IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.302 OF 2016
WITH
INTERIM APPLICATION NO.2308 OF 2020
IN
FIRST APPEAL NO.302 OF 2016

The Oriental Insurance Co. Ltd. ...Appellant
Versus
Vinita Ashok Jadhav and Ors. ...Respondents

.....

Mr. D.S. Joshi for the Appellant.
Mr. R.S.Alange for the Applicant in IA/2308/2020 and for Respondents in FA/302/2016.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 14th JUNE, 2022.

P.C.:-

1. With consent, the matter is heard finally at the stage of admission.

2. The Appellant-Insurance Company has challenged the judgment dated 12/02/2015 in M.A.C.P. NO.256 OF 2012, ,M.A.C.T., Solapur. By the impugned judgment and Award, the Claims Tribunal partly allowed the application filed by the Respondent Nos. 1 to 4 under Section 166 of the Motor Vehicles Act, 1988 and awarded compensation of Rs.24,78,328/-inclusive of NFL amount along with

interest at the rate of 8% p.a., from the date of the petition till final realization.

3. The Respondent No.1 is the widow and Respondent Nos.2 to 4 are the children of Ashok Jadhav, who died due to injuries sustained in a motor vehicular accident on 22/05/2012 involving a truck bearing registration No.MH-09/Q 5846, owned by Respondent No.5 and insured by the Appellant-Insurance Company.

4. The Respondent Nos.1 to 4, who shall be hereinafter referred to as the Claimants filed a Claim Petition under Section 166 of the M.V. Act that the death of Ashok Jadhav was solely due to rash and negligent driving by the driver of the offending truck. At the time of the accident, the deceased was 37 years of age. He was an agriculturist. He owned a tractor and a road roller, which he used to give on hire. His income is stated to be Rs.35,000 to 40,000/- per month. The Claimants claimed that the deceased was the sole earning member and claimed total compensation of Rs.50,00,000/-.

5. The insured did not contest the proceedings. The Appellant -Insurance Company took a defence that the accident was caused due to negligence of the deceased. The Insurance-Company disputed the

income of the deceased and alleged that the claim was exorbitant.

6. The Tribunal, upon considering the evidence adduced by the respective parties, held that the accident was caused due to the negligence of the driver of the offending vehicle. The Tribunal considered the agricultural income of the of the deceased as 50,000/- p.a. and further held that the deceased was earning Rs.60,000/- p.a. from the tractor and Rs.1,20,000/- p.a. from the road roller. The Tribunal thus considered the total income of the deceased at Rs.2,30,000/- per annum. The Tribunal deducted 1/3rd towards personal expenses and upon applying multiplier of 16 computed loss of dependency of Rs.24,53,328/-. The Tribunal also awarded compensation of Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium and loss of love and thus awarded total compensation of Rs.24,78,328/-. Being aggrieved by the quantum of compensation, the Appellant-Insurance Company has filed this appeal.

7. Heard Mr. D.S. Joshi, learned counsel for the Appellant and Mr. R.S. Alange for the Claimants. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

8. It is not in dispute that the deceased Ashok Jadhav had expired as a result of injuries sustained in a motor vehicular accident involving Truck bearing registration No.MH-09/Q 5846. It is the contention of the Claimants that the offending vehicle ran over the deceased, who was resting by the side of road after ploughing his field. Whereas the defence of the Appellant-Insurance Company is that the deceased was sleeping in the middle of the road and he was responsible for the accident.

9. It is to be noted that the Claimants in Petition under Section 166 of the Motor Vehicles Act are only required to establish their case on the touchstone of 'Preponderance of Probabilities'. In the instant case, the Claimants have relied upon scene of accident panchanama, which reveals that the spot of the accident was on the extreme right side of the road. This fortifies the contention of the Claimants that the deceased was resting by the side of the road. Further it is also in evidence that the FIR was registered against the driver of the offending vehicle for causing death of Ashok Jadhav due to rash and negligent driving and thereby committing offence under Sections 279 and 304 of the IPC. The driver has not stepped into the witness box to explain the circumstances under which the accident was caused. Under the

circumstances, the findings on the issue of negligence do not warrant any interference.

