IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST.) NO.31633 OF 2017
ALONG WITH
CIVIL APPLICATION NO.928 OF 2018

Universal Sompo General Insurance Co.Ltd... Appellant/Applicant
Vs.
Suchitra Suresh Pandit & Ors. .. Respondents

Mr.Nikhil Mehta i/by M/s.KMC Legal Venture for the appellant/ applicant.
Mr.Sandeep Mishra for the respondent nos.1 to 3.

CORAM : R.D.DHANUKA, J.
DATE : 18th February 2020

P.C.:

. By this appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellant (original opponent no.2) has impugned the judgment and award dated 20th June 2017 passed by the MACT, Thane allowing the application filed by the respondent nos.1 to 3 partly and directing the appellant and original opponent no.1 to jointly and severally pay an amount of Rs.10,43,822/- including NFL with interest @8% p.a. from the date of petition till realisation.

2. By consent of the appellant and the respondent nos.1 to 3, First Appeal is heard finally. Some of the relevant facts for the purpose of deciding this First Appeal are as under : -

3. The respondent no.1 is widow of deceased Suresh Gopal Pandit. The respondent nos.2 and 3 are his daughters. It was the case of the respondent nos.1 to 3 that the said Suresh Gopal Pandit was doing business of sign board and was earning Rs.10,000/- per month. He was 60 years old at the time of accident.

4. On 29th December 2011 at about 8.45 p.m., the deceased was a pedestrian and was proceeding towards his house by left side of the road and when he reached opposite Prem Nagar Society road, one motorcyle bearing No.MH-04-FL-588 came from his back side in high speed and dashed him. As a result, he fell down on road and thereafter he was admitted in Horizon Hospital, Thane. He succumbed to the injuries on 3rd January 2012.

5. The respondent nos.1 to 3 had filed a claim before the Tribunal. The said claim was resisted by the appellant by filing written statement. The Tribunal framed four issues for determination. The respondent nos.1 to 3 examined the respondent no.1 and filed their affidavit of evidence. They also examined Ravindra Balkrishna Salunkhe as CW-2. The appellant did not enter the witness box. The Tribunal allowed the said claim partly and directed the appellant and original opponent no.1 to jointly and severally pay an amount of Rs.10,43,822/- including NFL with interest @8% p.a. from the date of petition till realisation.

6. Mr.Mehta, learned counsel for the appellant invited my attention to the findings rendered by the Trial Court and would submit that the Tribunal could not have considered the income of the deceased at Rs.10,000/- per month since no evidence was produced by the witness examined by the respondent nos.1 to 3.

7. The next submission of the learned counsel is that the Tribunal could not have awarded the compensation towards loss of estate in the sum of Rs.1 lakh. He submits that the said compensation could not have been awarded more than Rs.15,000/- each and total in the sum of Rs.45,000/-.

8. Learned counsel for the respondent nos.1 to 3, on the other hand, submits that the said deceased was carrying on business of sign board. Considering the age of the said deceased, Tribunal has considered the income of Rs.8,000/- per month.

9. In so far as the compensation of Rs.1 lakh by way of loss of estate awarded by the Tribunal is concerned, learned counsel for the respondent nos.1 to 3 states that the same can be reduced to Rs.45,000/-.

10. Learned counsel tenders calculation of amount which is submitted after reducing the compensation of Rs.1 lakh to Rs.45,000/-

towards loss of estate. Copy of calculations submitted by the parties is taken on record and marked 'X' for identification.

11. In so far as the first submission of the learned counsel for the appellant that the Tribunal could not have considered monthly income of Rs.8,000/- per month is concerned, the appellant did not dispute that the Tribunal has rendered a finding that the deceased was doing business of sign board and was 60 years old. The respondent nos.1 to 3 had claimed compensation on the basis of the monthly earning of the said deceased at Rs.10,000/- per month. The Tribunal has held that considering the age of the deceased, he might have been earning at least amount of Rs.8,000/- per month. In my view, considering the age of the said deceased who was carrying on business for several years, Tribunal has rightly considered the income of the deceased of Rs.8,000/- per month which is fair, just and reasonable compensation awarded by the Tribunal and thus does not warrant any interference.

12. In so far as the claim for compensation of Rs.1 lakh awarded towards loss of estate is concerned, in my view, Mr.Mehta, learned counsel for the appellant is right in his submission that such compensation could not have been awarded more than Rs.45,000/- to be apportioned between all the respondent nos.1 to 3 @Rs.15,000/- each.

Learned counsel for the respondent nos.1 to 3 has fairly accepted this submission made by the learned counsel for the appellant.

13. I am inclined to accept the calculation submitted by the learned counsel for the respondent nos.1 to 3. Mr.Mehta, learned counsel for the appellant did not press any other issue for consideration other than the issues raised as aforesaid.

14. I therefore pass the following order :-

(i) The respondent nos.1 to 3 would be entitled to recover an amount of Rs.10,43,822/- including NFL with interest @8% p.a. from the date of claim petition till realisation.

(ii) The amount shall be apportioned between the respondent nos.1 to 3 in the ratio already prescribed in the judgment and award dated 20th June 2017.

(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 MACT. If there is any surplus left after payment of decreetal amount, the same shall be refunded to the appellant.

(iv) The judgment and award dated 20th June 2017 is substituted by this order.

15. Appeal is disposed of on aforesaid terms. In view of disposal of the first appeal, pending civil applications, if any, do not survive and are accordingly disposed of. Office is directed to transmit the statutory deposit of Rs.25,000/- to the concerned MACT expeditiously. Parties as well as the MACT to act on the authenticated copy of this order.

R.D.DHANUKA, J.