THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 368 OF 2016
WITH
CIVIL APPLICATION NO. 53 OF 2016
WITH
CIVIL APPLICATION NO. 216 OF 2017
IN
FIRST APPEAL NO. 368 OF 2016

National Insurance Co. Ltd. ….Appellant
V/s.
Mrs. Vaswati Samiran Ganguly and Anr. ….Respondents

Mr. Amol Gatne for the appellant.
Mr.S.V. Chaugule for the Respondent no. 1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 24th JUNE, 2019.

ORAL JUDGMENT :-

. At the outset, Mr. Amol Gatne, learned counsel for the appellant states that the appellant has not raised any statutory defence. Hence, notice to respondent no.2 is dispensed with. The learned counsel for respondent no.1 also makes a statement that the respondent no.1 does not wish to file any cross objections or cross appeals. With consent, the appeal is heard finally at the stage of admission.

2. The appellant - insurance company has challenged the impugned judgment and award dated 24th July 2015 passed by the learned Member of Claims Tribunal, Thane in MACP No.804 of 2008. By the

impugned judgment and award, the Claims Tribunal has awarded compensation Rs. 8,19,500/- with interest at the rate of 8 % p.a. from the date of application till final realization.

3. The respondent no.1, the original claimant is the mother of the deceased Abhishek Ganguly who expired as a result of the injuries sustained in the motor vehicular accident.

4. The case of the respondent no.1 – claimant was that on 16.04.2008, the deceased Abhishek along with his family members was proceeding from Shirdi to Mumbai by Qualis Vehicle bearing No. MH-02-AK-2523. When they reached at Sai Petrol Pump on Mumbai-Nashik road, a truck bearing No. MH-43-E-8480 came from the opposite direction at a very high speed and dashed against the Qualis. Said Abhishek expired as a result of the injuries sustained in the accident. The respondent no.1-original claimant claimed that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle which was owned by the respondent no.2 and insured by the appellant – insurance company. The respondent no.1 – original claimant therefore filed a Claim Petition under Section 166 of Motor Vehicles Act seeking compensation of Rs.10,00,000/- with

interest from the date of the petition till final realization.

5. The insured did not contest the proceeding despite due service. The appellant – insurance company disputed that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The appellant – insurance company claimed that the accident was caused due to rash and negligent driving of the driver of Qualis. The appellant – insurance company therefore claimed that it is not liable to pay any compensation to the claimants.

6. Upon appreciating the evidence on record, the learned Member of the Claims Tribunal held that the accident was caused due to rash and negligent driving of the driver of the truck bearing no. MH-43-E-8480. The Tribunal further held that the deceased was 12 years old. He was a meritorious student and had a bright future. The Tribunal considered the proposed / future contribution of the deceased to the tune of Rs.30,000/- per annum and on applying multiplier of 15, computed future loss of income as Rs.4,50,000/-. The Tribunal, after deducting Rs.75,000/- which was received by respondent no.1 – original claimant under medi-claim policy, awarded Rs.3,19,500/- towards medical expenses. The Tribunal also awarded Rs.50,000/- on

other conventional heads viz. loss of love and affection and funeral expenses. The Tribunal, therefore, awarded total compensation of Rs.8,19,500/- with interest @ 8% p.a. from the date of petition till final realization. Being aggrieved by the Award, the appellant – insurance company has preferred this appeal.

7. Mr. Amol Gatne, the learned counsel for the Appellant submits that the Tribunal ought to have considered the deceased as a bachelor and deducted 50% which works out to Rs.2,25,000/- towards his personal expenses. He further submits that in view of the judgment of the Hon'ble Apex court in ***National Insurance Company Limited v/s. Pranay Sethi and Others (2017 16 SCC 680),*** the respondent no.1 was entitled for compensation of Rs.30,000/- as against Rs.50,000/- awarded by the Tribunal on the two conventional heads viz. loss of love and affection and funeral expenses.

8. Mr. Chaugule, the learned counsel for the respondent no.1-original claimant submits that the minor cannot be regarded as a bachelor so as to warrant deduction of 50% towards personal expenses. He therefore submits that there is no justification for deduction of Rs.2,25,000/- from the quantum of compensation awarded by the

Tribunal.

