IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2476 OF 2010

1. Nandkumar s/o Kishanrao Dudhewar,
age 53 years, Occu. Service,
R/o Umarkhed, Tqa. Umarkhed,
District Yeotmal

2. Bhagirathibai w/o Kishanrao Dudhewar
(Abated as Dead) … APPELLANTS

VERSUS

1. Babu s/o Bhiwaji Mantri,
Age years, Occu.
R/o Nagewadi, Tq. & Dist. Jalna

2. Dr. Gopikishan s/o Mangilal
Bangad, Age major, Occu. Doctor,
R/o partur, Tq. Partur, Dist. Jalna

3. United India Insurance Co. Ltd.
through its Branch Manager
Parbhani, Dist. Parbhani … RESPONDENTS

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Shri Sachin S. Deshmukh, Advocate for appellants
Shri V.P. Golewar, Advocate for respondents No.1 and 2
Shri S.G. Chapalgaonkar, Advocate for respondent No.3.

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CORAM : R. G. AVACHAT, J.

DATE : 6th September, 2021

O R D E R :

This is an appeal under Section 173 of the Motor Vehicles Act. The appeal has been preferred by the original claimants for enhancement of compensation granted by the

Chairman, Motor Accident Claims Tribunal, Parbhani vide judgment and order dated 30/6/2009, passed in Motor Accident Claim Petition No.15/1990. The appellants have been granted compensation amounting to Rs.1,05,000/-, to be paid within 30 days from the date of impugned award, lest it shall carry interest @ 6% p.a. till realisation of the entire amount. This appeal has, therefore, been filed both for enhancement of quantum of compensation and grant of interest from the date of petition to the date of realisation of the amount.

2. The appeal has a chequered history. Deceased Kisanrao died in an accident involving motor vehicle on 28/8/1989. It so happened that, the deceased along with his friend and family members of both of them were on way to Pandharpur in ill-fated jeep- MXV-4721. The jeep belonged to the respondent No.2 herein, a friend of the deceased. The jeep was said to have been borrowed for pilgrimage. On the way to Pandharpur, a rear wheel of the jeep got dislocated all of a sudden. As a result, the deceased was thrown out of the jeep. He suffered multiple injuries. He was rushed to the hospital, but declared dead on admission.

3. The widow and the son (original petitioners), therefore, preferred the claim petition for compensation. The Tribunal allowed it on 19/10/1992, awarding compensation of Rs.35,000/- with interest @ 12% p.a. The respondent Insurance Company, however, was absolved of its liability. The claimants, therefore, preferred appeal against the judgment and award dated 19/10/1992. Cross-objections were also preferred in the said appeal by original respondents No.1 and 2. This Court, vide order dated 10/2/2009, allowed the appeal, remanding the matter back to the Tribunal to decide it afresh. The Tribunal thereafter allowed the petition, granting the appellants herein compensation of Rs.1,05,000/- to be paid within a period of 30 days, lest it shall carry interest @ 6% p.a.

4. Heard. Shri Sachin S. Deshmukh, learned counsel for the appellants would submit that, the deceased was a pensioner of 59 years of age. The deceased was agriculturist by profession post retirement. He was also an estate agent. Monthly income of the deceased was Rs.3000/-. The petition was filed by the widow and a minor son. The widow passed away six years after filing of the claim petition. The amount of compensation has been granted without application of the

set formula. Nothing has been awarded towards future prospects and under other conventional heads as well. The learned counsel, therefore, urged for grant of just compensation.

5. Shri Chapalgaonkar, learned counsel for the respondent Insurance Company would, on the other hand, submit that, the deceased was pensioner. His widow passed away pending the claim petition. Within a few years, the son became major. As such, the dependency of the son did not last for more than six years. According to him, amount of compensation, which has been awarded is more than the one which could have been worked out on application of the set formula. According to him, the deceased was 59 years of age, drawing pension. According to him, no case is made out for interference with the impugned judgment and award.

