IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2934 OF 2019

Cholamandalam General Insurance Company
Limited, Through its Branch Manager,
Welasle Court, C.T.S. No.15, Camp,
Dr. Ambedkar Road, Pune.

Through its Authorized Signatory / Branch Manager
3rd Floor, Oberoy Tower, Civil Lines,
Jalna Road, Opp, Amarpreet Hotel,
Aurangabad … **Appellant**
(Orig. Respondent No.3)

Versus

1. Vijaya Ankush Korde
   Age: 38 years, Occu: Household,

2. Pravin Ankush Korde
   Age: 21 Years, Occu. Education

   Both R/o Khedle Kajali, Tq. Newasa,
   Dist. Ahmednagar

3. Bharat Laxman Ghadge
   Age: Major, Occu. Agriculture,
   R/o. Gadge Vasti, Mohol Road, Devgaon,
   Tq. Pandharpur, Dist. Solapur

4. Ramkrushna Madhavrao Potdar
   Age: 51 years, Occu. Driver
   R/o. Sambhaji Chowk, Chavan Hospital,
   Pandharpur, Dist. Solapur … **Respondents**

(Respdt.No. 1 & 2–Org.Claimants
Respdt.Nos. 3 & 4 – Org.Respd.Nos. 1 & 2)

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Mr. S. G. Chapalgaonkar, Advocate for appellant
Mr. Ram B. Deshpande, Advocate for respondent Nos. 1 and 2

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CORAM : R. G. AVACHAT, J.

DATED : 13th AUGUST, 2021

PER COURT :-

. This is Insurance Company's appeal, challenging the judgment and award dated 15.09.2017, passed by the Member, Motor Accident Claims Tribunal (M.A.C.T.), Newasa in Motor Accident Claim Petition No.16 of 2015, awarding compensation of Rs.11,25,488/- with interest @ 9% p.a. from the date of the petition to the day of realization of the entire amount.

2. FACTS:-

The deceased Ankush was proceeding on his motorbike bearing registration No. MH-17/AB-3417 along Ahmednagar–Aurangabad road. While he was taking turn towards East, the Indica Car bearing registration No. MH-13/AZ-7056, knocked him down. As a result, the deceased died. The widow and the son of the deceased therefore preferred the petition for compensation contending that the deceased was an agriculturist by profession. The deceased would also vend milk, etc.

3. On appreciation of the evidence in the case, the Tribunal found it to be a case of contributory negligence in the proportion of 80:20. The Tribunal considered the monthly income of the deceased at Rs.8,000/- (Agriculture labour Rs.6000 + Rs.2000 towards agricultural supervision). 30% thereof was added towards future prospects. Considering him to be in the age group of 41 – 45 years, multiplier was 13 applied. An amount of Rs.10,81,860 was worked out towards loss of dependency. Towards non pecuniary damages, the Tribunal awarded a sum of Rs.1,00,000/- to the widow, towards loss of consortium, besides Rs.1,00,000/- each towards loss of love and affection. Rs.25,000/- were awarded for funeral expenses.

4. Heard. Perused the impugned award and the evidence relied on.

Shri S. G. Chapalgaonkar, learned Advocate for the appellant – Insurance Company would submit that the deceased himself was riding the motorcycle. The mode and the manner of the occurrence of the accident reveals that, deceased went to wrong direction and gave dash to the car. The Tribunal ought to have therefore considered it to be a case of contributory negligence in equal proportion. He would further submit that the Constitution Bench of the Apex Court in the case of ***National Insurance Company Limited vs Pranay Sethi and others – (2017) 16 SCC 680***, has laid down a concept of standardisation in order to attend uniformality in assessment of compensation towards non pecuniary losses. The amount of compensation to be awarded under this head has been quantified at Rs.70,000/-. The Tribunal has awarded it to Rs.3,25,000/-. The learned Advocate would further submit that the deceased left behind his agricultural land. The same has inherited by the claimants. The claimants continue to receive income from agriculture even after demise of the deceased. In this view of the matter, the Tribunal should only have awarded compensation on account of loss of supervision. In addition to agricultural income, the Tribunal considered Rs.2,000/- per month towards loss of supervision charges. The same is excessive and exorbitant. The learned Advocate would further submit that the widow of the deceased could only be termed to be a dependent of the deceased. Claimant No.2 was the major son of deceased. He was not dependent on the income of the deceased. The Tribunal, therefore, should have deducted half of the income of the deceased towards his personal and living expenses, instead of 1/3rd. The learned Advocate would further submit that the prevailing rate of interest awarded by Nationalised Banks is in between 6.5% to 7% per annum. The Tribunal has awarded interest at the rate 9% per annum. The same therefore needs to be scaled down. Learned Advocate for the appellant – Insurance Company relied on the following judgments:

(i) *T. O. Anthony vs. Karvarnan and others – (2008) 3 SCC 748;*

(ii) *Nishan Singh and others vs. Oriental Insurance Company Limited Through Regional Manager and others – (2018) 6 SCC 765.*

5. Shri Ram Deshpande, learned Advocate for the claimants would, on the other hand, submit that there is evidence to indicate the deceased was a milk vendor and had income therefrom. The learned Advocate reiterated the reasons given by the Tribunal in support of the impugned award.

