

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1157 OF 2017

The New India Assurance Co. Ltd. ...Appellant
Versus
Smt.Madhuri Vinay Kumar Mishra & Ors.Respondents

NILAM
SANTOSH
KAMBLE

Digitally signed by
NILAM SANTOSH
KAMBLE
Date: 2022.12.23
17:15:08 +0530

Mr.D.R. Mahadik for the Appellant.
Ms.Rina Kundu, for Respondent Nos.1,2,3 and 5.

CORAM : S.G. DIGE, J.

DATE : 12 DECEMBER 2022

JUDGMENT :-

. Being aggrieved and dissatisfied with the judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short 'the Tribunal'), the Appellant-Insurance Company-Original Respondent No.2 preferred this Appeal.

2. Brief facts are as under:-

On 6 May 2005 deceased Vinay Kumar Mishra was driving Tata Indica Car bearing No.MH-06-W-7004 along with his family, they were proceeding from Roha Parola-Dhule National Highway No.6. When they reached near Parola Village, Opp Mamta Hotel, District-Jalgaon, at the relevant time one truck was proceeding ahead their vehicle that way. Deceased asked the said driver of said truck to give side to move ahead.

The truck driver gave signal to pass, so as to overtake that truck. When deceased took his car slightly right side to overtake that truck at that time suddenly one truck bearing No.MH-04/H-9195 (for short 'offending truck) came from opposite direction with high and excessive speed in rash and negligent manner and gave dash to his car. Deceased and all family members sustained injuries. They were admitted in Civil Hospital, Dhule where the deceased was declared dead. The Crime was registered against the driver of the offending truck.

3. The Respondents (Original Claimants) filed Claim Petition before the Tribunal, Thane for getting compensation. The Tribunal has awarded compensation against the said judgment and order this Appeal.

4. It is contention of the learned counsel for the Appellant that deceased was more than 40 years old in spite of that the Tribunal has awarded 50% future prospectus in stead of 30%. The Tribunal has deducted dependency amount of $\frac{1}{5}^{\text{th}}$ it should be $\frac{1}{4}^{\text{th}}$. The Tribunal has applied wrong multiplier. The Tribunal has considered the age of the deceased as 39 whereas his age was 40 years and applied multipliers 15 it should be 14. The Tribunal has awarded exorbitant and excessive compensation, hence requested to allow the Appeal. He relied on judgment of

Apex Court in case of *National Insurance Company V/s. Pranay Sethi & Others*¹ .

5. The learned counsel for the Respondents submit that the Tribunal has considered all the aspects while awarding compensation no evidence was led before the Tribunal by the Appellant in respect of contentions which are raised in the Appeal. The order passed by the Tribunal is legal and valid.

6. I have heard both the learned counsel. Perused judgment and order passed by the Tribunal.

7. The issue's involved in this Appeal are application of wrong multiplier and awarding excess future prospects and wrong deduction of personal expenses.

8. I deal with the issue's one by one. In respect of the application of wrong multiplier the Tribunal has observed that at the time of the accident deceased was 39 years old on that basis he applied multiplier of 15.

9. It has come on record that at the time of the accident deceased was 41 years 11 months and 24 days old. His Date of Birth is 12 June 1963. It proves that at the time of the accident

¹ 2017-ACJ-2700

he was more than 41 years old. As per the view of the Hon'ble Apex Court in the case of *Sarla Verma V/s. Delhi Transport Corporation*² for this age the proper multiplier is 15, hence I am considering the multiplier 14.

10. The Tribunal has deducted 1/5 amount as personal expenses of deceased. It has come on record that deceased was married and there are 5 persons were dependent on him so dependency should be 1/4th.

11. The Tribunal has considered 50% future prospects, as per the view of the Hon'ble Apex Court in the case of *Pranay Sethi* if the age of deceased is between 40 to 50 years it should be 30% but this fact is not considered by the Tribunal, hence, I am considering 30% as future prospects.

12. In view of the above calculations the Respondent-Original Claimants are entitled for following compensation.

Income		Rs.21,633/-
Less Income Tax	Rs.1,200/-	
Less Professional Tax	Rs.200/-	
	-----	Rs.1,400
	Rs.1,400/-	-----
	=====	Rs.20,233/-
Add :Future Prospect 30%		Rs.6,070/-

² 2009 ACJ 1298 (SC)

Total Income	-----
	Rs.26,303/-
Less : 1/4th Personal Expenses	Rs.6,575/-

	Rs.19,728/-
Dependency	Rs.19,728 x 12 x 14 Multiplier
	Rs.33,14,304/-
Add: Consortium (Rs.44,000/- each x 5)	Rs.2,20,000/-
Add : Funeral Expenses	Rs.16,500/-
Add: Loss to Estate	Rs.16,500/-

Total	Rs.35,67,304/-
	=====

13. The Tribunal has awarded compensation of R.48,47,620/-. As per calculations of this Court Claimants are entitled for Rs.35,67,304/- as compensation. If this amount deducts from the compensation awarded by the Tribunal i.e. Rs.48,47,620/-, it comes to Rs.12,80,316/-. The Appellants are entitle for refund of this amount.

14. The learned counsel for the Respondent pointed out that Tribunal has granted the interest on the compensation amount not from the date of the Petition, but from date of order. It is settled position of law that the Respondent-Claimants are entitled for the interest on the compensation amount from the date of Petition till its realization. Hence Claimants are entitle for interest on compensation amount from date of filing Petition till its realization.

15. In view of the above I pass following order:-

ORDER

(i) The Appeal is partly allowed.

(ii) The Respondents-Original Claimants are entitled for amount of Rs.35,67,304/- @ 7% interest per annum from the date of filing Petition till its realization. The Appellant is entitled for the refund of the amount of Rs.12,80,316/-, if entire amount is deposited by the Appellant before the Tribunal along with accrued interest thereon.

(iii) The Respondents-Original Claimants are permitted to withdraw the entire amount along with accrued interest thereon deposited by the Appellant.

16. Pending Civil Applications are also disposed of.

(S.G. DIGE, J.)