IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1077 OF 2015
WITH
CIVIL APPLICATION NO. 2823 OF 2013
IN
FIRST APPEAL NO. 1077 OF 2015

ICICI LOMBARD GENERAL INSURANCE)
COMPANY LTD. 2nd Floor, Adventure Towers)
Opposite Hotel Oberoi, Savedi Road,)
Ahmednagar – 414 001)...APPELLANT

V/s.

1 SMT. RASHMI RAJENDRA GANDHI)
Age 28 years, Occupation : Household)
)
2 JANHAVI RAJENDRA GANDHI)
Age 1 year, Occupation : Nil)
)
3 SIDDHI RAJENDRA GANDHI)
Age 1 month, Occupation : Nil)
)
4 LALITA HIRACHAND GANDHI)
Age 60 years, Occupation : Nil)
No. 2 and 3 Minors through their)
Guardian Mother Petitioner No.1)
)
All residents of Khed Bk, Taluka Khandala)
District Satara)
)
5 DILIP HIRALAL DHAIGUDE)
Occupation : Agri, resident of Lonand)
Taluka Khandala, District : Satara)
)

6 BAPURAO PANDURANG DHAIGUDE)
Age : Adult, Occup : Agri, resident of)
Pimpre Taluka Khandala, District Satara)...RESPONDENTS

Mr. Nikhil Mehta i/b. KMC Legal Venture, Advocate for the Appellant.
Mr. Vaibhav R. Gaikwad, Advocate for the Respondents No.1 & 4.

CORAM : ABHAY AHUJA, J.

DATE : 22nd DECEMBER 2022

JUDGMENT :

1 The appellant-Insurance company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short the "M. V. Act") being aggrieved and dissatisfied by the judgment and award dated 14th September 2012 passed by the Motor Accident Claims Tribunal (for short the "M.A.C.T.") at Satara, in Claim Application No. 386 of 2007 allowing the said claim application in favour of the respondent-claimants.

2 The brief facts are that on 22nd October 2007, one Mr. Rajendra Gandhi was going on his two wheeler M-80, bearing

Registration No.MH-12/V-8074 from Lonad side to Khandala, at around 9.00 p.m., when he and his vehicle rammed on to trolley no. MH-11/R-4259 owned by one Bapurao Pandurang Dhaigude, attached to one Tractor No. MH-11/U-3813 owned by one Dilip Hiralal Dhaigude which were negligently parked on the road without following traffic rules nor the parking lights on nor were there reflectors on the said trolley, and therefore, the same were not visible to Mr. Rajendra Desai. Mr. Desai sustained multiple injuries in the said accident. He was referred to a nearby Nikop Hospital at Phaltan. However, during his treatment, on the next, day he died. Both the tractor and the trolley were insured by the appellant-Insurance company.

3 Thereafter, the wife of the deceased, the two minor daughters and the mother of the deceased preferred a claim petition under Section 166 of the M. V. Act seeking compensation on the death of Rajendra Gandhi, who died in the vehicular accident described above.

4 The petitioners claimed that the deceased was a Post Master having a monthly salary of Rs.3,323/-. It was further claimed that the deceased had a grocery shop and agricultural landed property. It was claimed that from the grocery shop he was earning Rs.3,000/- per month and from the agricultural yield he was getting income of Rs.60,000/- per annum. That, on the day of the accident he was 33 years. Therefore, under several heads the petitioners therein claimed compensation of Rs.16,51,000/-, which was restricted by the Claims Tribunal to Rs.7 lakhs.

5 The respondents in the claim petition, which included the owner of the tractor and the owner of the trolley, as well as the appellant-Insurance company, resisted the claim except the insurance coverage and sought dismissal of the balance claim.

6 After considering the rival contentions, the Tribunal affirmatively observed that the petitioners proved that due to the rash and negligent parking of the tractor and the trolley, an accident took place on 22nd October 2007 in which Rajendra

Gandhi sustained injury and died due to it. The Tribunal also found that the deceased was not negligent in riding the motorcycle. The Tribunal observed that, therefore, the claimants were entitled to payment of compensation and also decided the apportionment thereof.

