Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.58 OF 2015

Bajaj Allianz General Insurance Co.Ltd.,
3C-D, Sesa Ghor, Patto Plaza,
Panaji-Goa, through its Authorized signatory,
Mr. Pravin Prabhakar Prabhu. .... Appellant

Versus

1. Smt. Lata Ramdas Chari
   Widow of Ramdas Chari,
   Age-56 years old, service,
   and her daughter.

2. Miss Harsha Ramdas Chari
   Daughter of Late Ramdas G. Chari,
   Aged 26 years, Student,
   Both residents of 'HARSHA VIHAR'.
   Near I.D. Hospital, Ponda-Goa.

3. Mr. Basant Kumar Mehta,
   C/o. Amarnath P. Haldankar,
   Resident of H.No.191/23,
   Varkhandem, Ponda-Goa-403401.

4. Mr. Amarnath Pandharinath Haldankar,
   Resident of H.No.191/23,
   Varkhandem, Ponda-Goa-403401. .... Respondents

Mr. A. Kakodkar, Advocate for the Appellants.

Mr. R. G. Ramani, Senior Advocate along with Mr. Pranoy Kakodkar for the Respondents.

Coram:- M.S. SONAK, J.

Dated:- 23rd July, 2020

ORAL JUDGMENT

Heard Mr. Amey Kakodkar for the Appellant and Mr. R. G. Ramani, learned Senior Advocate along with Mr. Pranoy Kakodkar for the Respondents.

2. This appeal is directed against the judgment and award dated 27.02.2015 made by the Motor Accident Claims Tribunal (MACT) in Claim Petition No.24/2013. By the impugned judgment and award, the MACT has awarded the claimants compensation of ₹37,11,160/- together with interest @ 9% p.a. from the date of the claim petition till actual payment.

3. Mr. Kakodkar, the learned counsel for the appellant-insurance company has submitted that in the present case there is no evidence about rashness and negligence on the part of the driver of the insured vehicle. By way of elaboration he referred to the sketch accompanying the panchanama which is the part of the record and pointed out that it is quite evident that the deceased who was driving a Maruti vehicle came towards the insured vehicle and in order to avoid a head-on impact, the insured vehicle had to swerve, resulting in unfortunate

accident. Mr. Kakodkar also pointed out that AW4, the brother of the deceased, who claims to have been in the Maruti vehicle at the time of the accident is not a creditworthy witness, who was, possibly, not even in the vehicle at the time of the accident. Mr. Kakodkar points out that it is extremely unlikely that AW4 and his wife who are the brother and sister-in-law respectively of the deceased would sit on the hind seats of the car which was being driven by the deceased. He points out that there is no reference to the Maruti car attempting to overtake any vehicle in the deposition of AW4. Admittedly, AW4 has sustained no injuries, and if, the other evidence is to be believed, then, this is not possible. He submits that all this renders the presence of AW4 in the vehicle which met with the accident, highly unlikely.

4. Mr. Kakodkar, without prejudice submits that the compensation awarded is excessive in the facts and circumstances of the present case. In particular, he points out that the claimants' evidence bears out that the deceased was due to retire from his service within a period of hardly 8 months from the date of the accident since, on the date of the accident the deceased was almost 57 years of age. He therefore submits that the MACT was not justified in treating the income of the deceased the same as the income which the deceased was earning whilst in service. He submits that in such a situation it is necessary to apply the principle of split multiplier as was approved by the Learned Single Judge of this Court in ***Bhalchandra Laxman Gangadhare v.***

Shardabai Manohar Ugale – 2015 (1) ALL MR 353. Mr. Kakodkar submits that inasmuch as this principle has not been applied and excessive compensation is paid, the impugned judgment and award warrants interference.

5. Mr. Kakodkar also points out that in terms of the ruling of the Hon'ble Apex Court in ***National Insurance Company Ltd. v. Pranay Sethi – (2017) 16 SCC 680***, the compensation paid towards loss of consortium, funeral expenses or loss of estate is very much of the higher side and therefore needs modification.

6. For all the aforesaid reasons Mr. Kakodkar submits that this appeal is liable to be allowed and impugned judgment and award, set aside.

7. Mr. Ramani, learned Senior Advocate for the claimants defends the impugned judgment and award on the basis of the reasoning reflected therein. However, Mr. Ramani hastens to add that the additional compensation is due and payable to the claimants particularly as the aspect of future prospects has been completely ignored. He points out that at least a 15% addition is required to be made to the monthly income taking into consideration the age of the deceased and the law laid down in *Pranay Sethi (supra)*. He submits that if all these factors were to be taken into consideration the compensation would come to the extent of almost 41 lakhs or

thereabouts and therefore this appeal is liable to be dismissed and the compensation amount awarded by the MACT, enhanced further.

