IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2656 of 2019
IN
FIRST APPEAL NO. 16 OF 2019

Bhikabhau Vitthal Raskar & ors .. Applicants
Versus
Reliance GIC Ltd and anr .. Respondents

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Mr.Pritesh Bohade for the applicant in CA No. 2656 of 2019.
Mr. Rahul Mehta i/b KMC Legal Venture for the respondents

WITH

FIRST APPEAL NO. 16 of 2019

Reliance GIC Ltd and anr .. Appellants
Versus
Bhikabhau Vitthal Raskar & ors .. Respondents

Mr.Rahul Mehta i/b KMC Legal Venture for the appellants
Mr.Pritesh Bohade for the respondents.

CORAM: BHARATI DANGRE, J.
DATED : 11th MARCH 2020

P.C:-

1 Civil Application No.2656 of 2019 is taken out in the First Appeal which seek withdrawal of the amount deposited in terms of the order passed by this Court as a pre-condition for

grant of stay. While hearing the Civil Application, the learned counsel for the respective parties submit that since a limited issue is involved in the First Appeal and since the Appeal is filed challenging the quantum of compensation awarded, which according to the insurance company is not based on the decision of the Constitution Bench of the Apex Court is the limited point involved. Resultantly, the respective counsel argue the Appeal on merits instead of pressing the Civil Application.

2 The First Appeal is instituted challenging the judgment dated 3rd April 2018 by the MACT, Niphad and the Appeal is primarily premised on the ground that while awarding the compensation the judgment of the Apex Court in case of National Insurance Company Ltd. Vs. Pranay Sethi delivered on 31st October 2017 which is the last word as regards the compensation to be awarded in case of a self employed or a fixed salary personnel has been totally ignored. Apart from this point raised in the Appeal, a brief argument is advanced by the learned counsel for the appellant to the effect that the judgment is also erroneous since it has fastened the sole liability of negligence upon the driver of the insured vehicle and that the judgment and award do not take into consideration the evidence brought on record.

3 With the assistance of the respective counsel, perused the impugned judgment which deals with a claim of compensation to the tune of Rs. One crore on account of the death of one Mahesh B. Raskar, aged 35 years in a Motor vehicle accident which occurred on 7th February 2015. On the issue being framed whether the death of the deceased was on account of a vehicular accident due to rash and negligent driving of the truck bearing registration No.GJ-18-AU-9215 by its driver, the said issue is answered in the affirmative. When it comes to the calculation of the amount of compensation to be paid, the Tribunal relied on the Income Tax return for the Assessment Year 2013-14. Taking into account the net annual income to be Rs.2,38,511/- on an average of two years which was rounded off to Rs.2,10,535/-, considering his age to be in the range of 35-40 years, the Court has added 50% towards his future prospects. Calculating the total income as Rs.3,15,800/- with four dependents in the family, the total compensation payable was computed as Rs.40,04,600/-. The entire calculation proceed and take into consideration the future prospect to be 50%.

4 On perusal of the judgment delivered by the Constitution Bench of Pranay Sethi (supra), the Apex Court in paragraph no.61 has culled out its conclusions and direction no. (iv) stipulate the determination of the compensation to be payable to the deceased who was self employed or on a fixed

salary and it has been computed to be in addition of 40% of the established income where the deceased was below 40 years. The direction (iv) reads thus :-

> *"(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 y ears. 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."*

6 In light of the said judgment which is even binding on the Tribunal, the computation and consideration of the 50% of amount towards future prospect cannot be sustained. Taking into consideration the directives issued by the Constitution Bench, it cannot exceed 40% and if this amount is so computed, by taking into consideration the annual income of the deceased in terms of the judgment to be Rs.2,10,535/- and calculating the 40% loss of income regarding the future prospects, the deceased being self employed, the amount which would be arrived at would be Rs.84,214/-. The total of the said calculation would be Rs.2,94,749/- applying the multiplier of 16 and the deduction to the extent of one fourth of his total income towards personal expenses to be Rs.73,687/-, the amount arrived at would be

Rs.35,36,992/- . The remaining amount awarded i.e. towards loss of love and affection being Rs.two lakhs and the other misc expenses funeral for Rs.15,000/-, the amount due and payable would be Rs.37,51,992/- instead of the amount of Rs.40,04,600/-

7 The Insurance Company being aggrieved to the limited extent of the quantum of compensation awarded, by taking into consideration the amount as directed by the Apex Court to be 40% of the loss of income regarding the future prospects in case of a self employed person, the award which do not take into consideration the said factum and proceeds on a footing that it is 50% of the loss of income towards future prospects has computed the amount of compensation. This being the primary ground of challenge by the Insurance Company, the judgment and award by the MACT dated 3rd April 2018 is required to be quashed and set aside to that extent and the Appeal deserves to be allowed by calculating the compensation by taking into account directive no.(iv) of the Constitution Bench judgment in case of Pranay Sethi (supra).

8 As far as other challenge to the award is concerned, I do not find that it warrant any consideration on account of the clear cut finding recorded by the Tribunal based on the relevant facts placed before it and the ground in the Appeal to that extent cannot be taken into consideration.

9 Resultantly, the impugned judgment stands modified to the extent of the responsibility being fastened to the tune of Rs.40,04,600/- based on the calculation of 50% of loss of income and modified to the tune of fastening the liability of Rs.37,51,992/- jointly and severally to be paid by appellant and respondent no.5 towards towards compensation, the other factors including the interest directed to be paid remaining unchanged.

10 The amount of Rs.25,000/- deposited in this Court as a pre-condition for entertaining the First Appeal is directed to be transferred to the MACT, Niphad, to be adjusted towards the amount of claim. (to be paid by the appellant and respondent no.5 in the First Appeal)

11 In view of disposal of First Appeal, Civil Application No. 2656 of 2019 does not survive and is disposed of accordingly.

SMT. BHARATI DANGRE, J