9. The learned counsel for the respondent further contends that the Tribunal has erred in deducting Rs.75,000/- which was reimbursed under mediclaim policy. Relying upon the judgment of the Hon'ble Apex Court in the case of ***Magma General Insurance Company Limited V/s Nanu Ram (2018 SCC 1546),*** the learned counsel submits that the respondent no. 1 is also entitled for compensation of Rs.40,000/**-** towards Filial consortium.

10. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties. It is not in dispute that the deceased had expired in a motor vehicular accident involving a truck bearing no.MH-43-E-8480 which was insured with the appellant – insurance company. There is no challenge to the finding recorded by the Tribunal that the accident was caused due to negligent driving by the driver of the offending vehicle. The challenge is mainly to the quantum of compensation awarded by the Tribunal.

11. The guiding principle for determining the quantum of compensation, as it has been ruled by the Apex Court in ***Nagappa v/s.***

Gurdial Singh and ors. 2003 (2) SCC 274 is that the compensation must be just and reasonable. In ***Reshma Kumari and ors. V/s. Madan Mohan and anr. (2013) 9 SCC 65,*** the Apex Court has held that just compensation is adequate compensation which is far and equitable on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well – settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit.

12. In Pranay Sethi (supra), the Apex Court has observed that :-

" 55. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non- violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to

multiplier has been clearly stated in Sarla Verma (supra) and it has been approved in Reshma Kumari (supra). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

13. In the instant case, the respondent no.1-claimant has lost her 12 year old son in a motor vehicular accident. As observed by the Tribunal, the deceased was a meritorious student and had a bright future. The deceased being a student was not an earning member and was totally dependent on his parents for his personal expenses. Hence, the prospective or future loss had to be computed on the basis of notional future income, which in the instant case has been considered as Rs.30,000/- per annum. Considering the age of the deceased, the Tribunal has applied multiplier of 15 and has computed future loss of

income as Rs.4,50,000/-

14. It is pertinent to note that the notional future income of Rs.30,000/- which works out to Rs.2,500/- per month is itself pittance particularly in view of dwindling value of money as an effect of inflation. Furthermore, the Tribunal has not added any amount towards future prospects. Under the circumstances, deduction of 50% towards personal expenses of the deceased would be unfair and unjust.

15. It is also pertinent to note that the respondent no.1/claimant had spent Rs.3,94,500/- towards medical expenses of the deceased. The Tribunal has awarded Rs.3,19,500/- towards medical expenses after deducting Rs.75,000/- which was reimbursed under medi-claim policy. In this regard, it would be advantageous to refer to the judgment of this Court dated 19th March, 2019 of this Court in ***Royal Sundaram Alliance Insurance Company Ltd. V/s. Ajit Chandrakant Rakvi (First Appeal No.1620 of 2012)*** wherein the Single Judge of this Court after considering the decision of the Hon'ble Apex Court in ***Helen C. Rebello Vs. MSRTC, (AIR 1998 SC 3191)*** as well as two other decisions of the Single Judge of this Court in ***Vrajesh Navnitlal Desai Vs. Bagyam & Ors., 2006 ACH 65 (BOM.)*** and ***United India Insurance Company***

Ltd. Vs. Anjana W/o. Nileshkumar Parmar & Anr., 2012 (3) Mh.L.J.914 has held that the amount reimbursed under the medi-claim policy cannot be deducted. The relevant observations read thus :-

> *" 28. In the light of aforesaid enunciation as regards the statutory liability of the insurer, the nature of general contract of medical insurance needs to be noted. The medical insurance covers a variety of ailments and medical expenses therefor, which are not otherwise specifically excluded. Often there is a upper limit. The duration is also stipulated by the terms of the contract. In this backdrop, the matter can be looked at from another angle. If the claimant exhausts the upper limit or substantial part of the insured amount, for meeting the expenses of treatment, for the injury which is suffered in an accident, the claimant would not be entitled to the benefit of the medical insurance, if the occasion again arises on account of certain other ailments unconnected with the accident. If the policy is in the nature of Family Floater Plan and the limit is exhausted for meeting the expenses in connection with an injury suffered in an accident, by one member, the other members of the family cannot have the benefit of the medical insurance.*
>
> *29. In the backdrop of these variables, the nature of the proceedings under the Act, becomes significant. A claim petition for compensation in regard to a motor accident filed by the injured before Tribunal constituted under Section 165 of the Act, is neither a suit nor an adversarial lis in the traditional sense. Though the tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation.* ***(United India Insurance Co. Ltd. V.s Shila Datta & Ors.)****. This being the nature of the proceedings before the Tribunal, even in respect of the parties before it, in my view, the benefits emanating from an independent and unconnected contract of insurance cannot be considered by the Tribunal as it besets with variables rooted in contract.*

