IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1156 OF 2016
WITH
INTERIM APPLICATION NO. 2289 OF 2019
IN
FIRST APPEAL NO. 1156 OF 2016

United India Insurance Company Ltd. …. Appellant
v/s.
Pushpa Dattatray @ Dattaram Mohite
and ors. …. Respondents

Mr. Rahul Mehta i/b. KMC Legal Venture for the Appellant.
Ms. Vishakha Shelar i/b. Mr. Pratap Patil for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 29th JULY, 2022.

P. C. :-

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

2. The Appellant – Insurance Company has filed this Appeal under section 173 of Motor Vehicles Act assailing the judgment and award dated 19/12/2015 passed by the Motor Accident Claims Tribunal, Alibag in MACP No.409/2011. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.18,43,900/- with interest at the rate of 9% p.a. from the date of petition till final realization.

3. Mr. Mehta, learned counsel for the Appellant states that challenge is restricted only to the quantum of compensation. Hence, the question which falls for consideration is whether the compensation awarded by the Claims Tribunal is just and reasonable.

4. The evidence on record reveals that Dattatraya @ Dattaram Pandurang Mohite died as a result of the injuries sustained in a motor vehicular accident on 04/08/2011 involving Tata Indica Car No.MH-06-AN-9546. The said vehicle was owned by the Respondent No.7 and insured by the Appellant – Insurance Company. It was the case of the claimants - widow, children and mother of the deceased, that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Respondent – claimants had stated that the deceased who was 42 years of age owned a mini door rickshaw and that he used to personally drive the said vehicle and earn income of Rs.9,000/- per month.

5. The Tribunal held that the claimants had not adduced evidence to prove the income of the deceased. Nevertheless, considering the age and occupation of the deceased, accepted the statement that the monthly income of the deceased was Rs.9,000/-. The Tribunal added

30% towards future prospects and upon applying multiplier of 14 and deducting 1/4th towards personal expenses, computed loss of dependency to Rs.13,68,900/-. The Tribunal awarded Rs.1,50,000/- towards medical expenses ; Rs.1,00,000/- towards loss of consortium, deprivation of protection and social security, etc. ; Rs.1,00,000/- towards loss of love and affection, deprivation of protection and social security, etc. ; Rs.1,00,000/- towards loss of estate and Rs.25,000/- towards funeral and ritual expenses and thus awarded total compensation of Rs.18,43,900/-.

6. Mr. Mehta, learned counsel for the Appellant states that the claimants had failed to prove the income of the deceased and hence, the Tribunal was not justified in considering the notional income at Rs.9,000/- per month. He further submits that the Tribunal was also not justified in adding 30% towards future prospects and that compensation awarded on other conventional heads is also exorbitant.

7. Per contra, learned counsel for the Respondents submits that the deceased owned mini door rickshaw and he was personally operating the same and earning Rs.9,000/- per month. She submits that considering the nature of business and social status, it is difficult to

expect the deceased or the claimants to maintain records, submit returns and/or to prove the actual income. She submits that the deceased was 42 years of age and that total 06 members being widow, children and aged mother of the deceased were totally dependent on the income of the deceased. Considering that the 06 members were dependent on the deceased, deduction towards personal expenses ought to have been 1/5th and not 1/4th. She claims that the Respondents-claimants are entitled for enhanced compensation.

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

9. It is not in dispute that the deceased had died in a motor vehicular accident involving vehicle No.MH-06-AN-9546 which was duly insured by the Appellant – Insurance Company. The deceased was 42 years of age and he had left behind the widow, 04 children and aged mother. It is in evidence that the deceased owned a mini door rickshaw and he was personally plying the same. The widow of the deceased had deposed that he was earning Rs.9,000/- per month. It is true that the claimants had not adduced documentary evidence to prove the income of the deceased. However, considering the social status of the

deceased, that he will illiterate, it is difficult to expect him to maintain records, submit returns and/or to prove the actual income. The deceased was 42 years of age and was maintaining himself and 06 members of the family who were fully dependent on him. Considering the age and occupation of the deceased, in my considered view, the Tribunal has not committed any error in considering the income of the deceased at Rs.9,000/- per month which works out to Rs.1,08,000/- per annum. The deceased was self employed and was within the age group of 40 to 50 years and as such as per the judgment of the Hon'ble Apex Court in ***National Insurance Company Limited v/s.Pranay Sethi and Others (2017 16 SCC 680),*** 25% needs to be added towards future prospects. Considering the fact that total 06 members were dependent on the income of the deceased, 1/5th of the income needs to be deducted towards his personal expenses and considering the age of the deceased, loss of dependency has to be computed by applying multiplier of 14.

10. It is in evidence that the deceased was admitted in the hospital and that the claimants had incurred medical expenses of Rs.1,50,000/-. The claimants are also entitled for medical expenses of Rs.1,50,000/- Furthermore, the claimant no.1 being the widow and claimant nos.2, 3

and 4 being the children and claimant no.5 being the aged mother are entitled for compensation towards loss of spousal consortium, parental consortium and filial consortium i.e. Rs.2,15,000/-. In addition, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, the claimants are entitled for total compensation of Rs.19,42,000/- the details of which are as under :-

Head		**Compensation awarded**
1.	Annual income of the deceased	Rs.1,08,000/- (Rs.9,000/- x12)
2.	Addition of 25% towards future prospects	Rs.1,35,000/- (Rs.1,08,000/- + Rs.27,000/-)
3	Deduction towards personal expenses	Rs.1,08,000/- (Rs.1,35,000/- Rs.27,000/-)
4.	Loss of dependency on applying multiplier of 14	Rs.15,12,000/- (Rs.1,08,000/- x 14)
7	Medical Expenses	Rs.1,50,000/-
5.	Loss of spousal, parental and filial consortium	Rs.2,50,000/-
6.	Loss of estate and funeral expenses	Rs.30,000/-
8.	Total compensation	Rs.19,42,000/-

11. 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 ***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.)*** and ***Surekha Nakhate v/s. Santosh Namdeo Jadhav and ors. in SLP (C) No.8439 of 2019.***

12. Under the circumstances and in view of discussion supra, the Appeal is dismissed. It is held that the claimants are entitled for total compensation of Rs.19,42,000/-. The Appellant – Insurance Company to deposit the balance amount of Rs.98,100/- with interest at the rate of 7% p.a. from the date of the petition till final realization. The amount of Rs.98,100/- shall be deposited before the Claims Tribunal, Alibag within six weeks from the date of uploading of this order. Statutory deposit be transferred to MACT, Alibag. The Claims Tribunal shall pay 50% of the compensation to the claimant no.1, 20% each to claimant nos.2, 3, 4 and 5 and 10% to claimant no.6 with proportionate interest accrued thereon on such amount.

13. Appeal as well as pending applications stand disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)

PREETI H JAYANI Digitally signed by PREETI H JAYANI Date: 2022.09.23 15:27:26 +0530