IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 706 OF 2022
WITH
INTERIM APPLICATION NO. 3095 OF 2021
IN
FIRST APPEAL NO. 706 OF 2022

Smt. Karuna Kishor Chavan and ors. …. Appellants
v/s.
Shri. Kashiwala Rahenaben Haji Gulam Nabi and anr. …. Respondents

WITH
FIRST APPEAL NO. 126 OF 2022
WITH
CIVIL APPLICATION NO. 4141 OF 2017
IN
FIRST APPEAL NO. 126 OF 2022

Reliance General Insurance Co. Ltd. …. Appellant
v/s.
Smt. Karuna Kishor Chavan and ors. …. Respondents

Ms. Rina Kundu for the Appellant in FA/706/2022 and for the Respondent in FA/126/2022.
Mr. Rahul Mehta i/b. KMC Legal Venture for the Appellant in FA/126/2022.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 09th NOVEMBER, 2022.

<u>JUDGMENT :-</u>

. The Appellant – Insurance Company and the original Claimants have filed these Appeals under section 173 of the Motor Vehicles Act, challenging the judgment dated 12/05/2017 passed by the Motor Accident Claims Tribunal, Thane in Motor Accident Claim Petition No.0100398/2011. By the impugned judgment, the Claims Tribunal partly allowed the claim petition filed under section 166 of Motor Vehicles Act and awarded compensation of Rs.50,25,000/- with interest @ 8% p.a. from 10/04/2017 till realization.

2. The Appellant No.1 in First Appeal No.706/2022 is the widow, the Appellant Nos.2 to 6 are the children and Appellant Nos.7 and 8 are the parents of the deceased Kishor Chavan. These Appellants shall be hereinafter referred to as 'the Claimants' whereas the Appellant in the First Appeal No.126/2022 shall be referred to as 'the Respondent – Insurance Company'.

3. On 20/02/2011, the deceased Kishor Chavan was proceeding towards Andheri by his motor cycle bearing No.MH-02-CC-3019. The truck bearing No.GJ-11-Y-5417 dashed against his motor cycle near Kashimira Police Station, resulting in instant death of the deceased. The Claimants lodged a petition under Section 166 of MV Act alleging that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle. The Claimants stated that the

deceased was working as a Dressman with Balaji Telefilms, Andheri, Mumbai and was earning Rs.32,500/- per month. The deceased was the sole earning member in the family and that they were entirely dependent on his income. The Claimants asserted that they are entitled for compensation of Rs.48,89,856/- but restricted the claim to Rs.1,00,000/- for inability to pay the court fee.

4. The owner of the vehicle did not contest the proceedings. The Respondent-Insurance Company claimed that the driver of the offending vehicle was not holding valid and effective driving license and that the vehicle was operated without permit and fitness certificate. The Insurance Company denied its liability to indemnify the insured for breach of terms and conditions of the policy. The Insurance Company denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle and attributed negligence to the deceased. The Insurance Company also denied the income of the deceased and stated that the Claim is exorbitant.

5. The Tribunal, upon considering the evidence on record, recorded a finding that the accident was caused due to rash and negligent driving by the driver of the offending truck. Relying upon the evidence

of CW2 – Suresh Anchan, the Tribunal considered the monthly income of the deceased at Rs.36,000/- per month. Upon deducting the income tax, the Tribunal considered the annual income of the deceased as Rs.4,00,000/-. Applying multiplier of 16 and upon deducting 1/4th towards personal expenses, the Tribunal assessed loss of dependency at Rs.48,00,000/-. The Tribunal further awarded compensation of Rs.1,00,000/- towards loss of estate, Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. Thus, the Tribunal awarded total compensation of Rs.50,25,000/-. Being aggrieved by the quantum of compensation awarded by the Claims Tribunal, the Claimants and the Respondent- Insurance Company have filed these Appeals.