> *30. From this stand point, in the context of the distinction between the contractual liability under the contract of insurance (medical) and the statutory liability under the Act, the aforesaid proposition, not to deduct the amount of reimbursement received, under a medi-claim policy, appears to be in consonance with the principle of beneficial interpretation and advances the object of the Act. Hence, I am not persuaded to agree with the submission on behalf of the appellant that the said amount of Rs. 1,20,000/- ought to have been deducted. "*

16. In the light of the above, in my considered view, the Tribunal was not justified in deducting Rs.75,000/- which was received by respondent no.1-claimant under medi-claim policy.

17. The Tribunal has awarded Rs.50,000/- towards loss of love and affection and funeral expenses, which in view of the judgment of the Apex Court in ***Pranay Sethi (supra)*** ought to have been Rs.30,000/-. It is however to be noted that in ***Magma Insurance Company Ltd. (supra),*** the Hon'ble Apex Court has held thus :-

> " *Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*
>
> *Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the*

value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. "

18. In the instant case, the respondent no.1 has lost her 12 year old son in a motor vehicular accident. There can be no doubt that the death of the child must have surely had a devastating effect on the family. Though the life long agony, pain and shock suffered by the respondent as a mother cannot be measured in terms of money, the respondent no.1 can be notionally compensated by awarding Rs.40,000/- towards filial consortium. Hence, the respondent no.1 would be entitled for total compensation of Rs.70,000/- on these three conventional heads as against Rs.50,000/- awarded by the Tribunal.

19. The respondent no.1-claimant was therefore entitled for total compensation of Rs.9,14,500/- as against compensation of Rs.8,19,500/- awarded by the Claims Tribunal. The respondent no.1

has not filed an appeal or cross objection for enhancement of compensation. The question which therefore arises is whether this Court can enhance the compensation in the absence of the appeal or cross objection. In this regard, it would be advantageous to refer to the decision in ***A.P.S.R.T.C. Rep. by its General Manager and anr. V/s. M. Ramadevi and ors. 2008(1) T.A.C. 714 (S.C.),*** wherein the Apex Court while considering the question whether the High Court could have enhanced the compensation in the absence of an appeal by the claimant, reiterated the principles in ***Nagappa (supra)*** that under Motor Vehicles Act there is no restriction that the Tribunal Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal Court is to award 'just compensation' which is reasonable on the basis of evidence produced on record.

20. ***In National Insurance Co. Ltd. v/s. Vaishali Harish Devare and ors. in First Appeal No.1068 of 2012,*** the Division Bench of this Court has held that the Appeal being continuation of Claim Petition even if there is no Cross Appeal or Cross Objection, the Appellate Court is under an obligation to determine the just compensation payable to the claimants. It has been held that while deciding the appeal, an adjudication is required to be made whether the compensation granted

by the Tribunal is a just compensation. Such adjudication can be made without taking recourse to Rule 33 of O XLI of the Code.

21. It is thus well settled that there is no embargo in enhancing the compensation in the absence of appeal or cross objection. As stated earlier, the Tribunal has awarded compensation of Rs.8,19,500/-. While the evidence on record indicate that the respondent no.1 – original claimant is entitled for total compensation of Rs.9,14,500/- which in my considered view is the just compensation. The respondent no.1 cannot be deprived of the additional amount of Rs.95,000/- for non filing of appeal or cross objection.

22. Under the circumstances, the Appeal has no merits and is accordingly dismissed. The appellant – insurance company is directed to pay to the respondent no.1 – original claimant an additional amount of Rs.95,000/- with interest @ 8% p.a. from the date of petition till realization of the above amount. Award be modified accordingly.

23. In view of the disposal of the Appeal, pending Civil Applications does not survive and the same is also disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)