8. The rival contentions now fall for determination.

9. Insofar as the issue of rashness and negligence is concerned, it is necessary to note at the very outset that in this case, the driver of the insured vehicle i.e. the Tata Tipper Truck has not at all been examined. This driver would have been the best person to depose to the nature of the accident. In contrast, the claimants, have examined AW4, the brother of the deceased who was in the Maruti vehicle at the time of the accident. The circumstance that AW4 and his wife sat in the hind seats is hardly a circumstance to disbelieve the testimony of AW4. Besides there is deposition of AW4 that the person who was sitting in the front seat had in fact got down at Margao. On perusal of the testimony of AW4, it cannot be said that the presence of AW4 in the vehicle at the time of the accident is doubtful or that his testimony deserves no credit.

10. Insofar as the injuries on the person of AW4 are concerned, fortunately, the impact did not effect AW4 and his wife who were on the hind seat. AW4 has however deposed that on account of the impact it was not possible for him and his wife to immediately get out of the car and it took almost 20 minutes or so for the people to get them out of the car.

11. If the deposition of AW4 is evaluated in conjunction with the documentary evidence on record in the form of panchanama and rough sketch accompanying the panchanama, it is evident that the driver of the insured vehicle in fact swerved around and pushed the Maruti vehicle from the road. Even the insured vehicle went off the road and hit a teak wood and coconut tree, off the road. This was obviously a violent impact, which, indicates rashness and negligence on the part of the driver of the insured vehicle.

12. In the aforesaid state of the evidence, both ocular as well as documentary, there is no good ground made out to interfere with the finding recorded by the MACT on the aspect of rashness and negligence.

13. Insofar as the quantum of compensation is concerned, the issue of split multiplier was no doubt proposed and adopted by the learned Single Judge of this Court in the case of *Bhalchandra Laxman Gangadhare (supra)*. However, there is a Division Bench ruling in ***United India Insurance Company Limited v. Shakuntala Babasaheb Dhaktode & Ors. - 2015 SCC Online BOM 6842***, which according to me, has not approved the adoption of this principle in a situation where an employee is due to retire after a few years or is on the verge of retirement. In fact, after considering the decision of the Apex Court in ***Puttamma & Ors. v. K. L. Narayana Reddy &***

Anr. - (2013) 15 SCC 45, the Division Bench has favoured the adoption of the multiplier method as set out in the case of ***Sarla Verma & Ors. v. Delhi Transport Corporation & Anr. - (2009) 6 SCC 121***. In view of the ruling of the Division Bench, no fault can be found with the approach of the MACT in the present case in the matter of determination of the multiplier, by taking into consideration the age of the deceased. There is no dispute regards the income of the deceased, which stands proved by the salary certificate as well as the deposition of the representative of the employer of the deceased.

14. The MACT, has fairly assessed the compensation by applying the principles set out in *Sarla Verma (supra)*. However, Mr. Kakodkar is right in his submissions that the compensation awarded towards loss of consortium, funeral expenses and loss of estate is in excess of what is now prescribed in Pranay *Sethi (supra)*. The compensation under these heads should have been ₹40,000/- ₹15,000/- and ₹15,000/- respectively as against ₹1,00,000/-, ₹25,000/- and ₹20,000/- respectively awarded by the MACT.

15. However, as pointed out by Mr. Ramani, learned Senior Advocate for the claimants, the MACT was required to make some provisions for future prospects following the law laid down in Pranay *Sethi (supra)*. Similarly, some compensation was due to the daughter of the deceased on account of love and affection. The aspect that the

deceased was almost on the verge of retirement is also, not an entirely irrelevant circumstance. Taking into consideration all these aspects the lacunae pointed out by Mr. Kakodkar are offset by the lacunae pointed out by Mr. Ramani. In this case, the MACT has awarded compensation of ₹37,11,160/- as against the claimed amount of ₹35 lakhs.

16. According to me, the compensation determined by the MACT is quite just and fair in the facts and circumstances of the present case and therefore, warrants no interference.

17. For all the aforesaid reasons this appeal is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

18. Mr. Kakodkar points out that the awarded compensation has already been deposited by the appellant-insurance company in this Court. This position is borne out by the record as well. Now that this appeal is dismissed, the claimants shall be entitled to this compensation and therefore the Registry to permit the claimants to withdraw the same upon filing a formal praecipe.

M. S. SONAK, J.

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