6. Admittedly, the deceased died in a vehicular accident way back in 1989. the deceased was 59 years of age, a pensionery, drawing pension of Rs.1000/-. The petition was filed by his widow and a minor son. The widow passed away six years after filing of the petition. In the first round of hearing of the claim petition, the Tribunal had awarded a sum

of Rs.35,000/- towards compensation. As stated above, the said award came to be set aside, remanding the matter back to the Tribunal.

7. Considering the annual income of the deceased at Rs.12,000/-. 15% of his annual income is added thereto on account of future prospects. Here the future prospects may be in the nature of increase in Dearness Allowance and revision in pension. After adding 15%, the annual income of the deceased comes to Rs.14,800/-. Since the deceased was in the age group of 50 to 60, applying the multiplier of 9, the amount comes to Rs.1,24,200/-. One third thereof is to be deducted towards personal and living expenses which comes to Rs.41,400/-. After deducting the same, the amount comes to Rs.82,800/-. On the basis of this calculation, it may sound that the amount of compensation granted by the Tribunal is in excess of a just compensation to which the appellants are entitled to. It is, however, the case of the appellants that the deceased was doing agriculture and was an estate agent too. A 7/12 extract of the agricultural land was placed on record before the Tribunal. Moreover, no compensation has been awarded on account of loss of estate, funeral expenses and loss of consortium. Instead of working out additional

compensation in terms of the set formula, I propose to make some departure therefrom and grant a sum of Rs.50,000/- in addition to what has already been awarded under the impugned award.

8. The Tribunal has not awarded any interest on the amount of compensation from the date of petition to the date of award. It has directed to pay interest @ 6% p.a. on the amount of compensation if the same is not paid within a period of one month from the date of the impugned award. The Tribunal has not assigned any reason as to why it declined to grant interest from the date of the claim petition.

9. In case of **Smt. Chameli Wati and another V/s Delhi Municipal Corporation [1986 AIR (SC) 1191]**, Hon'ble Supreme Court observed :-

> "2. We are of the view that the Division Bench of the High Court erred in the exercise of its discretion under Section 110CC of the Motor Vehicles Act, 1939 in not awarding interest on the amount of compensation finally determined by it from the date of the application. It is undoubtedly true that under Section 110CC, the Division bench of the High Court had discretion to award interest at such rate and from such date not earlier than the date of the application as it may think fit in the

> exercise of its direction. But it is well settled that every discretion conferred by statute must be exercised judicially on the basis of the facts and circumstances of a particular case. Here when the learned Single Judge enhanced the amount of compensation, he awarded interest on the enhanced amount @ 6% per annum from the date of his judgment and the Division Bench also when it further enhanced the amount of compensation, directed that interest at the rate of 6% per annum be paid on the enhanced amount from the date of its judgment and not from the date of the application. The learned Single Judge as well as the Division Bench totally ignored the fact that the enhanced amount of compensation awarded by them was in their judgment the correct amount of compensation payable to the appellants on account of the death of the deceased resulting from the accident. The learned Single Judge and the Division Bench should have therefore awarded interest on the enhanced amount of compensation from the date of the application."

10. From the facts and circumstances of the case, it does appear that the appellant is the sufferer. The impugned award indicates that, it is the respondent Insurance Company alone which has been directed to pay the amount of compensation. The Insurance Company did not challenge the impugned award. This Court has, therefore, no option but to direct the respondent Insurance Company alone to pay the total amount of Rs.1,55,000/- as compensation with interest @ 7% p.a. from the date of application to the date of

payment of the entire amount. For the reasons given hereinabove, the appeal is allowed in terms of the following order :-

O R D E R

(i) The appeal is allowed.

(ii) The impugned award is modified, directing the respondent Insurance Company to pay total amount of Rs.1,55,000/- as compensation with interest @ 7% p.a. thereon from the date of application to the date of payment of the entire amount. The amount which has already been paid/ deposited, be given due adjustment.

(R. G. AVACHAT)
JUDGE

fmp/-