IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (STAMP) NO.11493 OF 2008
WITH
CIVIL APPLICATION NO.2572 OF 2008
WITH
CIVIL APPLICATION NO.2573 OF 2008
IN
FIRST APPEAL (STAMP) NO.11493 OF 2008

United India Insurance ...Applicant/Appellant

Versus

Smt. Dalimba Mallick and Ors. ...Respondents

....

Mr. Rahul Mehta i/b. M/s. KMC Legal Venture for the Appellant/ Applicant.
Mr. T.J. Mendon for Respondent Nos.1 to 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 23rd JUNE, 2022.

P.C.:-

1. The Appellant -Insurance Company has assailed the judgment and Award dated 05/09/2007 passed by the M.A.C.T., Thane, in M.A.C.P. No. 459 of 2003. By the impugned judgment the Claims Tribunal partly allowed the application under Section 166 of the Motor Vehicles Act, 1988 filed by Respondent Nos.1 to 3 and awarded compensation of Rs. 2,98,500/- with interest @ 9% p.a. from the date of the petition till final realisation.

2. The brief facts necessary to decide this appeal are as under:- Respondent No.1 is the widow and Respondent Nos.2 and 3 are the children of the deceased Krishnachandra Bairagi Mallick, who died in a motor vehicular accident on 25/05/2003 involving truck bearing No.MH-06-G-5384, owned by Respondent No.4 and insured by the Appellant-Insurance Company. The case of Respondent Nos.1 to 3 (hereinafter referred to as 'the Claimants') is that while the deceased Krishnachandra was going to his work place, the offending vehicle dashed against his bicycle and he died as a result of the injuries sustained in the accident. It was the case of the Claimants that the accident was caused solely due to the negligence of the driver of the offending vehicle. The Claimants stated that the deceased was a plumber and earning Rs.4,050/- per month, in addition to the agricultural income of Rs.50,000/- per annum. The Claimants were solely dependent on the income of the deceased and hence claimed compensation of Rs.4,00,000/- from the owner and the Appellant-Insurer of the offending vehicle.

3. The owner of the offending vehicle did not contest the proceedings. The Appellant -Insurance Company claimed that the accident was caused due to the negligence of the deceased. The Appellant- Insurance Company disputed the income of the deceased and

stated that the compensation claimed by the Claimants was exorbitant. The Insurance Company also raised a plea of breach of terms and conditions of the policy.

4. The Claims Tribunal after considering the evidence adduced by the respective parties held that the deceased had succumbed to the injuries caused in the accident involving the offending vehicle. Learned Judge has also recorded a finding that the accident was caused due to the negligence of the driver of the offending vehicle. The Tribunal held that the deceased was working as a plumber but in the absence of actual income, the Tribunal fixed his notional income at Rs.36,000/- per annum. After deducting 1/3rd towards his personal expenses and applying multiplier of 11 the Claims Tribunal computed loss of dependency at Rs.2,64,000/-. The Claims Tribunal also awarded amount of Rs.34,500/- towards other conventional heads. Being aggrieved by the judgment and Award, the Appellant-Insurance Company has filed this appeal under Section 173 of the M.V. Act.

5. Learned counsel for the Appellant challenged the findings on the issue of negligence and computation of compensation. Per contra, Mr. T.J. Mendon, learned counsel for the Claimants submits that the compensation awarded by the Tribunal is not just and reasonable. He

submits that the compensation can be enhanced without cross appeal or cross objection.

6. It is well settled that in Claim Petition under Section 166 of the M.V. Act, the Claimants are merely to establish their case on the touchstone of preponderance of probability. In the instant case, it is not in dispute that the crime was registered against the driver of the offending vehicle under Sections 279 and 304 A of the IPC for driving the vehicle in a rash and negligent manner and thereby causing the death of Krishnachandra. The driver of the offending vehicle did not step into the witness box to explain the circumstances under which the accident was caused. Considering this aspect, the Tribunal was justified in relying upon the police report in attributing negligence to the driver of the offending vehicle. Under these circumstances, the findings on the issue of negligence do not warrant any interference.

7. As regards the quantum of compensation, the deceased was 55 years of age. It is not in dispute that the deceased was working as a plumber. In the absence of any evidence to prove the actual income, the Tribunal has considered the notional income of the deceased as Rs.3,000/- per month. Considering the nature of employment and the age of the deceased, in terms of the judgment of the Apex Court in

National Insurance Company Ltd. Vs. Pranay Sethi and Ors. (2017) 16 SCC 680, 10% needs to be added to the actual income towards future prospect. Hence, considering the income of the deceased as Rs.36,000/- per annum and adding 10% towards future prospects, income works out to Rs.39,600/- p.a. Upon deducting 1/3rd towards his personal expenses and applying multiplier of 11 the loss of dependency comes to Rs.2,90,400/-. The Claimants are also entitled for compensation of Rs.1,20,000/- towards spousal and parental consortium and Rs.30,000/- towards funeral expenses and loss of estate. The Claimants are therefore entitled for total compensation of Rs.4,40,000/-, which is more than the amount awarded by the Tribunal.

8. The Claimants have not filed substantive appeal or cross-objection. The question which therefore arises is whether this Court can enhance the compensation in the absence of an appeal or cross objections. In this regard it would be advantageous to refer to the decision in ***A.P.S.R.T.C. Rep. by its General Manager and anr. V/s. M. Ramadevi and ors. 2008(1) T.A.C. 714 (S.C.),*** wherein the Apex Court while considering the question whether the High Court could have enhanced the compensation in the absence of an appeal by the claimant, reiterated the principles in *Nagappa* v/s. Gurdial *Singh and Ors. 2003 (2) SCC 274* that

under Motor Vehicles Act there is no restriction that the Tribunal or Court cannot award compensation exceeding the claimed amount. The function of the Tribunal Court is to award 'just compensation' which is reasonable on the basis of evidence produced on record.

9. In ***Surekha and Ors. vs. Santosh and Ors. 2020 SCC Online SC 1312*** Hon'ble Supreme Court has held that "*in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants".*

10. In ***National Insurance Co. Ltd. v/s. Vaishali Harish Devare and ors.*** *in* ***First Appeal No.1068 of 2012,*** the Division Bench of this Court has held that the Appeal being continuation of Claim Petition even if there is no Cross Appeal or Cross Objection, the Appellate Court is under an obligation to determine the just compensation payable to the claimants. It has been held that while deciding the appeal, an adjudication is required to be made whether the compensation granted by the Tribunal is a just compensation. Such adjudication can be made without taking recourse to Rule 33 of O XLI of the Code. It is thus well settled that there is no embargo in enhancing the compensation in the absence of appeal or cross objection.

11. Under the circumstances and in view of discussion (supra), the appeal is dismissed. It is held that the Claimants are entitled for compensation of Rs.4,40,400, which is rounded off to Rs.4,40,500/-. The Appellant-Insurance Company shall pay the enhanced compensation of Rs. 1,42,000/- with 9% interest p.a. from the date of the application till its final realization within a period of four weeks from the date on which this order is uploaded. The Claimants shall pay deficit court fee on the enhanced compensation.

12. The Tribunal shall pay 50% of the compensation along with accrued interest to the Claimant No.1, widow of the deceased and 25% each be paid to Respondent Nos.2 and 3.

13. The appeal is disposed of in above terms.

14. Pending application (s), if any, stand (s) disposed of in view of disposal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)