on the left side of the road. When the motor cycle driven by the said deceased reached near Kharegaon Toll Naka, at that time motor Trailer having registration no. MH-04-FD-2322 came from his back side in high speed, in rash and negligent manner and dashed the motor cycle driven by the said deceased.

3. The said deceased fell on the road and came under the wheel of the said Trailer (offending vehicle) and died on the spot. In the said accident, pillion rider Raviprakash was also injured. After the accident, the driver of

the offending vehicle involved in accident fled away from the spot. It was the case of the respondent nos. 1 and 2 that the said driver of the offending vehicle was solely negligent for the said accident. The said offending vehicle was owned by the respondent no.1 and insured with the appellant.

4. It was the case of the respondent nos. 1 and 2 that at the time of accident, the said deceased was 29 years old and was serving as a trainer to Maharashtra Police (CID) Department and doing business in partnership in Gayatri Electronics Hardware, Wagle Estate, Thane. According to the respondent nos. 1 and 2, the said deceased was earning about Rs.50,000/- p.m. The said deceased was holding Diploma in Computer Hardware and Networking. His name was registered with Government of Maharashtra, Directorate of Employment and Self Employment. Since, the original respondent no.1, owner of the offending vehicle did not appear in the proceeding before the Tribunal, the matter proceeded *ex-parte* against him.

5. The appellant appeared before the Tribunal and filed its written statement and denied all the contentions raised by the respondent nos. 1 and 2 herein. It was urged by the appellant in the said written statement that the said accident took place due to sole negligence of the said deceased. There was a breach of terms and conditions of the insurance policy by the offending vehicle involved in the accident. The compensation amount claimed by the respondent nos. 1 and 2 was highly exorbitant and baseless.

In the alternative, the appellant also denied that on the date of the accident, the offending vehicle was involved in the said accident. The driver of the offending vehicle was not holding a valid and effective licence. The registered owner of the vehicle used his vehicle without obtaining fitness certificate and permit.

6. The Tribunal framed 5 issues for determination and awarded the compensation in the sum of Rs.17,99,700/- inclusive of amount of “no fault liability”. The appellant and the original respondent no.1 were held jointly and severally liable to pay the amount to the respondent nos.1 and 2 with interest 7.5% p.a. from the date of institutions of the petition till the date of payment of the said amount. The Tribunal also directed that the amount of compensation be apportioned amongst the respondent nos. 1 and 2 i.e. Rs.10,00,000/- plus proportionate cost of petition plus interest to the respondent no.2. Being aggrieved by the said judgment and award dated 11th January, 2018, the appellant preferred this appeal. The original respondent no.1 did not file any appeal against the said judgment and award.

7. Mr. Nikhil Mehta, learned counsel for the appellant invited my attention to paragraph 15 of the impugned judgment and award and would submit that the Tribunal had not considered various deductions while computing the net salary of the said deceased. It is submitted that the Tribunal could not have awarded 40% towards future prospects in addition

to the salary income of Rs.12,392/- p.m.

8. Mrs. Kundu, learned counsel for the respondent nos. 1 and 2 on the other hand strongly placed reliance on the findings rendered by the Tribunal and would submit that the respondent nos. 1 and 2 had examined a witness who had proved before the Tribunal that the said deceased died in an accident involving offending vehicle owned by the original respondent no.1 due to rash and negligent driver of the offending vehicle. Learned counsel submits that the driver of the offending vehicle was solely responsible for the accident. She submits that the Tribunal rightly computed the earning salary of Rs.12,392/- after deducting Rs.200/- towards profession tax. She submits that the payment made towards ESCI and Provident Fund were not liable to be deducted and thus the Tribunal rightly did not deduct the said amount while deriving net earning salary. She submits that the Tribunal had already rejected the claim made by the respondent nos. 1 and 2 for compensation based on the said deceased being also a partner in Gayatri Electronics Hardware and was earning income out of the said partnership business.

9. Learned counsel for the respondent nos. 1 and 2 submits that since the said deceased was a bachelor at the time of his death, this Court shall also consider the additional compensation of Rs.40,000/- each towards filial compensation to the respondent nos. 1 and 2 who were the parents of the

said deceased. In support of this submission, learned counsel for the respondent nos.1 and 2 relied upon the judgment of Supreme Court in case of ***Magma General Insurance Co. Ltd. v/s. Nanu Ram @ Chuhru Ram and Ors., (2019) 4 Mh.L.J. 1*** and in particular paragraphs 8.4 and 9.

