IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.75 OF 2019

APPELLANT: Original Opponent No.3 on R.A	New India Assurance Co. Ltd. Branch office at Amravati, District Amravati, through the Regional Manager, Nagpur Regional office at Dr. Ambedkar Bhawan, M.E.C.L premises 4th Floor, High Land Drive, Seminary Hills NAGPUR – 440006 (M.S.).

... Versus ...

RESPONDENTS: Original Claimant No.1 on R.A	**1.** Sau. Lalita Rajendra Tirmare aged about 48 year, Occupation: service.
Original Claimant No.2 on R.A	2. Rajendra Ramkrushna Tirmare aged 53 year, Occupation: service.
Original Claimant No.3 on R.A	3. Dhanshri Rajendra Tirmare aged 25 year, Occupation: education.
Original Claimant No.4 on R.A	4. Harshal Rajendra Tirmare aged 23 year, Occupation: education All R/O Quarter No.3, in front of Bhatkuli Panchayat Samiti, Amravati, Tq. and District Amravati.
Original Opponent No.1 on R.A	5. Altaf Pir Mohammad Shaikh aged 30 year, Occupation: Driver, R/O Worli Police, Camp D Complex, R-37, Sir Pochkanwala Road, Worli Mumbai- 400 018.

Original Opponent No.2 on R.A — 6. Vidhya Shikshan Prasarak Mandal through its Deen, R/o V.S.P.M, Dental College, Y.M.C.A. Complex, Maharajbaug Road, Sitabuildi, Nagpur, Tq. & District Nagpur.

Shri B.P. Bhatt, Advocate for the Appellant.
Ms. Aastha Sharma, Advocate h/f Shri P.R. Agrawal, Advocate for Respondent Nos.1 to 4.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE OF JUDGMENT : 15th FEBRUARY, 2021

ORAL JUDGMENT:-

The Appellant – Insurance Company has challenged the judgment and award dated 06/08/2018 passed by the Claims Tribunal, Amravati in M.A.C.P. No.187/2015. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.30,77,974/- to respondent Nos.1 to 4 (the original claimants), with interest at the rate of 7% per annum from the date of the petition till its realization.

02] The Respondents Nos.1 and 2 are the parents and Respondent Nos.3 and 4 are the siblings of the deceased – Vrushali, who expired on 27/02/2015 in view of the injuries sustained in a motor vehicular accident involving Hundai Car bearing Registration No.MH-31/CE-9. The Respondent Nos.1 to 4, who shall be hereinafter referred to as the Claimants, had stated that the deceased was 26 years of age and working in the Office of Assistant

Commissioner, Food and Drugs Administration, Mumbai and was drawing salary of Rs.20,000/- per month. The Claimants alleged that the accident was caused solely due to the rash and negligent driving by the driver of the offending vehicle. The Claimants, therefore, filed an application under Section 166 of Motor Vehicles Act, 1988 and claimed total compensation of Rs.51,00,000/- from the driver, owner and insurer of the offending vehicle.

03] The Appellant – Insurance Company admitted that the offending vehicle was insured for the period between 01/12/2014 and 30/11/2015. The Appellant – Insurance Company claimed that the original Respondent No.1 was not holding a valid and effective driving licence and denied its liability to indemnify the insured on the ground of breach of terms and conditions of the policy.

04] The Tribunal, after considering the evidence on record, recorded a finding that the accident occurred due to rash and negligent driving by the driver of the offending vehicle. The Tribunal held that the Appellant - Insurance Company has failed to prove that the insured had committed breach of terms and conditions of the policy. Upon considering the age and income of the deceased and other relevant factors, the Tribunal awarded compensation of Rs.30,77,974/- and held that the driver, owner and the Appellant – Insurance Company jointly and severally liable to pay the compensation. Being aggrieved by the said judgment and award, the

Appellant – Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988.

05] The Respondent Nos.1 and 2 are the parents of Vrushali, who expired in a motor vehicular accident involving Hundai Car bearing Registration No.MH-31/CE-9, which was insured by the Appellant – Insurance Company. The factum of the accident and that the accident was caused due to rash and negligent driving by the driver of the said vehicle, is not in dispute. The Tribunal has held that the Appellant – Insurance Company has failed to prove that the insurer had committed breach of terms and conditions of the policy and has rejected the defence that the Appellant – Insurance Company is not liable to indemnify the insured. These findings have not been challenged. The challenge is restricted to the right of the parents, who were not dependents on the deceased, to claim compensation under Section 166(1) of the M.V. Act and to the application of the multiplier on the basis of the age of the deceased.

