IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (STAMP) NO.16457 OF 2016
WITH
CIVIL APPLICATION NO.3946 OF 2016
AND
CIVIL APPLICATION NO.3947 OF 2016
AND
CIVIL APPLICATION NO.1651 OF 2018
IN
FIRST APPEAL (STAMP) NO.16457 OF 2016

Iffco Tokio GIC Ltd. ...Appellant
Versus
Sandhya Bharat Patel and Ors. ...Respondents
.....

Ms Varsha Chavan for the Appellant in FAST/16457/2016 and for the Applicant in CAF/3946/2016 and CAF/3947/2016 and for the Respondents in CAF/1651/2018.
Mr. Saumen S. Vidyarthi for the Respondent Nos.1 to 4 and for the Applicants in CAF/1651/2018.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 26TH JUNE, 2019.

ORAL JUDGMENT:-

With consent of parties delay of 11 days in filing the Appeal is condoned.

2. At the outset, the learned counsel for the Respondent Nos.1 to 4 states that these Respondents do not wish to file cross objection /cross appeal. With consent of the parties, the Appeal is disposed of

finally at the stage of admission.

3. The Appellant-Insurance Company has challenged the judgment and award dated 20th February, 2016 in Motor Accident Claim No.12 of 2010 passed by the learned Member of M.A.C.T., Mumbai.

4. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.14,91,800/- with interest at the rate of 9% per annum from the date of the application, till actual realization.

5. The Respondent No.1 is the widow, the Respondent Nos.2 and 3 are children and the Respondent No.4 is the mother of the deceased Bharat Patel, who expired in a motor vehicular accident on 2/12/2009 involving Car No.MH 04 AW 5864. It was the case of the Respondent Nos.1 to 4 /original Claimants that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle, which was insured with the Appellant-Insurance-Company. The Respondent Nos.1 to 4 therefore filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming total

compensation of Rs.25,00,000/-

6. The owner of the vehicle did not contest the proceedings. The Appellant-Insurance Company had raised the defence that the petition was not maintainable for non joinder of necessary party viz. driver of the offending vehicle. The Appellant had also claimed that the driver of the Car was not holding a valid and effective driving licence at the time of the accident and that it was not liable to indemnify the insured for breach of terms and conditions of the policy.

7. The Tribunal after considering the evidence on record held that the accident was caused due to rash and negligent driving of the driver of the offending vehicle. The Tribunal also held that the Respondent Nos.1 to 4 had not proved that the deceased was earning Rs.10,000/- per month and computed compensation on the basis of notional income of Rs.8,000/- per month. Relying upon the decision of the Apex Court in ***Rajesh and Ors. Vs. Rajbir Singh and ors. 2013 ACJ 1403 (S.C.).*** The Tribunal added 30% of the income as future prospect and after deducting 1/4th amount towards personal expenses and applying multiplier of 13 computed loss of dependency as Rs.12,16,800/-. The Tribunal also awarded compensation of

Rs.2,75,000/- towards other conventional heads viz. Loss of consortium, loss of estate, funeral expenses and loss of lover and affection. The Tribunal therefore awarded total compensation of Rs.14,91,800/-. Being aggrieved by the said judgment, the Appellant has preferred this Appeal.

8. The challenge in the appeal is restricted to the quantum of compensation awarded by the Claims Tribunal. Ms Varsha Chavan, the learned counsel for the Appellant contends that the Respondent Nos.1 to 4 had not proved that the deceased was employed and was earning Rs.10,000/- per month. She further submits that the Respondent Nos.1 to 4 had not proved that the deceased was holding a permanent job and was drawing actual salary of Rs.8,000/-. She further contends that the Tribunal has erred in assessing compensation on the basis of the notional income of Rs.8,000/- and further adding 30% as future prospect. The learned counsel for the Appellant further submits that in view of judgment of the Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and Ors. (2017) 16 SCC 680*** the amount awarded under the conventional heads needs to be reduced to Rs.70,000/-.

9. The learned counsel for the Respondent Nos.1 to 4 fairly concedes that the compensation awarded towards conventional heads needs to be reduced to Rs.70,000/- and that only an amount of 25% of income was required to be added to future prospect. He however submits that the deceased was employed with Excel Consultancy as Art Designer and earning salary of Rs.8,000/- p.m.. The Respondent Nos.1 to 4 had produced the salary certificate however, they were unable to prove the same as the employer was not willing to appear and depose before the Court. He submits that considering the nature of the employment of the deceased, the Tribunal has not committed any error in assessing the income of the deceased at Rs.8,000/- p.m. for computing the loss of dependency.

10. Undisputedly, the deceased-Bharat Patel was 48 years of age. The Respondent No.1 has deposed that the deceased-Bharat Patel was employed as an Art Designer with Excel Consultancy, Mumbai and that he was earning Rs.10,000/- per month. The statement that the deceased was employed as Art Designer with Excel Consultancy has remained unchallenged. The only challenge is to the statement that the deceased was earning monthly salary of Rs.10,000/-. It is true that the Respondent /Claimant had not examined the employer or any

other officer to prove the salary certificate of the deceased. Nevertheless, considering the nature and tenure of the employment, the Tribunal has not erred in assessing loss of dependency on the basis of the monthly income of Rs.8,000/-.

11. Considering the monthly income as Rs.8,000/-, the annual income of the deceased works out to Rs.96,000/-. The deceased was 48 years of age. Upon adding 25% of the income towards future prospects, the estimated income works out to Rs.1,20,000/-. Deducting 1/ 4th towards personal expenses and applying multiplier of 13, the loss of dependency works out to Rs.11,70,000/-. In the light of the judgment of the Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and Ors. (2017) 16 SCC 680***, the Respondents/Claimants are entitled for compensation of Rs.70,000/- on conventional heads viz. loss of consortium, loss of estate, funeral expenses and loss of love and affection as against Rs.2,75,000/- awarded by the Tribunal.

12. Thus, the Respondents/Claimants are entitled for total compensation of Rs.12,40,000/-, which in my considered view is just and reasonable compensation.

13. Under the circumstances and in view of the discussion supra, the following order is passed:-

(i) The Appeal is partly allowed.

(ii) The compensation is reduced to Rs.12,40,000/-. All other directions as regards interest, costs, etc. remain the same.

(iii) Excess amount of Rs.2,51,800/- with proportionate interest as well as statutory deposit of Rs.25,000/- shall be refunded to the Appellant-Insurance Company

14. All pending Civil Applications stand disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

Megha Parab Digitally signed by Megha Parab Date: 2019.07.29 17:34:30 +0530