IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2833 OF 2019

The Oriental Insurance Co. Ltd.,
Through its Br. Manager,
Branch Office, near D.C. Petrol Pump,
Jalna, Dist. Jalna
Through its authorized signatory,
Administrative Officer, D. O. I.,
Oriental Insurance Co. Ltd. Aurangabad … APPELLANT
Orig. Resp.No.3

Versus

1. Bhanudas Bhimrao Gore
Age: 56 Yrs. Occ. Labour
R/o Watur Phata, Ta. Partur
Dist. Jalna .. Orig. Claimant

2. Abdul Kalim S/o Abdul Razzak
Age. 49 Yrs. Occ. Driver
R/o. House No. 4-5-90, Rengtipura
Old Mondha, Aurangabad

3. Prajesh Rana S/o Anil Rana
Age 54 Yrs., Occ. Business & Owner
R/o Rana Niwas, Basmati House,
House No. 4-17-10 Rengtipura
Ols Mondha, Aurangabad … RESPONDENTS
Orig.Claimant & Resp.Nos. 1 to 2

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Mr. Dhananjay P. Deshpande, Advocate for appellant
Mr. S. D. Tawshikar, Advocate h/f Mr. V. Y. Patil, Advocate for respondent No.1
Mr. U. M. Maske Patil, Advocate h/f Mr. S. B. Ghatol Patil, Advocate for respondent Nos. 2 and 3

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 05th AUGUST, 2021
PRONOUNCED ON : 18th AUGUST, 2021

J U D G M E N T :-

. The challenge in this appeal is to the award dated 24.04.2019, passed by the Ex Officio Member, Motor Accident Claims Tribunal (M.A.C.T.), (for short 'the Tribunal') Jalna in Motor Accident Claim Petition (M.A.C.P.) No.205 of 2015. By the impugned award, the appellant – Insurance Company, the vehicle owner and its driver, original respondent Nos. 1 and 2 have been directed to pay, jointly and severally a sum of Rs.3,93,000/- with 7% interest per annum thereon from the date of filing of M.A.C.P. to the date of payment to the respondent No.1 herein (original claimant). The Insurance Company has, therefore, preferred the present appeal.

2. FACTS:

The deceased Sakharam Gore died in the accident on 06.10.2015 involving the motor vehicle, Car bearing No.MH-20-BY-9998. The accident took place due to rash and negligent driving of the car by respondent No.2 herein. The car belonged to respondent No.3. It had the insurance cover granted by the appellant Insurance Company.

3. The deceased died bachelor. The claim was preferred by his real brother. On appreciating the evidence in the case, the Tribunal awarded compensation of Rs.3,93,000/- assuming monthly income of the deceased to be Rs.5,000/- per month. 10% was added therein on account of future prospectus. Thus, the income of the deceased was taken of Rs.66,000/- per annum. The amount of compensation after applying multiplier of 11 was worked out at Rs.7,26,000/- (Rupees Seven Lakh Twenty Six Thousand). Since the deceased died bachelor, 50% thereof came to be deducted towards standardise deduction. The claimant was awarded Rs.30,000/- towards funeral expenses and loss of estate. Thus the amount of compensation came to Rs.3,93,000/-.

4. Shri Dhananjay Deshpande, learned Advocate for the Insurance Company would submit that the claimant was not dependent on the deceased. The Tribunal, therefore, ought not to have granted him compensation on the ground of loss of dependency. Learned Advocate took me through the impugned award and also relied on the judgment of the Hon'ble Supreme

Court in the case of ***National Insurance Company Limited Vs. Birender and others – (2020) 11 SCC 356.*** Learned Advocate, therefore, urged for allowing the appeal.

5. Shri Tawshikar, learned Advocate for the claimant would, on the other hand, submit that although the deceased died bachelor, he was residing along with the claimant. Both were serving in one and the same employer. The claimant and his family members would provide the deceased daily meal and took his care. The deceased was contributing his substantial income for the family of the claimant. As such, due to the untimely death, the claimant has suffered financially and emotionally, as well. The learned Advocate urged for enhancement of the quantum of compensation. According to him, the Tribunal has not granted 10% hike. It has also not granted compensation on account of consortium. In view of learned Advocate, in terms of directions given by the Constitution Bench in the case of ***National Insurance Company Limited Vs Pranay Sethi and others – (2017) 16 SCC 680***, the Tribunal ought to have granted compensation as has been urged by him. According to him, the Appellate Court would be justified in enhancing compensation in spite of there being no cross appeal or even cross objection, as well.