06] Learned counsel for the Appellant – Insurance Company submits that the Respondent Nos.1 and 2, who are the parents of the deceased, are government servants and were not dependent on the deceased. He therefore claims that they are not entitled to seek compensation under Section 166 of the Motor Vehicles Act. He further submits that the Tribunal ought to have considered the age of the deceased for the purpose of applying the multiplier.

07] Learned Counsel for the Claimants has relied upon the decision of the Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Others*** reported in ***(2017) 16 SCC 680***, to contend that the multiplier would depend upon the age of the deceased and not of the Claimants. She has also relied upon the decision in the case of ***National Insurance Company Limited Vs. Birender & Others*** reported in ***2020 AIR (SC) 434***, to substantiate her contention that the parents of the deceased, being the legal representatives, have right to apply for compensation. She further submits that the Claims Tribunal has not awarded filial consortium and hence, the compensation awarded by the Tribunal needs to be enhanced. She has relied upon the decision of the Apex Court in the case of ***Surekha W/o Rajendra Nakhate & Others Vs. Santosh S/o Namdeo Jadhav & Others*** reported in ***2020(2) TAC 44***, to substantiate her contention that the compensation can be enhanced even in the absence of cross-objection.

08] I have perused the records and considered the submissions advanced by learned Counsel for the respective parties. The question whether the Claimants, who were not dependents on the deceased, can claim compensation under Section 166 of the M.V. Act, is no longer *res integra* in view of the decision of the Apex Court in ***Birender*** (supra), wherein the Apex Court has held as under:

> ***"15.*** *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 concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only".*

09] It is thus well-settled that the legal representatives of the deceased, whether they were fully dependent on the deceased or not, are entitled to claim compensation under Section 166 of the M.V. Act. The Respondent Nos. 1 and 2 are the parents of the deceased and being legal representatives, had right to apply for compensation under Section 166 of the M.V. Act. In ***Pranay Sethi*** (supra), the Apex Court has laid down that the age of the deceased should be considered while applying the multiplier. Hence, the Tribunal has not committed any error in applying the multiplier of 17 upon considering the age of the deceased.

10] As regards the quantum of compensation, the grievance raised by the Respondent Nos.1 and 2 is that the Tribunal has erred in not awarding the compensation towards loss of consortium. It is seen that the Tribunal has awarded total compensation of Rs.55,000/- on conventional heads i.e. Rs.40,000/- towards loss of estate and Rs.15,000/- towards funeral expenses in view of the judgment of the Apex Court in the case of ***Pranay Sethi*** (supra) and ***Magma Fincorp Limited Vs. Rajesh Kumar Tiwari*** reported in ***(2020) 10 SCC 399,*** the Respondent Nos.1 and 2 are entitled for filial compensation of Rs.40,000/- each in addition to compensation of Rs.30,000/- towards loss of estate and funeral expenses. Thus, the Respondent Nos.1 and 2 are entitled for total compensation of Rs.1,10,000/- on these conventional heads as against compensation Rs.55,000/- awarded by the Claims Tribunal.

11] The fact that the Claimants have not filed any cross-objection is no ground to deprive them of 'just compensation'. This has been reiterated by the Apex Court in the case of ***Surekha Nakhate*** (supra). It is held that in the matter of Insurance claim compensation in reference to the motor accident, the Court should not take hyper technical approach and should award just compensation. Reliance is also placed on the decision of the Division Bench of this Court in ***National Insurance Co. Ltd. Vs. Vaishali Harish Devare & Others*** in ***First Appeal No.1068 of 2012*** as well as of the learned Single Judge of this Court in ***Cholamandalam Ms General Insurance Company Ltd. Vs. Sumitra Wd/o. Debu Vishwa*** in ***First Appeal No.1116 of 2015.*** Hence, the Respondent Nos.1 and 2 are entitled for additional compensation of Rs.55,000/- notwithstanding the fact that no cross-objection has been filed.

12] Under the circumstances, the appeal is dismissed. The Appellant –

Insurance Company is directed to pay to the Respondent Nos.1 and 2 additional compensation of Rs.55,000/- (Rupees Fifty Five Thousand Only) with interest at the rate of 7% per annum from the date of the petition till final deposit.

13] The appeal stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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