6. Ms. Kundu, learned counsel for the Claimants submits that the evidence of CW2 – Suresh Anchan vis-a-vis salary certificate and salary slip proves that the deceased was earning more than Rs.36,000/- per month. She submits that the Tribunal has not considered loss of future prospects and further erred in deducting 1/4th towards personal expenses of the deceased though total eight members of his family were dependent on him. She submits that the compensation awarded by the Claims Tribunal is not just and reasonable and the same needs to

be enhanced.

7. Mr. Mehta, learned counsel for the Respondent– Insurance Company submits that the Claimants have not proved the income of the deceased and as such, the Tribunal has erred in considering the annual income of the deceased as Rs.4,00,000/-. He submits that there could be no addition towards future prospect since the deceased did not have a permanent job and was not self employed. He further submits that the Tribunal ought to have deducted 30% towards income tax payable by the deceased. He therefore submits that the compensation awarded by the Claims Tribunal needs to be reduced.

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 – Kishor Chavan had expired as a result of the injuries sustained in a motor vehicular accident. There is no challenge to the findings recorded by the Claims Tribunal that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The challenge in both these Appeals is restricted to the quantum of compensation awarded by the Claims

Tribunal. Hence, the only issue for consideration is whether the compensation awarded by the Tribunal is just and reasonable.

10. It is to be noted that the deceased was 31 years of age. C.W.-1 has deposed that the deceased was a Dressman with Balaji Telefilms on contractual basis and that he was earning Rs.32,500/- per month. The Claimants had examined C.W.2- Suresh Anchan, General Manager, Commercial, Creative Unit of Balaji Telefilms and has confirmed that the deceased was working as a Dressman on contractual basis in daily television show *'Baat Hamari Pakki Hai'*. He claims that after deducing TDS, the deceased was paid contractual fees of Rs.36,000/- per month. He has produced the salary certificate at Exhibit – 42 and certificate at Exhibit – 43 giving details of the cheques issued in favour of the deceased from 15/06/2010 to 07/02/2011.

11. The evidence of CW2 vis-a-vis certificates at Exhibits-42 and 43 reveal that the deceased was not paid fixed monthly salary and his income varied from month to month. The records reveal that the months preceding the death of the deceased, he was paid monthly income of Rs.32,000/- to Rs.40,000/- after deducting tax at source. Considering the age of the deceased and his professional skills and

relying upon the evidence of CW2, more particularly the payment slip at Exhibit – 42, the monthly income of the deceased can be considered as Rs.32,500/- i.e. Rs.3,90,000/- per annum.

12. In ***National Insurance Company Limited v/s. Pranay Sethi and Others (2017 16 SCC 680),*** the Hon'ble Supreme Court while accepting the principle of standardization as regards future prospects, has held thus:-

> *"To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospect s to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased, who had held permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased, who was a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be in apposite. It is because the criterion of distinction between the two in that event would be certainty on one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other. But such a perception is fallacious. It is because price rise does affect a self employed person, and that apart there is always incessant effort to enhance ones income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees.*

> *Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time."*

13. In ***Pranay Sethi*** (supra), the Supreme Court formulated norms for awarding future prospects to the deceased in different age groups falling under two categories viz. (i) Where the deceased had a permanent job (ii) the deceased was self employed or on a fixed job. In ***Meena Pawaia and Others vs. Ashraf Ali and Others, 2021 SCC Online SC 1083***, the Hon'ble Supreme Court has held that the principle of standardization is also applicable to the deceased who was not serving and/or was not having any income at the time of accident/ death. It is held that in case of a deceased, who was not earning and/or not doing any job or not self employed at the time of the accident/death, the income is to be determined on the guess work considering the circumstances and once such an amount is arrived he shall be entitled for future prospects.

14. It is thus well settled that the principle of standardization is applicable not only to self employed or a person with a fixed salary but is also applicable to the deceased, who was not doing any job and/or

was not earning at the time of the accident /death. The submissions of Mr. Mehta, learned counsel for the Appellant -Insurance Company that the deceased being a Dressman, the Claimants are not entitled for benefit of future prospect runs contrary to the principles laid down by Supreme Court in the aforestated decisions.

