IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1178 OF 2014

The New India Assurance Co. Ltd. ..Appellant
V/s
Mrs. Meena Mahesh Desai and Ors. ..Respondents

WITH
CIVIL APPLICATION (STAMP) NO. 18196 OF 2019

Mrs. Meena Mahesh Desai and Ors. ..Applicants
V/s
The New India Assurance Co. Ltd. ..Respondents

Mr. Devendranath S. Joshi for the Appellant in FA No. 1178 of 2014 and Respondent in CAFST No. 18196 of 2019.

Ms. Kavita Anchan I/b Mr. Vishal A. Dhende for Respondent Nos. 1 to 3 in FA 1178/2014 and Applicant in CAFST NO. 18196 of 2019.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 28th AUGUST, 2019.

ORAL JUDGMENT :

1. By consent of the parties, matter is heard finally at the stage of admission.

2. The Appellant-Insurance Company has challenged the

Judgment and Award dated 28/03/2014 passed by the Learned Member of MACT, Mumbai in Claim Application No. 227 of 2007. By the impugned Judgment and Award, the Claims Tribunal has awarded compensation of Rs.17,22,400/- with interest at the rate of 7.5% per annum from the date of filing of the petition till actual realization.

3. The brief facts necessary to decide the appeal are as under:

The respondent no.1 is the widow and the respondent nos. 2 and 3 are the children of Mahesh Desai, who expired in a motor vehicular accident on 10.08.2006 involving Luxury Bus No. MH-01-L-6975, which was owned by the respondent no.4 and insured by the appellant-Insurance Company. The respondent nos.1 to 3 claimed that the deceased was 50 years of age. He was an Advocate by profession and was earning Rs.45,000/- per month. The respondents further claimed that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle. The respondent nos. 1 to 3, therefore, filed an application under section 166 of the Motor Vehicles Act, 1988 claiming total compensation of

Rs.30,00,000/-.

4. The respondent no.4/owner did not contest the proceedings. The appellant-Insurance Company denied that the accident was caused due to rash and negligent driving by the driver of the bus and further claimed that the claim is exorbitant.

5. The Claims Tribunal, upon considering the evidence on record recorded a finding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal further held that the deceased was 50 years of age and was earning Rs. 12,000/- per month. After deducting 1/3rd towards his personal expenses and adding 30% towards future prospects and applying multiplier of 13, the Tribunal computed loss of dependency to the tune of Rs.16,22,400/-. The Tribunal also awarded total compensation of Rs.1,00,000/- on other, conventional heads viz loss of consortium, loss of love and affection, funeral expenses and loss of estate. Thus, the Tribunal awarded total compensation of Rs.17,22,400/-. Being aggrieved by the impugned Judgment

and Award, the appellant- Insurance Company has filed this appeal.

6. Mr. Devendranath Joshi, the learned counsel for the appellant states that though the appellant-Insurance Company has raised several grounds, the challenge is restricted only to the quatum of compensation. He contends that, the Tribunal has erred in considering the monthly income of the deceased as Rs.12,000/- when the Income Tax Return filed prior to the death of the deceased indicate that the income of the deceased was Rs.92,817/-per annum. He further contends that the evidence on record clearly indicates that the deceased was 52 years of age and as such, the multiplier applicable was 11. He, therefore, contends that the Tribunal has erred in applying multiplier of 13 while computing the loss of dependency.

7. Ms. Kavita Anchan, Learned Counsel for the respondent no.1 submits that the deceased was an Advocate and that the evidence of A/W-2 and A/W-3 amply proves that he was earning Rs. 12,000/- per month. She fairly concedes that the deceased was52 years of age and thus, the multiplier applicable is 11.

Relying upon the decision of Apex Court in the case of ***Magma General Insurance Co.Ltd. V/s. Nanu Ram @ Chuhru Ram & Ors., 2018 SCC on line SC 1546,*** she submits that respondent nos. 2 and 3 being the children, are also entitled for compensation under the head 'Parental Consortium.

8. I have perused the record and considered the submissions advanced by the learned Counsel for respective parties. It is not in dispute that the deceased was an Advocate by profession. The Respondent no.1 Mrs. Meena Mahesh Desai (A.W.1) had deposed that he was working in a Law Firm- Basin & Co. since about two years prior to the accident and earning Rs.12,000/- per month. This statement has gone unchallenged. In fact, in the cross-examination of this witness, the appellant-Insurance Company has affirmed that the deceased was working for Basin & Co. and earning Rs.12,000/- per month. The denial was only in respect of Rs.10,000/- allegedly earned by the deceased as consultant. Besides the evidence of A/W 2- Jaiprakash Vishram Kadam and particularly, the evidence of A/W 3- Advocate Sudeep Das Gupta, the Officer Incharge of the said

Law Firm viz-a-viz the certificate at Exh. 29 proves that the deceased was working in the said law firm and earning Rs.12,000/- per month. The evidence of these two witnesses cannot be discarded either because the deceased failed to file income tax return or had not shown the correct income in the tax returns.

9. The deceased was admittedly 52 years of age as on the date of the accident. In term of the Judgment of Apex Court in the case of ***Sarla Verma & Ors vs Delhi Transport Corp. & Anr. 2009(6) Scle 129,*** the multiplier applicable is 11. Considering the monthly income of the deceased as Rs.12,000/-, his annual income works out to Rs.1,44,000/-, adding 30% towards future prospects, the income works out Rs.1,87,200/-. Upon deducting 1/3rd towards personal expenses of the deceased and applying multiplier of 11, loss of dependency works out to Rs.13,72,800/-. In view of the principles enunciated in ***National Insurance V/s Pranay Sethi and Ors., 2017 ACJ 2700 and Magma General Insurance Co.Ltd. V/s. Nanu Ram @ Chuhru Ram & Ors.,*** the

respondent no.1 is entitled for compensation of Rs.40,000/- towards loss of spousal consortium. In addition, the respondent nos.1 to 3 are entitled for compensation of Rs.30,000/- towards funeral expenses and loss of estate. The respondent nos. 2 and 3, who have been deprived of their father's love and affection due to his untimely death are also entitled for compensation of Rs.40,000/- each towards parental consortium. The respondent nos. 1 to 3 are,therefore, entitled to total compensation of Rs.15,22,800/- which can be rounded to Rs.15,23,000/-. The impugned Judgment and Award needs to be modified to that extent.

10. Hence, the Appeal is partly allowed. The respondents are held to be entitled for compensation of Rs.15,23,000/- with interest at the rate of 7.5% per annum from the date of petition till actual payment and realization.

11. The excess amount Rs.1,99,400/- deposited by the appellant-Insurance Company be refunded to the appellant-Insurance Company along with proportionate interest thereon. The statutory deposit be transferred to MACT, if not already

transferred.

12. Liberty is granted to respondent nos. 1 to 3 to apply for withdrawal before the Tribunal.

13. Civil Application stands disposed of in view of the aforesaid terms.

(ANUJA PRABHUDESSAI, J.)