IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 640 OF 2022
WITH
INTERIM APPLICATION NO. 3702 OF 2022
IN
FIRST APPEAL NO. 640 OF 2022

Shriram General Insurance Co. Ltd. …. Appellant
v/s.
Ananda Yashawant Jamdade and ors. …. Respondents

Mr. Nikhil Mehta i/b. KMC Legal Venture for the Appellant.
Mr. Sagar Redkar h/f. Sahil Salvi for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 22nd JULY, 2022.

P. C. :-

. With consent, heard finally at the stage of admission.

2. This is an Appeal under section 173 of Motor Vehicles Act assailing the judgment dated 08/08/2017 passed by the Member, MACT, Sangli in Motor Accident Claims Petition No.218/2011. By the impugned judgment, the learned Judge, Claims Tribunal, Sangli partly allowed the claim petition filed under section 166 of Motor Vehicles Act and directed the owner and the Appellant – Insurance Company to pay compensation of Rs.7,44,000/- to Respondent Nos.1 to 3, original

claimants, with interest @ 8% p.a. from the date of petition till realization of the amount.

3. Heard Mr. Mehta, learned counsel for the Appellant and Mr. Redkar, learned counsel for the Respondents-claimants. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

4. The Respondent Nos.1 and 2 who are the parents of the deceased, had filed a petition under section 166 of Motor Vehicles Act in view of death of their son – Sunil Ananda Jamdade in a motor vehicular accident on 28/11/2010 involving truck bearing No.MH-09-Q-5885. The said truck was owned by the Respondent No.3, driven by Respondent No.4 and insured by the Appellant – Insurance Company. It is the case of the Respondents-claimants that the truck had dashed against the motor cycle bearing No.MH-10-F-7321 on which the deceased Sunil was a pillion rider. Said Sunil expired as a result of the injuries sustained in the accident. The claimants had stated that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle.

5. The claimants alleged that the deceased had a shop wherein he used to sell panpatti and was earning Rs.10,000/- per month. The claimants alleged that they were dependent on the income of the deceased and that in view of his death, they have lost the only earning member of the family. The claimants have therefore claimed compensation of Rs.15,90,000/-.

6. The driver and owner did not contest the proceedings. The Appellant – Insurance Company denied involvement of the offending truck in the accident and hence, denied its liability to pay any compensation to the claimants. The Appellant – Insurance Company also resisted the petition on the ground that the claim was exorbitant.

7. The Claims Tribunal, upon considering the evidence adduced by the respective parties, held that the Respondents-claimants have proved the involvement of the offending truck in the said accident. The deceased had expired as a result of the injuries sustained in the accident and the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal did not accept the contention of the claimants that the deceased was earning Rs.10,000/-

per month and assessed loss of dependency on the basis of notional income of Rs.4,500/- per month. Upon adding 50% towards future prospects and deducting 50% towards personal expenses and upon applying multiplier of 18, the Tribunal assessed loss of dependency to Rs.7,29,000/-. The Claims Tribunal has also awarded compensation of Rs.10,000/- towards love and affection and Rs.5,000/- towards funeral expenses. The Tribunal therefore awarded total compensation of Rs.7,44,000/- with interest @ 8% p.a. from the date of petition till final realization.

8. Mr. Mehta, learned counsel for the Appellant – Insurance Company submits that the statement of the rider of the motorcycle on which the deceased was a pillion rider was recorded six months after the accident. He states that there is no cogent and conclusive evidence to show the involvement of the offending vehicle in the said accident. He further submits that the compensation awarded by the Claims Tribunal is exorbitant.

9. Mr. Redkar, learned counsel for the Respondent submits that the statement of the rider of the motorcycle proves that the vehicle and the truck bearing No.MH-09-Q-5885 was involved in the accident. The

driver and the owner had not contested the proceedings. He submits that the evidence on record proves that the deceased was the pillion rider of the motorcycle and that there was collision between the said motorcycle and the offending vehicle after which the truck fled away from the spot. The Respondents-claimants further states that the compensation awarded by the Claims Tribunal is not in consonance with the dictum of the Hon'ble Apex Court in ***National Insurance Company Limited v/s.Pranay Sethi and Others (2017 16 SCC 680).***

10. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

11. The short question which falls for consideration is whether the Truck bearing No.MH-09-Q-5885 which is insured by the Appellant – Insurance Company was involved in the accident and whether the compensation awarded by the Claims Tribunal is just and reasonable.

12. It is not in dispute that the deceased – Sunil, the son of the claimants had expired as a result of the injuries sustained in the accident on 28/11/2010 on Islampur to Sangli road of village Karandvadi. The statement of Sushant Jadhav reveals that he was a

rider on motorcycle No.MH-10-F-7321 and that the deceased Sunil and one Rohit were the pillion riders. He has stated that the truck bearing No.MH-09-Q-5885 had dashed against his motorcycle. He as well as Sunil had sustained injuries and that Sunil succumbed to the injuries sustained in the accident. The claimants had also relied upon the statemen of Avinash Dabang. This witness had stated that the truck bearing No.MH-09-Q-5885 had dashed against the motorcycle and that the motorcycle fell on the road. He has also stated that the truck had stopped near the place of the incident for some while and immediately thereafter, the driver of the said truck fled away from the place of the accident.

13. The police records indicate that the deceased was a pillion rider on the motorcycle No.MH-10-F-7321 driven by Sushant Jadhav. The statement of the rider of the motorcycle as well as the statement of Avinash Dabang prove involvement of the truck in the accident. The statement of Sushant Jadhav, the rider of the motor cycle, cannot be discarded for the delay in recording the statement, when it is on record that he too had sustained injuries in the said accident. The evidence on record proves that the accident was caused solely due to rash and negligent driving by the driver of the offending truck. The driver as

well as the owner of the truck have not contested the proceedings and have not disputed involvement of the truck in the said accident. In the circumstances, the findings of the Tribunal as regards involvement of the truck cannot be interfered with.

14. As regards the quantum of compensation, the deceased was 18 years of age. The Tribunal had assessed loss of dependency on the basis of notional income of Rs.4,500/- per month. The Tribunal added 50% towards future prospects; deducted 50% towards personal expenses and upon applying multiplier of 18, has assessed loss of dependency at Rs.7,29,000/-. The Tribunal has awarded compensation of Rs.10,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses.

15. In addition, in view of the judgment of the Apex Court in ***Pranay Sethi*** *(supra)*, the parents of the deceased are entitled for compensation of Rs.80,000/- towards loss of filial consortium and Rs.30,000/- towards loss of estate and funeral expenses. Hence, the claimants are entitled for total compensation of Rs.8,39,000/-.

16. The fact that the claimants have not filed cross objection or cross appeal is no ground to deprive the Claimants of just and reasonable

compensation. In fact, it is an 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 ***Surekha Nakhate v/s. Santosh Namdeo Jadhav and ors. in SLP (C) No.8439 of 2019.***

17. Under the circumstances, the Appeal is dismissed. The Appellant – Insurance Company is directed t deposit enhanced compensation of Rs.95,000/- with interest @ 6% p.a. from the date of petition till final realization. The Appellant – Insurance Company to deposit the balance amount within a period of eight weeks. Statutory deposit of Rs.25,000/- be transferred to Claims Tribunal, Sangli. The Claims Tribunal, Sangli shall pay the amount deposited by the Appellant – Insurance Company to the Respondent Nos.1 and 2-claimants.

18. Pending applications, if any, stand disposed of in view of dismissal of the Appeal.

PREETI
H JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)