10. The next question for consideration is whether the compensation awarded by the Tribunal is just and reasonable.

11. It is the case of the Claimants that the deceased was an agriculturist and was earning Rs.5,00,000/- p.a. as agricultural income. The Claimants have placed on record 7/12 extract at Exhibit -31 to prove that the deceased was in possession of an agricultural land. The Tribunal has held that the property is a joint property and as such considered the agricultural income of the deceased as Rs.50,000/- p.a. The evidence adduced by the Claimants also proves that the deceased owned a road roller. The Claimants have produced work order, which reveals that the monthly hire charges of road roller were Rs.21,000/-. The Tribunal has deducted Rs. 10,000, towards salary of the driver,bhatta and other expenses and considered the income from the road roller at Rs.1,20,000/- p.a.

12. The deceased also owned a tractor, which was given on hire. Upon deducting expenses towards maintenance and other miscellaneous expenses, the Tribunal has considered the income from

hire of the Tractor at Rs.5,000. Thus, the Tribunal considered the income of the deceased as Rs.2,30,000/- p.a. Findings recorded by the Tribunal are based on evidence on record and cannot be said to be perverse and do not warrant interference.

13. It is not in dispute that as on the date of the Accident the deceased was 37 years of age. The Tribunal has applied multiplier of 16 and deducted 1/3rd towards personal expenses. It is pertinent to note that as per the dictum of the Apex Court in ***Sarla Verma & Ors vs Delhi Transport Corp.& Anr (2009) 6 SCC 121*** and ***National Insurance Company Limited cs. Pranay Sethi and Ors. (2017) 16 SCC 680*** the multiplier applicable is 15 and not 16 as applied by the Tribunal.

14. The evidence on record shows that the Claimants were entirely dependent on the deceased. Considering that there were four dependents, the Tribunal was required to deduct ¼ towards personal expenses of the deceased. The Tribunal has also not considered future prospects beside the compensation awarded on other conventional heads is not in consonance with the principles laid down by the Apex Court in ***Pranay Sethi*** (supra). Hence, the compensation awarded by the Tribunal is not just and reasonable.

15. The deceased was earning annual income of Rs.2,30,000/-. Considering the age of the deceased and the fact that he was self employed, in terms of ***Pranay Sethi*** (supra) 40% of the actual income i.e. Rs. 92,000/- needs to be added towards future prospects. Thus the total income works out to Rs.3,22,000/-. After deducting 1/4th towards personal expenses and applying multiplier of 15, loss of dependency works out to Rs.36,22,500/-. The Claimants are also entitled for compensation of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.1,60,000/- towards loss of spousal and parental consortium. Thus, the Claimants are entitled for total compensation of Rs.38,12,500/-.

16. The fact that the Claimants have not filed cross objections is no ground to deprive the Claimants of just and reasonable compensation. In fact it is the obligation of the Tribunal and Courts to decide just compensation even in the absence of cross appeal or cross objection. Reliance is placed on the decisions of the Apex Court in ***A.P.S.R.T.C. Rep. By its General Manager and Anr. vs. M. Ramadevi and Ors. 2008(1) T.A.C.714 (S.C.) and Surekha Rajendra Nakhate vs. Santosh Namdeo Jadhav and Ors.*** in ***SLP (C) No.8439 of 2019.***

17. Under the circumstances, the appeal is dismissed. It is held that the Claimants are entitled for compensation of Rs.38,12,500/- with interest @ 8% p.m. from the date of the petition till final realisation. The Appellant-Insurance Company to deposit the balance amount within a period of eight weeks. The Claimants shall pay deficit court fee, if any, on the enhanced amount of compensation. The Tribunal shall pay to each of the Claimants 25% of the compensation with proportionate interest thereon.

18. Statutory deposit, if any, with accrued interest be transferred to the Claims Tribunal, Solapur.

19. Pending application (s), if any stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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