7 Paragraph 15, 16, 17, 18 and 19 of the said impugned order are set forth as under :

> *"**15** As regards income of deceased, he was a rural part-time Post Master having monthly salary of Rs.3323/- (Exh.44) proved by P.W.2 Chandrakant Sonawale. Thus, from this source, his annual income comes to (Rs.3323/- x 12)=Rs.39,876/-. Besides the version of P.W.1 the petitioner no.1 reveals that from agricultural income, deceased was getting annual income of Rs.60,000/- and grocery shop Rs.36,000/-. But now the agricultural land has been let out for a rent of Rs.15,000/- per annum. According to her, the deceased was earning Rs.3,000/- per month from the shop.*
>
> ***16** As regards the agricultural income, it cannot die with agriculturist. So also, the shop can be run by surviving members of he family, notwithstanding, it may affect the quantumk of income, since it is depending upon the business skill of the shop-keper. Since the deceased was 33 years and his job as Post Master was permanent in nature, in view of the pronouncement in **Smt. Sarla Verma vs. Delhi Transport Corporation, 2009 (2) T.A.C. 677 (SC)**, 50% should be added towards increase. Thus, his income from salary would be*

Rs.3323/- x 12 = Rs. 39,876/-, rounded by Rs.40,000/- plus 20,000/- (50% of Rs.40,000/-) = Rs.60,000/-. Besides, from other sources, his income is held to be Rs.30,000/- per annum. Thus, his total income from all sources comes to Rs.90,000/-. Since there are four dependents upon the income of deceased, in view of ***Sarla Verma's*** *pronouncement, deductions at the rate of ¼ should be applied i.e. Rs.90,000/- Minus Rs.22,500/- (one-fourth) = Rs.67,500/-.*

17 *Since the deceased was 33 years, relevant multiplier in view of* ***Sarla Verma's*** *pronouncement applicable is 16. Thus, compensation works out Rs.67,500/- x 16 = Rs.10,80,000/-. In addition, the petitioners are entitled to Rs.5000/- towards funeral expenses, Rs.10,000/- towards loss of consortium, Rs.5000/- for loss of estate i.e. Rs.20,000/-. Thus total quantum of compensation comes to Rs.10,80,000/- + Rs,20,000/- = Rs.11,00,000/- payable to petitioners. Also, the petitioners are entitled to intereset @ Rs.8% p.a. from the date of petition till the realization thereof.*

18 *Since the petitioners have restricted their claim by Rs.7,00,000/-, it is settled principle of law, as has discussed at the outset of Judgment, that the compensation should be "just" and reasonable and if for want of Court Fee, the parties have restricted the claim, they can be awarded the compensation, for which they deserve, by getting the Court Fee recovered on additional compensation. However, they should not be deprived of their legitimate claim.*

19 *As regards apportionment, the petitioner No.1 being the widow shall get 60%, Nos.2 and 3 shall get 10% each and No.4 shall get 20% of the compensation amount together with interest. Accordingly, I endorse my findings on Issue Nos.3 and 4 and proceed to pass the following order."*

Aggrieved by the aforesaid, the Insurance company is in appeal.

8 Mr. Mehta, learned counsel for the appellant-Insurance company, drawing the attention of this Court to paragraph 15 of the impugned decision, would submit that, as far as the finding of the Tribunal with respect to the annual income of the deceased as rural part time Post Master is concerned, there is no dispute that his monthly salary was Rs.3,323/-, as has been proved by PW2 Chandrakant Sonawale. Learned counsel would submit, therefore, the annual income from this source of Rs.39,876/- has been accepted by the appellant-Insurance company.

9 He submits that the appellant, however, takes exception to the amount of Rs.30,000/- per annum, as income from other sources viz., for running the grocery shop and doing work as cultivation, as an additional amount, by the Tribunal.

