IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 34 OF 2018
WITH
CIVIL APPLICATION NO. 766 OF 2017
IN
FIRST APPEAL NO. 34 OF 2018

NATIONAL Insurance Company Limited
Motor Third Party Claims Hub
5th Floor, Sterling Cinema Building
Murzban Street, Fort,
Mumbai – 400 001 …Appellant/ Original Insurer

V/S

1. Smt. Hafiza Dastagir Mujawar
(Dead) ...Original Applicant No.1

2. Rahim Dastagir Mujawar
Age : 35 years, Occupation : Driving
Work ...Original Applicant No.2

3. Shikandar Dastagir Mujawar
Age : 31 years, Occupation : Merchant ...Original Applicant No.3

4. Rasul Dastagir Mujawar
Age : 31 years, Occupation : Merchant ...Original Applicant No.4

5. Hydar Dastagir Mujawar
Age : 29 years, Occupation : Labour ...Original Applicant No.5

6. Nayan Dastagir Mujawar ...Original Applicant No.6
Age : 27 years, Occupation : Merchant

7. Jameer Dastagir Mujawar
Age : 23 years, Occupation : Driving
Work ...Original Applicant No.7

All R/o, Sikandar Takali, Taluka Mohol
District : Solapur

8. The Proprietor of Hatakeshwara
Cargo Movers R/o House No.205,
Mangalwar Peth Bhor, Taluka Bhor,
District : Pune

...Original Opponent No.1

9. Shyam Sonerao Maker
Occupation : Driver
R/o Kawlyachiwadi, Taluka Parali
Vaijinath District Beed ...Original Opponent No.2
At present R/o, C/o Hatakeshwar Cargo Movers ...Respondents
205, Mangalwar Peth, Bhor
Taluka : Bhor, District : Pune

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Mr. Rahul Mehta i/b KMC Legal Venture for Appellant.
Mr. Ashok B. Tajane a/w Ms. Kavita P. Shinde for the Respondent Nos.1 to 6.

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CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 20th AUGUST, 2019.

ORAL JUDGMENT :-

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

2. The appellant herein has challenged the Judgment and Award dated 05th January 2016 passed by the learned Member of the M.A.C.T., Solapur in Motor Accident Claim Petition No.85/2012. By the impugned Judgment, the Tribunal has awarded compensation of Rs.7,78,328/- to the claimants (Respondent Nos.1 to 9 herein) being

the widow and children of the deceased Dastagir Mahiboob Mujawar who expired in a motor vehicular accident on 16th November, 2011.

3. It was the case of the claimants that while the deceased Dastagir Mujawar was walking towards a tea stall at Mohol, a truck bearing registration No.MH-12/FZ-8459 dashed against him. Said Dastagir expired due to the injuries sustained in the accident. The claimants alleged that the accident was caused due to rash and negligent driving by the driver of the offending vehicle which was owned by Respondent No.8 and insured by the Appellant-Insurance Company.

4. The claimants stated that the deceased Dastagir was 55 years of age and earned Rs.8,333/- per month. They further claimed that they were entirely dependent on the income of the deceased Dastagir. The claimants therefore filed an application under Section 166 of the Motor Vehicles Act, 1988 against the driver-owner and the insurer of the offending vehicle claiming total compensation of Rs.7,78,328/-.

5. The Respondent No. 8 and Respondent No. 9 did not contest the proceeding and were set ex-parte. The appellant – insurance company claimed that the driver of the offending vehicle was not holding a valid and effective driving license. The appellant – insurance company

disputed its liability to indemnify the insured on the ground of breach of terms and conditions of the policy. The appellant also asserted that the claim is excessive and exorbitant and also raised a plea of contributory negligence.

6. The Tribunal, after considering the evidence on record held that the accident was caused due to rash and negligent driving by the driver of the truck. The Tribunal observed that the deceased was 55 years of age and was earning Rs.1,00,000/- p.a. The Tribunal added 30% towards future prospects. The Tribunal deducted 1/3rd towards personal expenses of the deceased and upon applying multiplier of 8, the Tribunal assessed loss of dependency to Rs.6,93,328/-. In addition, the Tribunal awarded Rs.25,000/- towards funeral expenses and Rs.60,000/- for loss of love and affection. Thus, the Tribunal has awarded total compensation of Rs.7,78,328/-.

7. Being aggrieved by the said Judgment and Award, the appellant/Insurance Company has filed this Appeal.

8. Though the appellant has challenged the Judgment on several grounds, the learned Counsel for the appellant has stated that the

challenge is restricted only to the amount of compensation awarded towards future prospects. Relying upon the Judgment of Hon'ble Apex Court in ***National Insurance Company Ltd. V/s. Pranay Sethi and Ors. 2017 ACJ 2700,*** the learned Counsel for the appellant contends that considering the age of the deceased, the Tribunal ought to have granted addition of 15% of the actual income towards future prospects. He contends that the excess amount awarded towards future prospects is required to be reduced.

9. In the case of **Pranay Sethi (Supra)** the Hon'ble Apex Court has held thus :-

> *" (iii) While determining the income, an addition of 50% 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%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary be read as actual salary less tax. "*

10. In the instant case, the deceased was 55 years of age. Hence in terms of the Judgment of the Apex Court, 15% of the actual income ought to have been added towards future prospects. The learned Counsel for the respondent nos.1 to 9 fairly concedes that the Tribunal has erred in adding 30% towards future prospects and in awarding

Rs.85,000/- towards non-pecuniary losses instead of Rs.70,000/-. Hence, the excess amount of Rs.79,999/- awarded by the Tribunal needs to be deducted from the total compensation awarded to the applicants. Upon deducting the excess amount so awarded, the compensation comes at Rs.6,83,327/-.

11. Under the circumstances, the following order is passed :-

(a) The appeal is partly allowed.

(b) The compensation awarded by the Claims Tribunal is reduced from Rs.7,78,328/- to Rs.6,83,327/-. Costs and interest would remain the same. Award stands modified accordingly.

(c) The excess amount deposited by the Insurance Company along with proportionate interest accrued thereon be refunded to the appellant/Insurance Company.

(d) The respondent Nos.1 to 7 are at liberty to apply to the Tribunal for withdrawal of the compensation.

12. Appeal stands disposed of in the above terms. Civil Application stands disposed in view of disposal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)