15. In the instant case, the deceased was a young man of 31 years. At the time of the accident he was working for Balaji Telefilms as a Dressman on contract basis. As a Dressman, he was incharge of costumes of the artists in TV serial- 'Baat Hamari Pakki Hai' and would fall in the category of self employed. Hence, the Claimants are entitled for the benefits of future prospects. Considering the age of the deceased and the norms laid down in ***Pranay Sethi*** (supra), 40% of the established or determined income needs to be added towards future prospects.

16. The Tribunal has deducted 1/4th towards personal expenses of the deceased, despite there being 08 dependents. As reiterated by the Hon'ble Supreme Court in ***Pranay Sethi*** (supra), deduction for personal and living expenses of the deceased should be 1/5th, where the number of dependent family members exceeds six. The Tribunal has

not awarded any compensation towards loss of spousal, parental or filial consortium, which as per the judgment of ***Pranay Sethi*** (supra) and ***Magma General Insurance Co. Ltd. V/s. Nanu Ram alias Chuhru Ram & Ors. 2018 SCC Online SC 1546,*** would be Rs.40,000/- towards loss of spousal consortium, Rs.2,00,000/- (Rs.40,000 x 05) towards loss of parental consortium and Rs.80,000/- towards loss of filial consortium. In addition, the Claimants are also entitled for compensation of Rs.30,000/- towards loss of estate and funeral expenses. Thus, the claimants are entitled for total compensation of Rs.3,50,000/- which needs to be adjusted as against the compensation of Rs.2,25,000/-, awarded by the Tribunal towards loss of estate, loss of love and affection and funeral expenses. Hence, the Claimants are entitled for total compensation as under :-

Income	Rs.32,500/- per month
Deduction of 1/5th towards personal expenses	Rs.6,500/-
Annual Income [Rs.32,500/- (-) Rs.6,500/- (x) 12]	Rs.3,12,000/-
Add : 40% towards future income [Rs.1,24,800 + Rs.3,12,000/-	Rs.4,38,600/-
Loss of dependency after applying multiplier of 16 [Rs.3,12,000/- x 16]	Rs.69,88,800/-
Add : conventional heads [Rs.40,000/- (spousal consortium) + Rs.2,00,000/- (parental consortium) + Rs.80,000/- (filial consortium) + Rs.15,000/- (loss of estate) + Rs.15,000/- (funeral expenses]	Rs.3,50,000/-
Total compensation	Rs.73,38,800/-

Less : Compensation awarded by the Tribunal	Rs.50,25,000/-
Enhanced compensation payable	**Rs.23,13,800/-**

17. As regards the interest, it is seen that the Claimants have filed the Appeal after a delay of 04 years and 49 days. It would not be just to saddle the Insurance Company with interest for the delayed period of 04 years and 49 days. Hence, the Claimants would not be entitled for interest for the said delayed period.

18. Considering the above facts and circumstances, the First Appeal No.126/2022 filed by the Insurance Company is dismissed. First Appeal No.706/2022 filed by the Claimants is allowed. It is held that the Claimants are entitled for total compensation of Rs.73,38,800/- with interest @ 6% per annum from the date of the petition till final realization, excluding the period of 04 years and 46 days.

19. The Claimants to pay additional Court fees, if any, within a period of eight weeks.

20. The Insurance Company to deposit the enhanced compensation of Rs.23,13,800/- with interest within a period of eight weeks from the date of the order.

21. The Claimants have already withdrawn 70% of the compensation. 40% of the balance compensation with accrued interest be paid to the widow (Claimant No.1), 10% each to the children (Claimant Nos.2 to 6) and 5% each to the parents (Claimant Nos.7 and 8) respectively.

22. Statutory deposit be transferred to MACT, Thane. Claimants are entitled to withdraw the same.

23. Pending Civil/Interim Applications stand disposed of in view of disposal of the Appeals.

PREETI H JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)