IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 693 OF 2019

1. Smt. Swati w/o. Abhang Bhalke, Age. 27 years, Occ. Household, .. Appellants [original claimants]

2. Vedant s/o. Abhang Bhalke, Age. 07 years, Minor, Appellant No.2 is Minor, Through its Natural Guardian Appellant No.1.

3. Smt. Kantabai w/o. Vinayak Bhalke, Age. 60 years, Occ. Nil/H.H.

All R/o. Bhootmugali, Tq. Nilanga, Dist. Latur.

Versus

1. Madhav s/o. Bapurao Mirkale Age.35 years, Occ. Driver/Business R/o. Kanejawalga, Tq. Nilanga, Dist. Latur. .. Respondents [original respondents]

(Owner of Auto MH-24-J-3232)

2. The Branch Manager HDFC ERGO General Insurance Company Ltd., Branch Office, at Mumbai, 6th Floor, “Leela Business Park” Andheri-Kurla Road, Andheri, (E), Mumbai, Policy Issuing Office at Mumbai (Insurance Co. for the Auto No.MH-24-J-3232) (Period of Policy 18.12.2012 to 17.12.2013)

Mr.Santosh B. Gastgar, Advocate for the appellants.
Respondent No.1 served.
Mr.S.S. Dargad h/f. Mr.S.G. Chapalgaonkar, Advocate for respondent No.2.

CORAM : VINAY JOSHI, J.
RESERVED ON : 18.02.2022
PRONOUNCED ON : 03.03.2022

J U D G M E N T :-

01. The claimants have challenged the impugned judgment and award passed in Motor Accident Claim Petition No.18 of 2013 by the Motor Accident Claims Tribunal, Nilanga on account of inadequacy of compensation. The challenge is mainly on account that the Tribunal has fixed notional income at lower side and erred in not making addition on account of loss of future prospects.

02. The facts in brief are that the appellants (claimants) are the legal heirs of deceased Abhang, who died in vehicular accident dated 08.08.2013. On the day of accident the deceased was travelling as a passenger in

auto-rickshaw bearing registration No. MH-24-J-3232 owned by respondent No.1 and insured with respondent No.2 at relevant time. The auto-rickshaw was driven in high speed. As a result, due to loss of control, the auto-rickshaw turned turtle. The passenger Abhang sustained multiple bodily injuries in which he died. It is the claimant’s case that the deceased was running grocery shop as well as doing milk business and cultivating his own land. He was earning Rs.15,000/- per month from all sources. Since the claimants lost earning hand of the family, they raised claim before the Tribunal.

03. The owner as well as insurer resisted the claim by denying the rashness and negligence on the part of auto-driver. They have also denied the age and income of deceased. It is contended that the auto-driver was not holding valid and effective licence at the relevant time and therefore there is breach of terms and conditions of the insurance policy. With these contentions the claim is resisted. The Tribunal held that the accident was the

result of the rash and negligent driving of auto-driver. The Tribunal assessed total compensation to the tune of Rs.5,82,000/- to be paid to the claimants. It is held that there was breach of terms and conditions of the insurance policy. Therefore, pay and recover order was passed.

04. Basically this is appeal of claimants, therefore, restricted issue regarding quantum of compensation fell for consideration. It is argued that though claimants have adduced sufficient evidence, the Tribunal erred in holding notional income to the tune of Rs.4000/- per month which is quite adequate. Perused evidence of claimants relating to income of deceased. The widow deposed that the deceased was running grocery shop, having milking cattles and some agricultural land. In support of said contention the claimants have produced revenue extract of agricultural land (Exh.35), certificate of Sarpanch (Exh.36) about shop and some receipts (Exh.39 to 42) to show that milking cattles were

purchased.

05. Per contra, the respondents have strongly assailed said evidence by contending that the deceased was handicap person and it was quite impossible for him to do milk business and agricultural work. It is submitted that bare certificate of Sarpanch about grocery shop is not acceptable. The Tribunal has assessed the evidence on the point of income in paras 11 to 13 of the judgment. The Tribunal considered worth of evidence and assessed notional income to the tune of Rs.4000/- per month.

06. Admittedly, the claimants have not produced any reliable documents in the nature of Shop Act Licence or grocery purchase bills to satisfy that deceased was conducting grocery shop. The certificate issued by the Sarpanch is not worth to be considered. However, it reveals from the revenue extract that the deceased was holding some agricultural land as well as there are

receipts to show that he had purchased milking cattles. Having regard to the physical incapacity, certainly the deceased would have had some restrictions on his work. However, as there is evidence about his milk business and agricultural land, I deem it appropriate to consider notional income of deceased at the rate of Rs.5000/- per month i.e. Rs.60,000/- per annum.

07. The claimants' learned Counsel has argued that the Tribunal though referred the celebrated judgment of Supreme Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.(2017) 6 SCC 680**, however, seriously erred in not making addition on account of loss of future prospects. In view of the said decision the claimants are entitled for addition of 40% on account of future prospects as per the age and nature of work of the deceased. Thus, on addition of 40%, it comes to the tune of (60,000 + 24,000) Rs.84,000/-. Since there were three dependents on deceased, 1/3rd is to be deducted and as such on such deduction it comes to the tune of (84,000 –

28,000) Rs.56,000/-. As per post-mortem notes the deceased was 35 years of age and therefore multiplier '16' is to be applied. On use of multiplier of 16, total loss of dependency would be (56,000 x 16) Rs.8,96,000/-.

08. On account of conventional heads, the learned Counsel for the claimants would submit that in view of decision of the Supreme Court in the case of Pranay Sethi (supra), there should be 10% hike on the amount awarded under conventional head. In view of that certainly addition under conventional heads would be from Rs.70,000/- to Rs.77,000/-. Thus, total entitlement would be (8,96,000 + 77,000) Rs.9,73,000/-. The impugned judgment calls modification to that extent only.

09. In view of above, the appeal stands partly allowed. The impugned judgment and award is modified only to the extent of holding that the claimants are entitled for total compensation of Rs.9,73,000/- (Rupees Nine Lakhs Seventy Three Thousand) (inclusive of 'No Fault

Liability’). Rest of the order remains as it is. The additional amount be paid to the widow.

[VINAY JOSHI,J.]

snk/2022/MAR22/fa693.19