10. Mr. Mehta, learned counsel for the appellant in rejoinder submits that net salary considered by the Tribunal at Rs.12,932/- p.m. is not proper. He submits that this Court shall direct the office to transmit the amount of statutory deposit of Rs.25,000/- made by the appellant to the concerned MACT expeditiously.

REASONS AND CONCLUSION

11. A perusal of the record indicates that the original respondent no.1 did not appear in the proceedings before the Tribunal. The matter accordingly proceeded ex-parte against him on 23rd February, 2016. Though, the appellant appeared before the Tribunal and had filed written statement, the appellant did not examine any witness. The Tribunal framed 5 issues for determination. The respondent no.2 had filed his affidavit in lieu of examination-in-chief for himself and on behalf of the respondent no.1, Mr.Raviprakash Harinandan Prajapati who was partner of Gayatri Electronics Hardware and Mr. Vikram Mohanrao Salunkhe of M/s. Onwards E-Services Limited. The petitioner no.2 had also produced the certified copy of FIR lodged in Kalwa Police Station, spot panchanama, inquest

panchanama, cause of death certificate, photo copy of insurance policy, school leaving certificate of the said deceased, true copy of the certificate issued by the Maharashtra Business Training Board, true copy of the certificate issued by All In One Computer Centre, true copy of Candidate Registration Slip.

12. The other witnesses examined by the respondent nos. 1 to 2 also tendered various documents including the appointment letter of the said deceased with break up of salary, pay slip of the said deceased for the month of January 2014 and February 2014. Those witnesses also produced monthly contribution details of the said deceased for the month of October 2013, December 2013, January 2014, February 2014 in evidence.

13. After considering the documentary evidence as well as oral evidence examined by the original petitioners, the Tribunal found the evidence led by the witnesses examined by the original petitioners consistent. The Tribunal also considered the Police papers including FIR produced by the witnesses examined by the original petitioners. In my view, after considering the evidence produced by the original petitioners, the Tribunal rightly held that the said deceased and the original petitioners were proceeding towards Thane by a motor cycle having registration no. MH-04-ER-9375 of the said deceased. The respondent no.1 herein who was the original petitioner no.1 was the pillion rider. When the said motor cycle reached near Kharegaon

Toll Naka, at that time one Container i.e. offending vehicle dashed the said motor cycle and hence they fell on the road. The respondent no.1 herein fell on the left side and the said deceased fell under the left back side wheel of the container and died on the spot. The Tribunal also considered the panchanama which showed that the number plate of the motor cycle was broken on the spot of accident. There were blood stains and speed marks of the tyres. The said deceased died as he sustained shock and haemorrhage due to multiple injuries.

14. There was no objection raised by the appellant when various documents including police papers were tendered in evidence of the witnesses examined by the respondent nos. 1 and 2 herein and were marked as exhibits. After considering those undisputed documents including the police papers, the Tribunal came to the conclusion that the accident took place due to guilt of the driver of the offending vehicle. Though various suggestions were put to the witnesses examined by the respondent nos.1 and 2 herein, no evidence was led by the appellant to prove the case of the appellant put to the witnesses examined by the appellant.

15. In so far as the quantification is concerned, the Tribunal considered the school leaving certificate of the said deceased showing the date of birth as 24th September, 1984. Considering the said school leaving certificate, the Tribunal held that on the date of accident, the said deceased was 24 years, 4

months, 2 days old. He was serving with M/s. Onwards E-Services Limited as a trainer, Project Manager regarding computer operating and was earning salary of Rs.11,000/- p.m. The respondent nos. 1 and 2 herein had also examined PW No.3 Mr. Vikram Salunkhe who proved before the Tribunal that the said deceased was working in his company since 15th October, 2013 as a trainer and was earning gross salary of Rs.11,000/- p.m. and one salary as a annual bonus.

