IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1507 OF 2013
WITH
CIVIL APPLICATION NO.3773 OF 2013
WITH
CIVIL APPLICATION NO.2512 OF 2014
WITH
CIVIL APPLICATION NO.495 OF 2019
IN
FIRST APPEAL NO.1507 OF 2013

The New Indian Assurance Co. Ltd. …Applicant/Appellant
Versus
Smt. Gunvanti Bhalchandra Dhuri
and Anr. ...Respondents

…..

Mr. D.S. Joshi in FA/1507/2013 and CAF/3773/2013, CAF/2512/2014 and for the Respondents in CAF/495/2019.
Mr. T.J. Mendon for the Respondent No.1 in FA/1507/2013, CAF/3773/2013, CAF/2512/2014 and for the Applicant in CAF/495/2019.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 7th FEBRUARY, 2019.

P.C.:-

The Appellant herein has challenged the judgment and award dated 10th December, 2012 in MACP No.1372 of 2008 passed by the Member, M.A.C.T., Mumbai. By the impugned judgment and award the MACT has partly allowed the application under SEction 166 of the Motor Vehicles Act filed by the Respondent No.1 and awarded compensation of Rs.5,81,600 inclusive of amount paid under no fault liability, with interest at the rate of 7.5% per annum from the date of the application till the date of realisation of the said amount.

2. Vinayak Dhuri, 21 years old son of the Respondent No.1 expired in a motor vehicular accident on 17.4.2018. The Respondent No.1had filed an application under Section 166 of the Motor Vehicle claiming compensation of Rs.8,00,000/- from the Respondent No.2-owner and the Appellant-insurer of the vehicle involved in the accident.

3. The case of the Respondent No.1 was that on the relevant date her son was a pillion rider on a motorcycle MH01-BC 8147. He was proceeding towards Ghatkopar by Western Express Highway. When the motorcycle reached from Godrej Soap Gate Thane, Mumbai a truck bearing No.UA-04-A-7527 came at a fast speed and dashed against the motorcycle. The son of the Respondent No.1 expired as a result of injuries sustained in the said accident. The Respondent No.1 claimed that her son had an electronic shop at Mira Road and that he was earning Rs.5,000/- p.m. The Respondent No.1 has stated that her son had expired due to rash and negligent driving by the driver of the truck No.UA-04-A-7527. Hence, the owner and insurer of the vehicle

were liable to pay to her compensation of Rs.8,00,000/-.

4. The claim was not contested by the Respondent No.2-owner of the vehicle. The Appellant Insurance Company, resisted the said claim and denied the age as well as the income of the deceased.

5. Upon considering the evidence adduced by the Respondent No.1, the learned Tribunal held that the accident was caused due to rash and negligent driving by the driver of the truck No. UA-04-A-7527. The learned Judge of MACT held that the deceased was 21 years of age and the multiplier applicable was 18. The learned Judge did not accept the contention of the Respondent No.1 that the deceased was earning Rs.5,000/- per month. However, considering his qualifications, the learned Judge computed the loss of dependency on the basis of notional income of Rs.4,000/-. The Tribunal awarded Rs.5,61,600/- towards loss of dependency, Rs.10,000/- towards loss of love and affection, Rs.5,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. The Tribunal directed the Appellant and the Respondent No.2 to jointly and severally pay to the Respondent No.1 compensation of Rs.5,81,600/- with interest as stated above. Being aggrieved by this award the Appellant-Insurance company has

preferred this appeal.

6. Mr. D.S. Joshi, the learned counsel for the Appellant submits that the learned Member of the Tribunal was not justified in considering the notional income at Rs.4,000/- per month. He has also submitted that the learned Judge of the Tribunal has erred in selecting the multiplier on the basis of the age of the deceased. He has further submitted that the Tribunal has erred in awarding compensation towards future prospects.

7. Mr. T.J. Mendon, the learned counsel for the Respondent No.1. has submitted that none of the grounds raised in the aforestated grounds can be sustained in view of the judgment of the Apex Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and Ors 2017 ACJ 2700.***

8. In the case of ***Pranay Sethi (supra)*** the Apex Court has laid down following guidelines :-

> *61. In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> *(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as*

it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(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 should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

> *(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.*

9. In the instant case the documents viz. wireman certificate issued by the State of Maharashtra and mark sheet of Electrician Trade issued by Directorate of Provisional Education Training and wireman license, produced by the Respondent No.1 clearly indicate that the deceased was an electrician and was self employed. Considering the above fact, the learned Judge was justified in considering the income of the deceased as Rs.4,000/- per month. The deceased was 21 years of age, and in terms of the judgment in ***Pranay Sethi (supra),*** the learned Judge was justified in applying the multiplier of 18 on the basis of the age of the deceased and further in adding 30% towards future prospects. After deducting 50% towards personal expenses the Tribunal has determined loss of dependency as 5,61,600/-. The Tribunal has also awarded 20,000/- towards under other conventional heads. Considering the above facts and circumstances, the compensation awarded is just and reasonable.

10. Under the circumstances and in view of discussion supra,

the appeal has no merits and is accordingly dismissed.

11. The Appellant has deposited the compensation before the Tribunal. The statutory amount of Rs.25,000/- may be transferred to the Tribunal, if it is not already transferred. In the event any compensation remains unpaid and is invested, the same be paid to the Respondent No.1 alongwith the interest accrued thereon.

12. In view of the above order the Civil Applications do not survive and hence stand disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)