AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL ST. NO. 5465 OF 2020
WITH
INTERIM APPLICATION NO. 3654 OF 2020
IN
FIRST APPEAL ST. NO. 5465 OF 2020

Reliance General Insurance Co Ltd ...Appellant

Versus

Smt. Tuljibai Mahadev Rukumpur & Ors ...Respondents

INTERIM APPLICATION NO. 3839 OF 2021
IN
FIRST APPEAL ST. NO. 5465 OF 2020

Smt. Tuljibai Mahadev Rukumpur & Ors ...Applicants

Versus

Reliance General Insurance Co Ltd ...Respondent

Mr. Nikhil Mehta, i/b KMC Legal Venture, for the Appellant & Applicant in IA/3654/2020.

Mr. B.V. Kamble, for the Respondents in FA & for the Applicants in IA/3839/2021.

CORAM: Smt. Bharati Dangre, J.

DATED: 7th December 2021

P.C.:-

1. The Appeal itself deserve to be rejected on the short point which is sought to be argued by Mr. Mehta, on behalf of the Appellant, being that the parameters laid down in the Constitution Bench decision in case of ***National Insurance Co. Ltd v Pranay Sethi***, cannot be made applicable, since the accident took place prior to the said decision, though the Applicant/Claimant filed Interim Application No. 3839 of 2021 seeking withdrawal of the decretal amount.

2. On 26.10.2021 an indication was given to the parties that the Appeal itself will be heard finally on condoning the delay. Stay was also granted subject to deposit of decretal amount and it is informed that the Appellant has deposited the entire decretal amount subject to which the impugned judgment is stayed.

3. The claim before the Motor Accident Claims Tribunal, Mumbai was instituted by the widow and children of one Mahadev Laxman Rukumpur who was working as a labour in one Thakur Air Conditioning Company, Govandi, Mumbai and it was claimed that he was earning Rs. 10,000/- per month. He succumbed to the serious burn injuries sustained by him in a vehicular accident, which took place on 04.03.2013. He could not survive the incident, resulted into registration of

C.R. No. 54 of 2013 invoking Section 279, 337, 338, 304-A and 285 of the Indian Penal Code in Govandi Police Station, Mumbai against driver of the tanker which was responsible for being driven in high and rash speed. His widow has filed a claim for compensation praying an amount of Rs. 9,00,000/- from the opposite party No. 1 and the insurer who is the Appellant in this Court.

4. On the issues being framed as to whether the accident took place due to rash and negligent driving of the driver of the offending tanker, it was answered in the affirmative along with the issue as to whether the deceased had succumbed to the injuries which he suffered in the accident. As far as the claim for compensation, Claimant No. 1 adduced her evidence and also examined the employer as A.W. 2. It is an admitted position that the insurer in rebuttal has not examined any witness.

In order to substantiate the claim sought, the Claimants relied upon the documentary evidence, i.e. copy of the FIR, copy of spot panchanama, inquest panchanama, copy of cause of death certificate, copy of insurance policy, certificate of driver of the offending vehicle, letter issued by the RTO to Govandi Police Station, copy of the National Permit, copy of driving licence of the driver of the offending tanker, as well copies of the Aadhar card of the Claimant and also salary certificate of the deceased which is exhibited as Exhibit 40.

5. Applying the principle of '*res ipsa loquitur*' on perusal of the documents placed on record in the form of FIR as well as the other documents, the accident was held to be on account of rash and negligent driving by the driver of the offending tanker.

6. As far as the amount of compensation is concerned, the Tribunal applied the principle flowing from the decision of the Supreme Court in ***Sarla Verma v Delhi Transport Corporation*** reported in ***2009 ACJ 1298*** and ***National Insurance Company v Pranay Sethi*** reported in ***2017 ACJ 2700***. The compensation has been worked out by invoking the formula laid down by the Supreme Court in *Pranay Sethi* and the Claimants are also entitled for the loss of estate calculated at Rs. 15,000/- with 10% increase every 3 years, loss of consortium is only granted to the spouse to the tune of Rs. 40,000/-, whereas funeral expenses of Rs. 15,000/- is also awarded. Loss of care and guidance for minor children though claimed was not awarded which was to be granted in ***Rajesh v Rajbir*** which was done away by the recent orders of the Supreme Court.

7. The learned Counsel for the Appellant would submit that the accident in question took place in 2013 and the law as laid down by the Apex Court in ***Pranay Sethi*** cannot be made applicable to the said accident. The said objection is just referred to be rejected since it is to be noted that the claim petition was decided by the Tribunal on 21.09.2019 and the compensation came to be awarded by taking the factors which have been determined in ***Pranay Sethi***, which is a binding judgment on the date on which the petition was decided by the Tribunal.

8. Serious objection raised as to the income of the deceased being computed at Rs. 8,000/- is concerned, even this objection is as hollow as the first one, since the income that was claimed was Rs. 10,000/- but since the employer also entered into the witness box and the income of the deceased surfaced on record as Rs. 8,000/- and, therefore, the whole calculation in paragraph 20 of the said judgment is based upon the income being taken at Rs. 8,000/-. The amount of compensation which has been computed in paragraphs 20 and 21 to the following effect:

> "20. The income of deceased is considered as Rs. 8,000/- p.m. and by addition of 25% future prospects i.e. Rs. 2,000/- it becomes Rs. 10,000/- and by making deduction of one fourth of the said amount for the personal expenses of deceased it would be (10,000 – 2,500) Rs.

7,500/- per month. The loss of dependency obviously comes to Rs. 7,500 x 12 = Rs. 90,000/- p.a. and looking the age of deceased i.e. 50 years, multiplier of '13' would be applicable. Therefore, Rs. 90,000/- x 13 – Rs. 11,70,000/- would be loss of dependency for the claimants.

21. The General and non pecuniary damages which is now fixed by the Hon'ble Supreme Court in the case ***Pranay Sethi...*** is set out as under.

Head	Amount (Rs.	
Loss to Estate	15,000/-	with 10% increase every 3 years.
Loss of Consortium (in case of spouse)	40,000/-	
Funeral Expenses	15,000/-	
Loss of care and guidance for minor children	Nil	Removed what was in Rajesh Vs. Rajbir case."

Award of the compensation, as stated above, in my considered opinion do not warrant any interference in view of the fact that ***Pranay Sethi*** (supra) a Constitution Bench Judgment is the judgment holding the field, which provide guidelines on how the amount of compensation is to be awarded, particularly under the head of loss of estate and consortium along with funeral expenses.

9. The Appeal deserve to be dismissed.

10. On the Appeal being dismissed, the Respondents/ Claimants are entitled to withdraw the entire amount deposited by the insurance company along with interest which has accrued till the date of its withdrawal.

11. Upon the aforesaid, Interim Application No. 3839 of 2021 is disposed of as no orders are necessary.

(**Smt. Bharati Dangre, J.**)