He also urged for enhancing the rate of interest from 7% to 9%. Learned Advocate has relied on the following judgments.

(1) The New India Assurance Company Limited Vs. Rajni Harshwardhan Sharma and Ors – MANU/MH/2036/2015;

(2) United India Insurance Company Limited and Ors Vs. Kunti Binod Pande and Ors – MANU/MH/3536/2019;

(3) Annapurna and Ors Vs. Jaspal and Ors – MANU/MH/1630/2019;

(4) Magma General Insurance Co. Ltd., Vs. Nanu Ram and Ors – MANU/SC/1012/2018.

6. Section 166 (1) (c) of the Motor Vehicles Act, 1988 (M.V. Act) reads thus:

> "***166. Application for compensation. -*** *(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made -*
>
> *…………*
>
> *…………*
>
> *(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased*".

7. The deceased died bachelor. The claimant being real brother of the deceased, being his Class-II heir, is a legal representative of the deceased. He is, therefore, entitled to file application under Section 166 of the M.V. Act.

8. The question is whether the claimant was justified in claiming compensation on account of loss of dependency. In ***Birender's case (supra)***, the Hon'ble Supreme Court in para 14 has observed thus :

> "***14.*** *It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only.*"

9. It has been averred in para 3 of the M.A.C.P. that both the claimant and the deceased were serving with one and the same employer. The deceased was serving as a Watchman at an average monthly pay of Rs.5,000/-. Since the deceased was bachelor, and his parents having been already passed away, he was staying with the claimant as one of his family members. The deceased would contribute a sum of Rs.150/- to Rs.170/- daily to the claimant's family. Since income of the claimant was meager and the cost of leaving was high, the claimant was dependent on the income of the deceased. As such, a case of dependency was averred in the M.A.C.P.

The claimant filed his affidavit of evidence Exh.19 reiterating the very averments. I have carefully perused the cross examination of the claimant to find that the appellant – Insurance Company has not disputed the said evidence. As such, the learned Advocate for the appellant – Insurance Company would not be justified in contending that the claimant was not dependent on the income of the deceased and therefore, the compensation granted on that count needs to be set aside. True, the claimant might not have been wholly dependent on the income of the deceased.

10. Learned Advocate for the claimant may be right so far as regards legal proposition is concerned. The Appellate Court can enhance compensation in appeal preferred by the Insurance Company or owner/driver, challenging the award granting compensation without there being an appeal by the claimant for enhancement or cross objections. I do not propose to dwell at length on this issue, since I find the amount of compensation granted by the Tribunal to be adequate and just, although under one or the other head, the Tribunal has not granted any compensation. Section 168 of the M.V. Act reads :

> "***168. Award of the Claims Tribunal. -*** *(1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 163 may make an award determining the amount of compensation <u>which appears to it to be just</u> and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:*
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> ……………….
> ………………."

11. What is a just compensation is a question of fact in the fact and circumstances of each case. In the present case, though there being no concrete evidence about income of the deceased, the Tribunal assumed his income at Rs.5,000/- per month as had been claimed by the claimant. The claimant himself being gainfully employed, was thus not wholly dependent on the deceased. Still complying all the parameters, the Tribunal has awarded the claimant a just and adequate compensation. True, on account of loss of love and affection, no compensation has been awarded.

12. So far as regards prayer for enhancement of the rate of interest is concerned, the same can be granted considering prevailing

rate of interest awarded by the nationalized or scheduled banks. During the economic scenario, that was prevailing when the impugned award was passed, the rate of interest granted by nationalized banks on fixed deposit was not more than 7% per annum. The Tribunal has awarded interest at the same rate. There is, therefore, no need to grant interest at the rate more than the one granted by the Tribunal.

13. In the result, the First Appeal fails. The same is dismissed.

14. The amount of compensation in deposit with this Court be paid to the claimant with interest accrued thereon, immediately.

15. Civil application Nos. 9996 of 2019 and 14295 of 2019, are disposed of.

[R. G. AVACHAT, J.]

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