IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1958 OF 2020

Divisional Officer,
United India Insurance Company,
Divisional Office, Above Axis Bank,
Osmanabad, through its
Authorised Signatory, United India
Insurance Company, T.P. Hub,
Osmanpura, Aurangabad … APPELLANT

VERSUS

1. Shashank Shrikant Modi,
   Age 24 years, Occ. Education,

2. Prachi Shrikant Modi,
   Age 26 years, Occ. Education,

3. Sow. Smita Amol Bhadule,
   Age 32 years, Occ. Household,
   R/o Karve Nagar, Pune

4. Sow. Neha Shirish Tabe,
   Age 29 years, Occ. Household,

   Nos.1, 2 and 4 R/o Laxmi Nagar,
   Kalamb, Tq. Kalamb,
   District Osmanabad

5. Shaikh Salim Shaikh Khalil,
   Age major, Occ. Business,
   R/o Neknur, Tq. & Dist. Beed. … RESPONDENTS

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Shri A.S. Usmanpurkar, Advocate for appellant
Shri P.S. Chavan, Advocate for respondents No.1 to 4

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CORAM : R. G. AVACHAT, J.

DATED : 9th AUGUST, 2021

<u>J U D G M E N T</u> :

Admit. Taken up for final hearing with the consent of learned counsel for the parties.

2. This is an appeal under Section 173 of the Motor Vehicles Act (MV Act). The appeal has been filed by the Insurance Company, original respondent No.2, taking exception to the award dated 7/2/2020, passed by the Motor Accident Claims Tribunal (Tribunal), Osmanabad in Motor Accident Claim Petition (MACP) No.64/2016. By the impugned award, the appellant and the respondent No.5, original respondent No.1, have been directed to pay the respondents No.1 to 4 (claimants) a sum of Rs.19,35,000/- with interest @ 7% p.a. thereon from the date of petition to the date of payment of the entire amount.

3. A short question that is involved in this appeal is as to whether the Tribunal was justified in deducting only one fourth of the pension of the deceased Shrikant towards personal and living expenses.

Deceased Shrikant admittedly died in the accident involving motor vehicle. The deceased was 59 years of age when he breathed his last. He was a retired Instructor with

Industrial Training Institute, Kalamb. The deceased would draw a monthly pension of Rs.21,418/-. The wife of the deceased died in the same accident. Both have been survived by the claimants, a son and three daughters. Admittedly, two of the daughters have already been married before the accident. The Tribunal held the annual income of the deceased at Rs.2,52,000/- (Rs.21000 per month). It preferred to deduct one fourth thereof i.e. Rs.63,000/- towards personal and living expenses (2,52,000 – 63,000). The annual income of the deceased was thus fixed at Rs.1,89,000/- for calculating the amount of compensation. Since the deceased died at the age of 59 years, a multiplier of 9 was applied. Thus, the amount of compensation was worked out at Rs.17,01,000/-. In addition thereto, the claimants were awarded Rs.1,61,154/- towards reimbursement of medical expenditure, Rs.70,000/- for funeral expenses and loss of love and affection.

4. Learned counsel for the appellant Insurance Company would submit that, two of the claimants were married daughters of the deceased. Those could not be termed to be the dependents on the income of the deceased. According to learned counsel, the Tribunal ought to have deducted 50% income of the deceased towards personal and

living expenses. Learned counsel would further submit that, the claimants being adult, were not entitled to receive family pension on the death of their father. The Tribunal, therefore, ought to have taken into consideration a fixed sum of money as notional income of the deceased. The learned counsel, therefore, urged for reworking out the amount of compensation.

5. Learned counsel for the respondents – claimants would, on the other hand, submit that, the Tribunal has not added 15% of the established income of the deceased towards future prospects. With a view to defend the award passed in favour of the claimants, they are very much entitled to point out mistake committed by the Tribunal in calculating the compensation. According to learned counsel, even the married daughters could be the dependents, entitled for compensation under Section 166 of the MV Act. Learned counsel relied on the following authorities :-

(1) Gujarat State Road Transport Corporation, Ahmedabad V/s Ramanbhai Prabhatbhai and another [AIR 1987 SC 1690]

(2) National Insurance Company Ltd. Vs. Pranay Sethi & ors. [AIR 2017 SC 5157]

(3) Ranjana Prakash & ors. Vs. Divisional Manager & anr. [2011 ACJ 2418]

(4) Smt. Satva Devi & anr. Vs. Mr. Nihal Singh & ors.
[2005(2) Sim.L.J.1038]

(5) The Managing Director, Karnataka State Transport Corporation Limited Vs. P. Selvi & ors.
[2020(1) T.N.M.A.C. 26]

6. The claimants No.3 and 4 are married daughters of the deceased. These daughters, therefore, could not be said to have been the dependents on the income of the deceased. The claimants No.1 and 2 are major, taking education. The deceased was 59 years of age when he breathed his last. He was a retired Instructor, drawing monthly pension of Rs.21,418/-. The Constitution Bench of the Hon'ble Supreme Court of India, in case of Pranay Sethi (supra), has observed :-

> "In our view, the standards fixed by this Court in Sarla Verma on the aspect of deduction for personal living expenses in paras 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out."

7. In view of the above, the Tribunal ought to have deducted 50% of the monthly pension of the deceased towards his personal and living expenses. It also ought to have considered the exact figure of pension i.e. Rs.21,418/-.

The submission of the learned counsel for the appellant Insurance Company that on the demise of deceased Shrikant Modi, the claimants being his grown up children, were not entitled to receive family pension, could not be accepted because, had the deceased not met with the accident, his pension would have been available for claimants No.1 and 2 for their necessities in the life. As such, for determining the amount of compensation, annual income of the deceased comes to Rs.21,418 x 12 = Rs.2,57,016/-. The Tribunal did not make addition towards future prospects. In view of the directions in case of Pranay Sethi (supra), whether the deceased was self-employed on a fixed salary, addition should be of 10% of the established income when the deceased was between the age group of 50 – 60 years. It was on account of future prospects. The deceased was a retired employee, drawing a fixed pension, not entitled to any annual increment or pay revision except Dearness Allowance. In my view, therefore, the Tribunal ought to have added 10% of the established income of the deceased towards future prospects. As such, by addition of 10% of Rs.2,57,016/- i.e. Rs.25,702/-, the total comes to Rs.2,82,718/-. After deducting 50% of the amount towards personal and living expenses of the deceased, the amount comes to Rs.1,41,359/-. Applying the multiplier of 9 to this amount, the amount of compensation on account of loss of dependency comes to Rs.12,72,231/-. The Tribunal has awarded a sum of Rs.1,61,154/- towards reimbursement of medical expenditure and Rs.70,000/- for funeral expenses and loss of love and affection. There is no reason to interfere with grant of this much amount of compensation under these two heads.

8. In view of the above, the impugned award is modified as under :

(i) The figure Rs.19,35,000/- appearing in clause (B) and clause (D) of the impugned award is replaced by the figure Rs.15,03,385/-. The figure Rs.3,00,000/- appearing in clause (D) of the impugned award is replaced with the figure Rs.2,00,000/-. Rest of the terms of impugned award to stand unaltered.

(iii) The amount of compensation deposited either with this Court or the Tribunal, be paid to the claimants in terms of this award immediately, and the balance amount, if any, be paid back to the appellant Insurance Company.

(R. G. AVACHAT)
JUDGE

fmp/-