IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2414 OF 2020

The Oriental Insurance Co. Ltd.,
D.O. Near Old S.T. Stand, Railway Station Rd.,
Ahmednagar,
Through its Divisional Manager
Adalat Road, Aurangabad … Appellant
(Orig. Resp.No.2)

Versus

1. Mahadev Barikrao Didul
Age 28 yrs., Occu. Service

2. Kum. Dipali Mahadev Didul
Age 5 yrs., Occu. Education

3. Kumar Tejas Mahadev Didul
Age 4 yrs., Occu. Nil.

Resp No.1 is father and guardian of minor Resp nos.2 & 3

All r/o Chumbhali Tq. Patoda Dist. Beed
At present r/o Malewadi, Tq. Maval, Dist. Pune

4. Sandeep Jagannath Sanap
Age major, occu. Business,
r/o At Post Bhayal,
Tq. Patoda, Dist. Beed … Respondents
(Resp Nos. 1 to 3 – Orig. Claimants
Resp No.4 – Orig. Resp. No.1)

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Mr. Dhananjay Deshpande, Advocate for appellant
Mr. Umakant U. Wagh, Advocate for respondent Nos. 1 to 3

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CORAM : R. G. AVACHAT, J.
DATED : 13th AUGUST, 2021

PER COURT :-

. The appellant – The Oriental Insurance Company Limited, has preferred this appeal, challenging the judgment and award dated 31.01.2011, passed by the Member, Motor Accident Claims Tribunal (M.A.C.T.) (for short, 'the Tribunal'), Ahmednagar in Motor Accident Claim Petition (M.A.C.P.) No.470 of 2006. Vide impugned judgment and award, the M.A.C.T. has awarded a sum of Rs.4,23,000/- as compensation together with 6% p.a. interest thereon from the date of petition to the date of realization on account of death of Avidha, wife of respondent No.1 Mahadev and mother of respondent Nos.2 and 3.

2. Heard.

Shri Dhananjay Deshpande, learned Advocate for the appellant – Insurance Company would submit that the vehicle involved in the accident was a goods vehicle. The deceased was travelling therein as a paid passenger. The evidence of the claimant indicates that he was unaware of the name of the driver of the offending vehicle. As such, the claimant's evidence that the driver was of his acquaintance, is untrue. He therefore urged for setting aside of the impugned award so far as regards appellant – Insurance Company is concerned.

3. Shri Umakant Wagh, learned Advocate for respondent Nos. 1 to 3 would, on the other hand, submit that the insurance policy covers the risk of gratuitous passengers. On the question of quantum, the learned Advocate would submit that the multiplier has been wrongly applied. Inadequate compensation has been granted under other heads, as well. He, therefore, urged for enhancement of compensation. According to him, the Tribunal has statutory duty to grant just compensation even there being no cross appeal or cross objection preferred by the claimants for enhancement of compensation.

4. Admittedly, the deceased – Avidha, along with her husband and children (respondent Nos. 1 to 3) was travelling in tanker bearing No. MH-23-4461. All of them were sitting in the cabin of the tanker. The tanker dashed against a road side tree. As a result, Avidha died.

5. It is true that it was a goods carriage vehicle. The evidence of the claimant that the driver of the tanker was of his acquaintance appears to be untrue, since he could not give the name of the tanker driver. However, there is nothing to indicate that the deceased and the claimants were travelling as paid passengers (fare paying). The policy of insurance Exh.36 indicates the appellant – Insurance Company to have charged Rs.75/- towards non fare passengers. The same indicates it to have granted insurance cover to non fare passengers. It has already been observed above that there is no evidence to indicate the deceased to have been travelling as paid passenger. Since the contract of insurance covers the risk of gratuitous passengers, the appellant – Insurance Company cannot be heard to say to have no liability to pay any compensation. The Appeal, therefore, fails.

6. Learned Advocate for the claimants-respondents urged for enhancement of compensation. According to him, the compensation awarded by the Tribunal is grossly inadequate.

7. The claim was made by the husband and two minor children of the deceased - Avidha. The deceased was said to be 24

years of age while she breathed her last. The Tribunal worked out the amount of compensation considering the notional income of the deceased at Rs.3,000/- per month. According to the claimants, the deceased was doing tailoring work. For want of cogent evidence, the Tribunal was justified in taking into consideration of Rs.3,000/- per months as notional income. 1/3rd thereof was deducted towards personal and living expenses of the deceased. As such, annual loss of dependency was worked out at Rs.24,000/-. Applying the multiplier of 17, a sum of Rs.4,08,000/- is granted towards loss of dependency. A sum of Rs.15,000/- has been granted towards loss of consortium, loss of estate and funeral expenditure etc.

8. It is true that the amount of compensation awarded, has to be in consonance with the directions of the Apex Court in the case of ***Sarla Verma and others vs. Delhi Transport Corporation and another – (2009) 6 SCC 121*** and in the case of ***National Insurance Company Limited vs. Pranay Sethi and others – (2017) 16 SCC 680.*** This Court is aware of its duty to grant just and adequate compensation. In the case in hand, the claimant had claimed compensation of Rs.3,00,000/-. True, they had reserved their right to claim more. On appreciation of evidence in the case, the Tribunal

granted Rs.1,23,000/- more than claimed in the petition. One of the claimants is the husband of the deceased. He could not be said to have wholly been dependent on the deceased. Other two claimants are the minor children, only dependent on their father.

9. Learned Advocate has relied on the judgment of the Hon'ble Apex Court in the case of ***Andhra Pradesh State Road Transport Corporation and another vs. M. Ramadevi and others – (2008) 3 SCC 379*** and the judgment of this Court in the case of ***New India Assurance Company Ltd. vs. Seema Sudam Auti and others – 2017(6) Mh. L.J. 828,*** to submit that the Court can award compensation more than one granted by the Tribunal, in spite of there being no appeal or cross objection.

10. In view of this Court, the amount granted by the Tribunal is quite reasonable.

11. In case of ***Ranjana Prakash & Ors vs. Divisional Manager & Anr. - 2012 AIR SCW 848,*** it has been observed thus:

> *"....... It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objection."*

Moreover, in case of ***Shivawwa and another vs. Branch Manager, National India Insurance Company Ltd. and another – 2019(1) Mh.L.J. 1,*** it has been observed thus:

> "***(b) Motor Vehicles Act (59 of 1988), SS. 168 and 149 -*** *Appeal to set aside decision of High Court in first appeal preferred by insurer – High Court exonerated insurer from any liability vis-a-vis award against respondents – Appellant – claimants did not file an appeal for enhancement of compensation amount against that part of award passed by Tribunal nor chose to file any cross-objection in first appeal – Not appropriate for Court to consider – Therefore, plea regarding quantum of compensation cannot be raised for first time by appellant – claimants before Supreme Court.*"

12. In view of this Court, the appellate Court cannot enhance the amount of compensation unless claimants file appeal or cross-objection therefor.

13. For the aforesaid reasons, the First Appeal is dismissed.

14. The amount in deposit, if any, with this Court or the Tribunal, be paid to the claimants immediately.

15. Civil Application No.6928 of 2020 is disposed of.

[R. G. AVACHAT, J.]

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