10 Mr. Mehta submits that the deceased was earning agricultural income of Rs.60,000/- from agricultural land cannot

be considered now because now the agricultural land has been let out for a rent of Rs.15,000/- per annum. Learned counsel draws the attention of this Court to paragraph 16 of the impugned order, to submit that, as regards agricultural income, it cannot die with the agriculturist. He submits that since the claimants are the heirs of the deceased, they would naturally be getting that rent of Rs.15,000/- per annum, and therefore, the annual income of Rs.60,000/- per annum towards agricultural income cannot be taken into account.

11 Further, with respect to the income of Rs.3,000/- per month from the grocery shop, Mr. Mehta would submit that since the shop is a family business, the said income would now be earned by the claimants. He also refers to paragraph 16 of he impugned decision to submit that, the shop can be run by the surviving members of the family, notwithstanding that it may affect the quantum of the income, since it depends on the business skill of the shopkeeper. He, therefore, submits that Rs.36,000/- per month from the grocery shop should also be reduced from the claim.

12 On the other hand, Mr. Gaikwad, learned counsel for the claimants, being respondents no.1 to 4 in this appeal, would submit that, the claimants have accepted the decision of the Tribunal. He would submit that if claimants were to claim Rs.3000 per month from the grocery shop, that would be Rs.36,000/- per annum; and if that amount was added to the total income of Rs.90,000/-, as determined by the Tribunal, that would be Rs.1,26,000/-; and if Rs.15,000/- being the rent received in the case of agricultural land was to be reduced, that would be an amount of Rs.1,11,000/- which is much more than the total income of Rs.90,000/- from all sources, as determined by the Tribunal, which has been accepted by the respondents as no appeal has been filed by t he respondents-claimants. Learned counsel would submit that this appeal be therefore dismissed.

13 I have heard learned counsel for the appellants as well as the learned counsel for the respondents claimants and with their able assistance, I have perused the impugned order and considered the submissions made by them.

14 It is not in dispute that the deceased Rajendra Desai, who was the husband, father and the son of the respondents–claimants herein, was a rural part time Post Master having a monthly salary of Rs.3,323/-. That, from this source, his annual income worked out to Rs.39,876/-. It is also not disputed that since the deceased was 33 years old at the time of his death and his job as part time Post Master being permanent in nature, in view of the decision of the Apex Court in the case of **Smt. Sarla Verma vs. Delhi Transport Operation**[1]**,** 50% is to be added towards the increase. The Tribunal, therefore, computed his annual income from salary Rs.39,876/-, which was rounded off to Rs.40,000/- and added Rs.20,000/- (viz. 50% of Rs.40,000/- as per the decision of the Apex Court in **Smt. Sarla Verma vs. Delhi Transport Operation (supra)**) and the total, so came to Rs.60,000/-.

15 If one were to consider the version of PW1, the claimant, that the deceased was getting Rs.36,000/- from the grocery shop, then this amount would have to be added to the total income of Rs.60,000/- from salary, as determined by the Tribunal. That

1 2009 (2) T.A.C. 677 SC

would, anyways, take the total income to Rs.96,000/- i.e. above the income from all sources of Rs.90,000/-, as determined by the Tribunal. However, since the respondents-claimants have accepted the impugned decision, no further discussion is called for on this aspect.

16 Further, the appellants contention that since the agricultural land has been let out for a rent of Rs.15,000/- per annum, which would naturally be received by the claimants, and therefore, the annual income of Rs.60,000/- from agriculture, as claimed by claimants cannot be considered, appears to have already been taken care of by the Tribunal in paragraph 16 of the impugned order, as the Tribunal has taken Rs.30,000/- per annum, to be the income from all other sources and which also considers the income from the grocery shop as well as the claim of Rs.36,000/- per annum (being Rs.3,000/- per month from the grocery shop).

17 Therefore, no fault can be found with the Tribunal holding the income from other sources to be Rs.30,000/- per annum, which is less than what was claimed.

18 In this view of the matter, there being no error apparent or perversity in the order of the Tribunal, the appeal deserves to be dismissed, and is hereby dismissed. No costs.

19 In view of dismissal of the appeal, Civil Application No.2823 of 2013 also stands disposed of.

(ABHAY AHUJA, J.)

ARTI VILAS KHATATE
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