6. The evidence on record undoubtedly indicate that the deceased had already taken a turn towards East. The Tribunal observed the accident took place in the slow lane. As per the panchanama of the spot of the accident, the car moved on to the eastern edge of the road. The same indicate the car driver tried to

avoid the accident. It further observed that when accident took place in the slow lane, the car driver had sufficient time to avoid the accident, as he could see the deceased at a long distance. Had the car been in moderate speed, accident could have been avoided. It further observed that the deceased was also required to take care while crossing the highway. In view of the scene of accident panchanama, the Tribunal held it to be a case of contributory negligence in proportion of 80:20. I do not see any reason to defer with the said finding and enhance the proportion or percentage of contributory negligence on the part of the deceased.

7. The deceased was an agriculturist by profession. True, on his demise, the agricultural land has been inherited by the claimants. The fact however remains that the deceased must have personally been engaged in agricultural operations. It is a case of accident that took place in January 2015. It has to be assumed that in those days minimum wages of agricultural labour must have been not less than Rs.200/- per day. The Tribunal has therefore rightly considered the notional income of the deceased at Rs.6,000/- per month. True, the Tribunal, therefore, ought not to have considered Rs.2000/- per month towards loss of supervision charges. This Court

could have preferred to ignore the same, but for evidence on record to indicate that the deceased would rear mammals. He would supplied milk to a local dairy. The Tribunal has not considered his income from milk vending. Needless to mention the claimants though not preferred appeal or cross objection, can still rely on evidence in the case which has not been referred to by the Tribunal, to support the impugned award. In view of the same, I do not propose to interfere with the quantum of compensation awarded towards loss of dependency.

8. In view of the Judgment of the Apex Court in the case of ***Pranay Sethi*** (supra), the widow of the deceased would be entitled to a sum of Rs.40,000/- towards loss of consortium. The Tribunal has awarded her a sum of Rs.1,00,000/-. The same, therefore, needs to be scaled down to Rs.40,000/-. When the widow has been awarded compensation on account of loss of consortium, the Tribunal ought not to have awarded a further sum of Rs.1,00,000/- on account of loss of love and affection. The son has also been awarded an equal amount of compensation under the same head. The son, however, would be entitled to a sum of Rs.40,000/- towards loss of love and affection in view of the Apex Court's judgment in the case of ***Magma***

General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others – (2018) 18 SCC 130.

9. As such, interference with the impugned award granting Rs.3,00,000/- towards loss of consortium and love and affection, needs to be made scaling it down to Rs.40,000/- each. The interest at the rate 9% p.a. also happens to be on higher side. The same needs to be reduced to 7.5%.

10. As such, the claimants would only be entitled to a sum of Rs.80,000/- (Rs.40,000/- each) towards loss of consortium and love and affection. Here, the Tribunal has awarded them a sum of Rs.3,00,000/-. A sum of Rs.2,20,000/- would therefore be deducted from the total amount of compensation granted. Here, it is to be noted that already 20% thereof has been deducted on account of contributory negligence on the part of the deceased. Hence, a sum of Rs.1,76,000/- only needs to be subtracted. This way, the total amount of compensation comes to Rs.9,49,488/-. The rate of interest is reduced to 7.5%.

11. In view of above, the appeal is partly succeeds. Hence, following order:-

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

(i) The appeal is partly allowed. The impugned award is modified as under.

(ii) In Clause 2 of the impugned award, a sum of Rs.11,25,488 (Rupees Eleven Lakh Twenty Five Thousand Four Hundred Eighty Eight) is replaced with a sum of Rs.9,49,488/- (Rupees Nine Lakh Forty Nine Thousand Four Hundred Eighty Eight) and interest 9% p.a. appearing therein is replaced by 7.5% p.a.

(iii) The amount in deposit, if any, with this Court or the Tribunal, be paid to the claimants along with interest accrued thereon. The balance amount, if any, be paid back to the appellant – Insurance Company.

[R. G. AVACHAT, J.]

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