

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1811 OF 2019

The New India Assurance Co. Ltd. .. Appellant
Vs.
Nanda Laxman Mane & Anr. .. Respondents

**ALONG WITH
CIVIL APPLICATION NO.925 OF 2019**

Nanda Laxman Mane .. Applicant
Vs.
The New India Assurance Co. Ltd. & Ors. .. Respondents

Mr.Ketan Joshi for the appellant.
Mr.Nagesh Y. Chavan for the applicant/respondent no.1.

**CORAM : R.D.DHANUKA, J.
DATE : 24th February 2020**

P.C.:

. By this appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellant (original opponent no.1) has impugned the judgment and award dated 28th May 2015 passed by the MACT, Sangli allowing the claim application filed by the respondent no.1 partly and directing the appellant and the respondent nos.2 & 3 (original opponent nos.2 & 3) to jointly and severally pay compensation amount of Rs.12,19,400/- including NFL amount of Rs.50,000/- to the respondent no.1 with interest @9% p.a. from the date of the claim application till realisation.

2. By consent of the appellant and the respondent no.1, First Appeal is heard finally. Some of the relevant facts for the purpose of deciding this First Appeal are as under : -

3. On 14th December 2012, when Laxman Ananda Mane was proceeding from Sangli to Fifth Mile road within the jurisdiction of Nagaon, the tanker bearing registration No.MH-10/Z/4951 dashed the deceased causing the death of the said deceased. The offending vehicle was driven by the respondent no.3 which was owned by the respondent no.2 and insured with the appellant.

4. The respondent no.1 being a legal heir of the deceased filed an application before the MACT, Sangli inter alia praying for compensation of Rs.12,30,000/- with interest. The said claim was resisted by the appellant by filing written statement.

5. Tribunal framed four issues for determination. The respondent no.1 examined herself and produced various documents including FIR, Spot Panchnama, Post Mortem Report, policy certificate and identity card issued by the Election Commissioner. The respondent no.1 was cross-examined by the appellant. The appellant did not lead any evidence before the Tribunal. Tribunal awarded compensation in the sum of Rs.12,19,400/- including NFL amount of Rs.50,000/- to the respondent

no.1 with interest @9% p.a. from the date of the claim application till realisation.

6. Mr.Joshi, learned counsel for the appellant invited my attention to some of the findings rendered by the Tribunal and would submit that the witness examined by the respondent no.1 was not an eye witness and thus the respondent no.1 had not proved the negligence of the driver of the offending vehicle. Tribunal thus could not have awarded any compensation against the appellant.

7. It is submitted by the learned counsel that in so far as the issue of quantification is concerned, Tribunal has considered the monthly income of Rs.10,000/- though there was no proof produced by the respondent no.1 to prove the quantification of claim to the extent of Rs.10,000/- per month.

8. Mr.Chavan, learned counsel for the respondent no.1, on the other hand, relied upon the findings rendered by the Tribunal and would submit that the appellant had admittedly not led any evidence and thus various findings on the issue of negligence on the part of the driver of the offending vehicle rendered by the Tribunal being not perverse cannot be interfered with by this Court in this First Appeal.

9. In so far as the issue of quantification of claim raised by the appellant is concerned, it is submitted by the learned counsel the respondent no.1 that the said deceased had license to carry on business of filtering gold in Nepal and he was a skilled labourer. He submits that though the respondent no.1 had claimed the said amount on the basis of monthly income of Rs.15,000/-. Tribunal has awarded reasonable compensation considering the monthly income at Rs.10,000/- per month. He submits that if this Court comes to the conclusion that the said amount of Rs.10,000/- per month considered by the Tribunal is on the higher side, this Court may reduce the said amount.

10. It is submitted by the learned counsel that in addition to the basic salary, the respondent no.1 has also claimed 10% towards future prospects.

11. Mr.Joshi, learned counsel for the appellant submits that the compensation awarded by the Tribunal in the sum of Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of love and affection and Rs.1,00,000/- towards loss of estate could not be more than Rs.70,000/-. In support of this submission, learned counsel placed reliance on the judgment of the Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors., (2017) 16 SCC 680.***

12. Mr.Chavan, learned counsel for the respondent no.1 submits that his client has no objection if the said non-pecuniary damages awarded by the Tribunal in the sum of Rs.2,25,000/- is reduced to Rs.70,000/- which is in conformity with the principles of law laid down by the Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors. (supra)***. Statement is accepted.

13. In so far as the issue of negligence raised by the appellant is concerned, it is not in dispute that the respondent no.1 himself had entered the witness box and had produced several documents also. The appellant though had put various suggestions to the respondent no.1 in the cross-examination did not bother to enter the witness box on the issue of negligence or otherwise. I do not find any infirmity in the findings rendered by the Tribunal on the issue of negligence. Tribunal had recorded a finding after considering oral and documentary evidence that the respondent no.1 had proved that the deceased died in accident occurred on 14th December 2012 involving offending vehicle owned by the respondent no.2 insured with the appellant. The respondent no.1 had proved that the accident had occurred because of rash and negligence of the driver of the offending vehicle. The findings of facts being not perverse cannot be interfered with by this Court in this First Appeal.

14. In so far as the issue raised by the appellant that the Tribunal

could not consider the income of Rs.10,000/- per month towards loss of dependency is concerned, in my view, it would be more appropriate if the said amount of Rs.10,000/- per month is reduced to Rs.9,000/-. Tribunal in paragraph 16 of the impugned judgment and award has observed that even an ordinary labourer earns Rs.416 as daily wages in India amounting to approximately Rs.9,000/- per month. In my view, the same basis can be applied to the facts of this case. Considering the basic salary of Rs.9,000/- multiplier of 12, after deducting 1/3rd towards personal expenses, after applying 10% future prospects and after applying multiplier of 11, the amount of compensation comes to Rs.8,71,200/-.

15. In my view, Mr.Joshi, learned counsel for the appellant is right in his submission that Tribunal could not have awarded non-pecuniary damages of Rs.2,25,000/- towards funeral expenses, loss of love and affection and loss of estate but could have granted maximum amount of Rs.70,000/-. I am inclined to accept this submission of the learned counsel for the appellant.

16. After adding a sum of Rs.70,000/- to Rs.8,71,200/- towards non-pecuniary damages, the respondent no.1 would be entitled to a sum of Rs.9,41,200/-. No other submissions are urged by the learned counsel for the appellant.

17. I therefore pass the following order : -

- (i) The respondent nos.1 to 2 would be entitled to recover an amount of Rs.9,41,200/- including NFL amount of Rs.50,000/- with interest @9% p.a. from the appellant from the date of claim petition till realisation.
- (ii) The respondent nos.1 and 2 would be entitled to recover the said amount from the amount deposited by the appellant in the Tribunal.
- (iii) If there is any shortfall in recovering the amount by the appellant, the appellant shall deposit the said shortfall amount within two weeks from the date of computation of the said amount by the concerned MACT. If there is any surplus left after payment of decretal amount, the same shall be refunded to the appellant.
- (iv) The judgment and award dated 28th May 2015 is substituted by this order.

18. First Appeal is accordingly disposed of. In view of dismissal of the First Appeal, pending civil applications, if any, do not survive and are accordingly disposed of. Parties as well as the concerned Tribunal to act on the authenticated copy of this order.

R.D.DHANUKA, J.