IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1237 OF 2015

National Insurance Company Limited … Appellant
V/s.
Smt. Haseena Musa Pathan & Ors. … Respondents

Mr. Nikhil Mehta I/b KMC Legal Venture for the Appellant.
MR. T.J. Mendon for Respondent Nos. 1 to 7

CORAM: K.K.TATED, J.
DATED : 28/08/2019

P.C.

1 Heard learned Counsel for the parties.

2 Both the Counsel submits that matter can be disposed of at the stage of admission itself without calling R & P and/or paper book. Hence, by consent of both the parties, matter is taken on board for final hearing at the stage of admission itself.

3 By this First Appeal, the Appellant Insurance Company is challenging the Judgment and Award dated 30.08.2012 passed by the MACT, Kalyan in MACP No. 192 of 2004 holding that the Respondent original Claimants are entitled to sum of Rs.6,72,000/- by way of compensation with interest @ 7% p.a. from the date of filing of application under Section 166 of M.V. Act till the realistion of the entire amount.

4 In the present proceeding, in accident which occurred on 15.08.2004 the Claimant No.1 lost her husband and Claimant Nos. 2 to 6 their father Musa Abdul Rehman Pathan. On the date of accident, he was 45 years old and was serving as driver and was earning Rs.4,500/- per month. Because of this, Respondents-

Claimants filed application under Section 166 of the M.V. Act claiming compensation of Rs.5 lakhs with interest. The Tribunal after considering the evidence on record held that the Claimants are entitled to sum of Rs.6,72,000/- with interest @ 7% per annum. Hence, Insurance Company filed the present First Appeal.

5 The learned Counsel for the Insurance Company submits that the Tribunal awarded the compensation on the higher side. He further submits that though the Claimants made averments in the application that the deceased was working as driver and was getting salary of Rs.4500/- per month, they failed and neglected to place on record any evidence to that effect. He submits that this facts are considered by the Trial Court and held that the Claimants failed to place on record any documentary evidence to show that the deceased was getting the salary of Rs.4,500/- per month. In support of this contention, the learned Counsel for the Insurance Company relies on para 14 of the impugned judgment. On this count, the impugned judgment is required to be set aside.

6 The learned Counsel for the Insurance Company further submits that the Tribunal erred in coming to the conclusion that the income of the deceased to be considered as Rs.3,000/- per month on the basis of Apex Court Judgment in the matter of ***Laxmi Devi and others v/s. Mohd Tabbar and another reported in 2008 (2) TAC 394 (SC)***. He submits that when the Claimants failed to place on record any documentary evidence about income of the deceased, there is no question of considering the notional income of the deceased @ Rs. 3000/- per month.

7 The learned Counsel for the Insurance Company further submits that the Tribunal erred in coming to the conclusion to

consider the multiplier of 15 in the present proceeding. He submits that the multiplier should not be more than 10 to 12. On this count also, the impugned judgment is required to be set aside.

8 The learned Counsel for the Insurance Company submits that the Tribunal erred in coming to the conclusion that for future income 30% is required to be considered as a increase income of the deceased. He submits that it should not be more than 20% to 25% in any case. On these facts, the learned Counsel for the Insurance Company submits that the impugned judgment is required to be set aside.

9 On the other hand, the learned Counsel for the original Claimants vehemently opposed the present First Appeal. He submits that Tribunal has considered all relevant facts and evidence on record and rightly held that the Claimants are entitled to compensation to the tune of Rs.6,72,000/- with interest @ 7% p.a. He further submits that the deceased was 45 years old on the date of accident. Therefore, the Tribunal rightly held multiplier of 15. He submits that Tribunal has considered the income of the deceased on the basis of minimum wages. He submits that during that period, the minimum wages was Rs.100/- per day. Therefore, the Tribunal has rightly held that the income of the deceased Rs. 3000/- per month. The learned Counsel for the Claimants submits that Tribunal has rightly given 30% increase of the deceased total income at the time of calculating the compensation payable to the Claimants. In support of the contention, the learned Counsel for the Claimants relies on the judgment of the Apex Court in the matter of ***National Insurance Company Limited V/s. Pranay Sethi and***

others, reported in 2017 ACJ 2700. He relies on para 61 (iii), which reads thus:

> *"61(iii) While determining the income, an addition 50 per cent of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30 per cent, if the age of the deceased was between 40 and 50 years. In case the deceased was between the age of 50 and 60 years, the addition should be 15 per cent. Actual salary should be read as actual salary less tax."*

11 The learned Counsel for the Claimants submits that in this authority, the Apex Court specifically held that the addition should be 30% if the age of the deceased was between 40 and 50 years. He submits that in the case in hand, on the date of accident, the deceased was 45 years old. Therefore, there is no substance in the present First Appeal and same is required to be dismissed with costs.

12 On the basis of submissions made by the learned Counsel for the parties, the following issues involved for consideration of this Court.

I) Whether the amount awarded by the Tribunal is on higher side?

II) Whether 30% increase given by the Tribunal at the time of calculating the compensation payable to the Claimants was according to law.

13 It is to be noted that in the present proceeding, in accident which occurred on 15.08.2004 Claimant No.1 lost her husband who was 45 years old on that date. If a deceased is 45 years old then in view of Apex Court in the matter of Pranay Sethi (supra) 30% increase for calculating the compensation is reasonable.

Therefore, the objections raised by the learned Counsel for the Insurance Company do not sustained.

14 It is to be noted that in the present proceeding, at the time of calculating the income of the deceased, the Tribunal has considered the minimum wages of the deceased i.e. Rs.100/- per day. Therefore, there is no question of holding that the Tribunal has awarded compensation on higher side. Hence, Issue No.1 is answered in negative and Issue No.2 is answered in positive.

15 During the course of the arguments, the learned Counsel for the Insurance Company submits that at the time of filing of First Appeal, they deposited a sum of Rs.25,000/- in the Registry of this Court. The said amount with accrued interest be transferred to the Tribunal to the MACT, Kalyan in the account of MACP No. 192 of 2004.

16 Hence, following order is passed:

a) First Appeal stands dismissed summarily. No order as to costs.

b) Civil Application (St) No. 668 of 2019 preferred by the Respondents original Claimants for withdrawal of amount does not survive. Hence, the same is dismissed as infructuous.

c) The Registry is directed to transfer a sum of Rs.25,000/- deposited by the Insurance Company at the time of filing of First Appeal with accrued interest to the MACT, Kalyan in MACP No. 192 of 2004.

(K.K.TATED, J.)