IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1258 OF 2009

1. Khairunnisa Fazlurraheman Ansari
Age: 47 years, Occu: Household

2. Masihurrahman Fazlurraheman Ansari,
Age: 25 years, Occu: Education,
Both R/o H. No.3158, Behind
Dr. Kabre's Hospital, Khatkiwada,
Akbar Chowk, Dhule
Tq. And Dist. Dhule … **Appellants**
(Orig. Claimants)

Versus

1. Shr Mansingh Pokarram
Age: 40 years, Occu: Driver and owner
R/o. i) Bahadurgad, Dist. Jahjjar (Hariyana),
and ii) Asoda, Dist. Jahjjar (Hariyana)

2. The Oriental Insurance Co. Ltd.,
Insurance of Truck bearing
No. HR-69-2790, Police Issuing
Branch – Sonpat, Policy Cover
Note No.936559,
Policy valid for the period 21.10.2006 to
20.10.2007.
(Notice to be served on the Branch Manager
The Oriental Insurance Co. Ltd.,
Branch office, Dhule) … **Respondents**
(Resp. No.1 and 2 are
Orig. resp No. 1 and 2)

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Mr. A. D. Pawar, Advocate for appellants
Mr. A. S. Deshpande and A. A. Puranik, Advocates for respondent No.2

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CORAM : R. G. AVACHAT, J.
DATED : 10th DECEMBER, 2021

PER COURT :-

. This appeal has been preferred by the original claimants for enhancement of compensation granted by the Member, Motor Accident Claims Tribunal, Dhule, in Motor Accident Claim Petition No.74 of 2007. It was a death claim preferred by the legal representatives of the deceased. The respondent - Insurance Company is not in appeal or cross objection.

2. While the impugned award was passed, the judgments of the Apex Court in the case of ***National Insurance Company Limited Vs Pranay Sethi and others – (2017) 16 SCC 680*** and ***Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others – (2018) 18 SCC 130*** were not in the field. The appeal being continuation of the original claim, the same therefore needs to be governed by the directions in the aforesaid judgments.

3. Learned Advocate for the respondent – Insurance Company would submit that the claim was preferred by the widow and major son of the deceased. The son was earning his living and therefore, the widow was the only dependent on the deceased. He, therefore, urged for reduction of half of the income of the deceased towards his personal and living expenses. He would further submit that the deceased died at the age of 57 when he was due for retirement within a year thereof. As such, the learned Advocate urged for application for split multiplier. According to him, some deduction warrants towards income tax. According to him, the amount of compensation awarded, is just and reasonable, no interference is warranted therewith.

4. Considered the submissions advanced. Perused the impugned judgment and award. The deceased was serving as Superintendent with the Maharashtra State Warehousing Corporation. His monthly salary was at Rs.14,885/-. The Tribunal after having considered the deductions towards professional tax and income tax, considered a sum of Rs.12,142/- for working out the amount of compensation. No change is warranted therewith. Since the deceased was in permanent employment and still in the age

group of 50 – 60, 15% thereof is added thereto towards future prospects. This way, his monthly income comes to Rs.13,963/-. The deceased left behind a widow and grown up son. In terms of the directions of the Apex Court judgment in the case of ***Pranay Sethi*** (supra), if the deceased was married and the number of dependents are not more than three, 1/3rd deduction thereof warrants towards his personal and living expenses. After deducting 1/3rd thereof, the loss of dependency would come at Rs.9,308/-.

5. In view of the judgment of the Apex Court in the case of ***Sarla Verma (Smt) and others Vs Delhi Transport Corporation and another – (2009) 6 SCC 121,*** multiplier of 9 has to be applied. Applying the same, the amount of compensation on account of loss of dependency would come at Rs.10,05,357/-. Both the appellants are granted Rs.40,000/- each, towards loss of consortium, love and affection, besides a sum of Rs.30,000/- towards funeral expenses and loss of estate. This amount shall not carry interest *pendente lite.* Thus, the total compensation comes to Rs.11,15,357/- (10,05,357+1,10,000).

6. The appeal was dismissed in default. It has been restored

with an order that the appellants shall not be entitled for interest for the period from 15.06.2010 to 22.11.2019.

7. In view of the above, the appeal is allowed in terms of following order:-

<u>O R D E R</u>

(i) The appeal is allowed.

(ii) The amount of compensation awarded by the Tribunal is enhanced from Rs. 1,82,000/- to Rs.11,15,357/-.

(iii) The sum of Rs.1,10,000/- shall not carry interest *pendente lite* (from the date of petition to the date of this order).

(iv) The claimants shall not also be entitled for interest on the entire amount of compensation for the period from 15.06.2010 to 22.11.2019.

(v) Pending civil applications stand disposed of.

[R. G. AVACHAT, J.]

SMS