IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.116 OF 2006
AND
CIVIL APPLICATION NO.363 OF 2006

United India Insurance Co. Ltd.,
Through it's Divisional Manager and
authorised representative and signatory
Ahmednagar Divisional Officer,
Kisan Kranti Building, Ahmednagar ..Appellant

Vs.

1. Manda @ Pushpa Vishnu Gund,
Age:26 years, Occ. Household,

2. Akshya Vishnu Gund,
Age:9 years , Occ. Education,

3. Abhijit Vishnu Gund,
Age : 5 years, Occ. Education,

4. Yamunabai Chagan Gund,
Occ. Household

Resp Nos.2 and 3-through Minor
Guardian mother-respondent no.1
Respondent Nos.1 to 4
r/o. Bhenda Factory, Landewadi,
Tq. Newasa, Dist. Ahmednagar

5. Kumar Brijlal Bhikchandan
Age:Major, Occ. Transport,
r/o. Ward No.7, Shrirampur,
Dist. Ahmednagar ..Respondents

Mr.A.B.Gatne, Advocate for appellant
Mr.A.Y.Pandule, Advocate for respondent nos.1 to 4

CORAM : R.G. AVACHAT, J.
DATE : OCTOBER 05, 2021

JUDGMENT :-

This is an insurance company's appeal challenging the judgment and award granting compensation on account of death in a vehicular accident. Basically, the challenge is to the quantum of compensation.

2. The Tribunal awarded compensation amounting to Rs.7,14,352/- inclusive of the amount awarded under no fault liability claim. It is the case of the respondents/claimants that the deceased-Vishnu was serving with Dnyaneshwar Sugar Factory. The nature of his employment was seasonal permanent. The deceased would, therefore, work as Mathadi Kamgar.

3. The Tribunal, after considering income of the deceased from his salary as seasonal employee with the sugar factory and income as Mathadi Kamgar, has awarded compensation applying multiplier of 16.

4. Learned counsel for the appellant/insurance company would submit that the Tribunal erred in considering the consolidated

income of the deceased; one in the nature of his salary paid by the sugar factory and other, in the nature of his income from serving as Mathadi Kamgar. Learned counsel would further submit that it was just impossible for the deceased to simultaneously serve with the sugar factory and work as Mathadi Kamgar also. He would further submit that the deceased was 36 years of age. The multiplier applicable would, therefore, be of 15. The Tribunal erred in applying the multiplier of 16. Learned counsel, therefore, urged for reduction of the amount of compensation. According to him, the salaried income of the deceased should alone be considered for granting compensation.

5. Perused the impugned judgment and award. Gone through the relevant evidence. It has been specifically averred by the claimants in the claim petition that the deceased was 36 years of age. He would earn Rs.4708/- per month from salary besides Rs.1200/- per month from Mathadi service. In proof of their claim, two witnesses were examined besides one of the claimants. It is in the evidence of witness no.3 – Maruti that the deceased was in service with Dnyaneshwar Sugar Factory. His salary was Rs.4708/-. He tendered in evidence a certificate indicating annual salary of the

deceased for the period from April, 2000 to March, 2001. As per the said certificate, the deceased was paid Rs.37,232/- towards salary for a period of eight months of the said year. It has also been mentioned in the certificate that the nature of his employment was seasonal permanent. It further appears that the sugar factory used to be closed for at least 4-5 months in a year. The deceased was paid Rs.10,021/- towards retention allowance besides a sum of Rs.5,115/- towards bonus. As such, his total income was Rs.52,368/-. Witness – Maruti was not subjected to detail cross-examination. The entire text of his cross-examination is as under :-

> *" It is true to say that Shri Gund was not permanent employee of the factory. He was the seasonal employee. Today I have not brought the original record. It is not true to say that I have submitted false information."*

There is nothing in the evidence of this witness to suggest that a seasonally permanent employee of the sugar factory is prohibited from serving elsewhere or to work to earn during the period the factory used to be closed. It has, therefore, to be taken that a person who gets work for not more than 7-8 months in a year, would necessarily work somewhere else to earn more. There is nothing in the evidence of witness - Maruti that a seasonally permanent employee was required to report duty at his work place even during the period the factory would remain closed. There was, therefore, nothing wrong on the part of the deceased to work as a Mathadi Kamgar also.

6. Witness no.2 – Dnyaneshwar was examined in proof of the income of the deceased serving as Mathadi Kamgar. It is in the evidence of this witness that the deceased was working as labour. His salary and payment would depend on the nature of work and workload. He tendered in evidence a certificate (Exh.33). It is evident therefrom that the average annual income of the deceased as Mathadi Kamgar was Rs.12,896/-. This witness no.2 was not subjected to extensive cross-examination. What has been deposed to by this witness in his cross-examination is, therefore, reproduced below:-

> " *I have not produced on record authority letter to depose but I am deposing in the capacity as Accountant. It is true to say that there was no fixed salary of the deceased employee."*

Although this witness did not produce authority letter to give evidence in the case, what has been deposed to by him in the examination-in-chief, has not been taken exception to. This witness was none other than the Accountant serving with Ahmednagar Mathadi and Unsecured Labour Board. It, therefore, cannot be assumed that the certificate (Exh.33) is an untrue document. As such, the fact remains that the deceased had two sources of income; one from serving as a seasonal employee with the sugar factory and other from serving as a Mathadi Kamgar. This Court, therefore, did not find any reason to interfere with the Tribunal's considering income of the deceased from both the sources to work out the amount of compensation.

7. True, the Tribunal applied multiplier of 16. The deceased was said to be 36 years of age. In terms of the judgment in the case of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another, (2009)6 SCC 121**, the multiplier in case of death in the age group of 36-40 shall be 15. It may, therefore, appear that the amount of compensation awarded by the Tribunal needs to be reduced. Close reading of the impugned award would indicate that nothing has been awarded towards future prospects. Under the conventional heads, such as, loss of consortium, love and affection, mental agony, etc., a sum of Rs.15,000/- and for funeral

expenses, a sum of Rs.3,000/- have been awarded. The claimants were widow, mother and two minor children of the deceased. In view of the Constitution Bench judgment of the Apex Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and ors., (2017)16 SCC 680** and the judgment in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and ors., (2018)18 SCC 130**, each of the claimants is entitled to have Rs.40,000/- towards loss of love and affection. They are also entitled to receive Rs.30,000/- towards funeral expenses and loss of estate, but, for want of an appeal or a cross-objection for enhancement of compensation awarded by the Tribunal.

8. In the case of **Ranjana Prakash and ors. Vs. Divisional Manager and anr., 2012 AIR SCW 848**, it has been observed by the Apex Court thus:-

> *" .... It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objection."*

As such, even if the Tribunal has erred in applying a wrong multiplier, there would, ultimately, be no reduction in the amount of compensation awarded by the Tribunal. Even for the sake of assumption, if we accept the contention of learned counsel for the appellant-insurance company that the income of the deceased as Mathadi Kamgar should be ignored, there would be no reduction in the amount of compensation granted under the impugned award, for the very reason that the claimants would show that the Tribunal erred in not granting them compensation towards future prospects and for loss of love and affection in terms of the judgment in the case of **Pranay Sethi** (Supra).

9. Thus, the result is one and the same, that is, failure of the appeal. The appeal is dismissed.

10. The amount in deposit, if any, with this Court or the Tribunal, be paid to the claimants with interest accrued thereon. The Civil Application stands disposed of.

[**R.G. AVACHAT, J.**]

KBP