IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.191 OF 2022
WITH
INTERIM APPLICATION NO.16761 OF 2022
IN
FIRST APPEAL NO.191 OF 2022

Reliance General Insurance Co. Ltd. and Ors. ...Appellants

Versus

Smt. Seema Govinda Gavare and Ors. ...Respondents

...

Ms Kalpana Trivedi for the Appellants.
Mr. Akshay R. Kapadia with Mr. M.R. Sherekar with Mr. Vikas Shejwal for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 3rd OCTOBER, 2022.

P. C. :-

1. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 filed by the Appellant-Insurance Company challenging the impugned Judgment dated 31/03/2021 in M.A.C.P. No.616 of 2015. By the impugned judgment the Claims Tribunal partly allowed the petition under Section 166 of the Motor Vehicles Act filed by Respondent Nos.1 to 5 (hereinafter referred to as ‘the Claimants’) and awarded compensation of Rs.50,10,487/- with interest @ 7.5% per annum from

the date of the petition till final realization.

2. Respondent No.1 is the widow, Respondent Nos.2 and 3 are the children and Respondent No.4 is the mother of the deceased Govind Gavare, who expired in a motor vehicular accident on 29/12/2014 involving motor car bearing registration No.MH-02-AV-1036, which was owned by Respondent No.5 and insured by the Appellant -Insurance Company.

3. The Claimants have alleged that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle. The Claimants alleged that the deceased was 47 years of age and was working with MSRTC and drawing monthly salary of Rs.33,515/-. The Claimants therefore filed a petition under Section 166 of the M.V. Act claiming total compensation of Rs.90,00,000/-.

4. The owner and driver did not contest the proceedings. The Appellant-Insurance Company raised a defence of breach of terms and conditions of the policy asserting that the driver of the offending vehicle was not holding a valid and effective driving license.

5. Upon considering the evidence on record the Tribunal has returned the finding that the accident was caused due to rash and

negligent driving by the driver of the offending vehicle. The Tribunal having held that the deceased was earning Rs.3,95,677/- per annum and after deducting an amount paid towards professional tax and income tax (Rs.2500+3947=6447), the Tribunal considered the income of the deceased to Rs.3,89,230/- per annum. The Tribunal added 30% of the actual salary to the income of the deceased towards future prospect. Upon deducting 1/4th towards personal expenses and adopting multiplier of 13, the Tribunal assessed loss of dependency at Rs.49,33,487/-. The Tribunal also awarded compensation of Rs.33,000/- towards loss of estate and funeral expenses and Rs.44,000/- towards loss of spousal consortium. The Tribunal thus awarded total compensation of Rs.50,10,487/-. Being aggrieved by the quantum of compensation awarded by the Tribunal, the Appellant-Insurance Company has filed this appeal.

6. Ms Kalpana Trivedi, learned counsel for the Appellant has restricted her challenged to the quantum of compensation. She submits that the deceased was 49 years of age and hence multiplier applicable was 11. She further submits that in the absence of cogent evidence the Tribunal has erred in considering the income of the deceased as Rs.3,89,230/- per annum. She therefore contends that the

compensation awarded by the Tribunal is not just and reasonable.

7. Per contra, Mr. Akshay Kapadia, learned counsel for the Claimants submits that the deceased was 49 years of age and as per the decision of the Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation, 2009 ACJ 1298*** and also in ***National Insurance Company Vs. Pranay Sethi, 2017 ACJ 2700*** the multiplier applicable is 13. He submits that the Tribunal has not committed any error in computing the loss of dependency to Rs.49,33,487/-. He submits that the Claimant Nos.2 and 3 are the children and Claimant No.4 being the mother of the deceased are also entitled for compensation towards loss of parental and filial consortium.

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

9. The only question for consideration is whether the compensation awarded by the Claims Tribunal is just and reasonable. It is not in dispute that the deceased was an employee of MSRTC. The Claimants have produced salary certificate at Exhibit-43 and Form -16 at Exhibit-51. The aforesaid documents vis-a-vis evidence of AW2-Shashikant Jadhav reveals that the deceased was drawing monthly

salary of Rs.33,515/- with deduction of Rs.2,500/-towards professional tax and Rs.3,947/- per annum towards income tax. Upon excluding the amount deducted towards professional and income tax, the annual income of the deceased was Rs.3,89,230/-. Considering the annual income of the deceased as Rs.3,89,230/- and adding 30% towards future prospect, the total income comes to Rs.5,05,999/-. After deducting 1/4th i.e. Rs.1,26,500/- towards personal and living expenses and applying multiplier of 13, loss of dependency is assessed at Rs.3,79,499/-. The Tribunal has awarded total compensation of Rs.44,000/- towards loss of spousal consortium. In view of the judgment in ***Magma General Insurance Company Limited V/s Nanu Ram (2018 SCC 1546),*** Claimant Nos.2, 3 and 4 are also entitled for compensation of Rs.44,000/- each towards loss of parental and filial consortium. Thus, the Claimants are entitled for total compensation of Rs.51,42,487/-.

10. The fact that the Claimants have not filed cross objection 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.***

11. Under the circumstances, the appeal is dismissed. It is held that the Claimants are entitled for compensation of Rs.51,42,487/- with interest @ 7.5% p.m. from the date of the petition till final realisation. The Appellant-Insurance Company to deposit the balance amount within a period of four weeks from the date on which the order is uploaded. The Claimants shall pay deficit court fee, if any, on the enhanced amount of compensation. 50% of the compensation deposited by the Appellant-Insurance Company along with proportionate interest accrued thereon be paid to Claimant No.1-Seema Gavare and the balance amount be paid to Respondent Nos.2 and 3 in equal proportion.

12. Statutory deposit, if any, with accrued interest be transferred to the Claims Tribunal, Mumbai.

13. Appeal as well as pending application (s), if any stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

MEGHA S PARAB Digitally signed by MEGHA S PARAB Date: 2022.10.20 09:26:45 +0530