16. The said witness had produced appointment letter of the said deceased, his salary break up and pay slips for various periods. In my view, after considering the documents produced by the said witness PW No.3, the Tribunal rightly came to the conclusion that the said deceased was receiving gross salary of Rs.12,593/- including Rs.1,010/- towards ESIC, Provident Fund and Profession Tax. The Tribunal thereafter deducted Rs.200 towards profession tax from the gross salary of Rs.12,393/- p.m. In my view, there is no substance in the submission made by the learned counsel for the appellant that while computing earning salary of the said deceased, the Tribunal ought to have deducted the payment towards ESIC and provident fund.

17. In so far as the submission of the learned counsel for the appellant that the Tribunal could not have added 40% towards future prospects in addition to the salary income of Rs.12,393/- p.m. is concerned, in my view, the Tribunal has rightly made addition to the 40% towards future prospect in

view of the finding rendered by the Tribunal that the said deceased was serving in a private limited company on a fixed salary and was below the age of 40 years after adverting to the judgment of Supreme Court in case of ***National Insurance Company Limited v/s. Pranay Sethi & Ors., AIR 2017 SC 5157***.

18. In my view, learned counsel for the original petitioners is right in her submission that the original petitioners being mother and father of the said deceased are also entitled to additional compensation of Rs.40,000/- each towards filial compensation, in view of the judgment of Supreme Court in case of ***Magma General Insurance Co. Ltd.*** (supra) and in particular paragraphs 8.4 and 9.

19. No other submissions are urged by the learned counsel for the appellant for consideration of this Court. There is no substance in the submission of the learned counsel for the appellant that the said accident took place due to the negligence of the said deceased or that there was any breach of any terms and conditions of the insurance policy by the driver of the offending vehicle in the said accident. In my view, the burden of proof was on the appellant to prove that the said deceased was solely negligent and was responsible for the said accident or that there was any breach of any terms and conditions of the insurance policy committed by the driver of the offending vehicle. The appellant admittedly did not lead any oral or

documentary evidence before the Tribunal and thus failed to discharge the said burden cast upon the appellant.

20. In my view, this appeal his devoid of merit and is accordingly dismissed.

21. I therefore pass the following order :-

(a) The original petitioners are entitled to get compensation amount of Rs.17,99,700/- inclusive of amount of “no fault liability” and also sum of Rs.80,000/- (Rs.40,000/- each) towards filial compensation. The original petitioners are also entitled to be paid interest @ 7.5 per annum from the date of institution of the claim petition i.e. 25th February, 2014 till the date of payment.

(b) The amount of compensation to be apportioned amongst the respondent nos. 1 and 2 herein (original petitioners) as under:-

(i) Respondent no.1 (Mother) Rs.10,40,000/- + proportionate cost of petition + interest.

(ii) Respondent no.2 (Father) Rs.8,39,700/- + proportionate cost of petition + interest.

(c) Out of the said proportionate amount, 50% of the aforesaid amount shall be deposited in the fixed deposit in their respective names in any of the nationalized bank of their choice for the period of three years. Rest of the amount be paid to them by account payee cheques on due identification and verification. They shall be at liberty to withdraw the amount of interest accrued on the fixed deposit amount, quarterly, if they so desire.

(d) The original respondent nos. 1 and 2 shall pay proportionate cost of the petition on the principle amount awarded aforesaid to the respondent nos. 1 and 2 herein and shall bear their own cost.

(e) The respondent nos. 1 and 2 are directed to pay the deficit court fee stamp, if any, within 4 weeks from the date of computation of such additional fees, if any, by the MACT, Thane in MACP No. 166 of 2014.

(f) If any amount is deposited by the appellant before the MACT, Thane, the respondent nos. 1 and 2 herein would be at liberty to withdraw the said amount upon production of an authenticated copy of this order. If there is any shortfall in recovery of the decreetal amount, the appellant shall deposit the deficit amount with the MACT, Thane within 2 weeks from the date of computation of such deficit amount. If there is any surplus amount deposited by the appellant, after payment of decreetal amount to the original petitioner nos. 1 and 2, the balance amount shall be refunded to the appellant by the MACT, Thane upon production of an authenticated copy of this order.

(g) The operative part of the judgment and award dated 11th January, 2018 passed by the MACT, Thane is substituted by the aforesaid order.

(h) In view of the disposal of the First Appeal, Civil Application No. 2213 of 2019 is also stands disposed of in aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)