IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.263 OF 2019

The New India Assurance Co. Ltd. ...Appellant

Versus

V.J. Vasanthi and Ors. ...Respondents

...

Mr. D.S. Joshi with Mr. Pradumna Thakur Desai and Mr. Tejas Baviskar for the Appellant.
Mr. Haresh Shivdasani for Respondent Nos.1 to 4.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 18th NOVEMBER, 2022.

P.C. :-

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

2. This is an appeal under Section 173 of the Motor Vehicle Act assailing judgment dated 23/02/2017 passed by the Claims Tribunal, Mumbai in Claim Application No.1932 of 2009. By the impugned judgment, the Claims Tribunal allowed claim under Section 166 of the Motor Vehicle Act and awarded compensation of Rs.1,29,23,000/- with interest @ 9%per annum from the date of the application till final realisation.

3. Brief facts necessary to decide this appeal are as under:-

The Respondent No.1 is the widow, Respondent No.2 is the minor daughter and Respondent Nos.3 and 4 are the parents of the deceased-Krishna Kumar Padmanabhan, who expired in a motor vehicular accident on 25/02/2009 involving vehicle No.MH-06-AL-4002, insured by the Appellant-Insurance Company.

4. The deceased was 42 years of age and was earning annual income of Rs.10,57,750/-. The Claimants have stated that they were solely dependent on the deceased. The Claimants stated that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle and claimed compensation of Rs.1,50,00,000/-.

5. The insured did not contest the proceedings. The Appellant -Insurance Company denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle and raised a plea that the accident was caused due to negligence of the deceased. The Appellant-Insurance Company also denied the occupation and income of the deceased and claimed that they are not liable to pay any compensation to the Claimants.

6. The Tribunal framed the issues and considering the evidence adduced, rendered a finding that the deceased had expired due to rash and negligent driving by the driver of the offending vehicle. Upon deducting the income tax the Tribunal considered the income of the deceased at R.8,89,639/- per annum and upon adding 30% towards future prospect and applying multiplier of 14 and deducting 1/4 towards persons expenses computed loss of income at Rs.1,26,73,123/-. The Tribunal also awarded compensation of Rs.1,00,000/- to Respondent No.1 towards loss of consortium and Rs.1,00,000/- to Respondent No.2 to 4 towards loss of love and affection and granted compensation of Rs.25,000/- towards loss of estate and funeral expenses. The Tribunal thus awarded total compensation of Rs.1,29,23,000/- inclusive of amount paid under the NFL. Being aggrieved by this judgment, the Appellant -Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act.

7. Mr. Joshi, learned counsel for the Appellant states that the challenge to the judgment is restricted to the quantum of compensation. He submits that the Respondent No.1 is well qualified and is also employed and that she was not dependent on the income of

the deceased. He submits that this aspect ought to have been considered while computing loss of dependency. He contends that since Claimant No.1 was not dependent on the deceased, the Tribunal ought to have deducted 1/ 3rd towards personal and living expenses of the deceased. He further submits that there is an error in calculating loss of dependency. He submits that the compensation awarded by the Tribunal is not just and reasonable.

8. Per contra, Mr. Shivdasani, learned counsel for the Respondents-Claimants submits that the Respondents-Claimants had made a positive statement that they were dependent on the deceased and that the statement that the deceased was the primary and substantial bread winner of the family has gone unchallenged. Moreover, there is nothing on record to prove that the Claimant No.1 is employed. He therefore submits that deduction of 1/4th towards personal and living expenses is based on the judgment of the Apex Court in ***Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr., (2009) 6 SCC 121***, which has been approved by the Constitution Bench in ***National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 ACJ 2700,*** He therefore submits that the impugned judgment does not warrant any interference.

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

10. It is not in dispute that the deceased had expired as a result of the motor vehicular accident. The Tribunal has recorded a finding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. There is no challenge to these findings. The only issue raised in this appeal is whether the compensation awarded by the Tribunal is just and reasonable.

11. It is not in dispute that the deceased was 42 years of age. The deceased was in a permanent employment and his annual income was Rs.10,57,750/-. Upon deducting income tax he was getting net income of Rs.8,89,639/-. Considering the age of the deceased as per ***Sarla Varma*** and ***Pranay Sethi*** (supra), the multiplier applicable is 14 and amount to be added towards future prospect is 30% of the actual income. Hence, 1/4th needs to be deducted towards his personal and living expenses. The contention of Shri Joshi that the Claimant No.1 is employed and was not dependent on the deceased is not borne from the records. CW1 has specifically stated in her affidavit-in-evidence that the deceased was the only earning member and that they were dependent on his income. This statement has gone unchallenged.

There is nothing on record to prove that Respondent No.1 is employed. Even otherwise the Hon'ble Supreme Court has set the norms for deducting personal expenses based on the number of dependents. Considering the fact that four members of the family were dependent on the deceased 1/4th needs to be deducted towards personal expenses of the deceased.

12. Thus, considering the income of the deceased as Rs.8,89,639/- per annum and upon adding 30% towards future prospect and applying multiplier 14 and deducting 1/4th towards personal expenses, loss of dependency works out to Rs.1,21,43,572/- and not Rs.1,29,23,000/- as computed by the Tribunal, which appears to be the calculating mistake. The Respondent No.1 being widow, Respondent No.2-minor daughter and Respondent Nos.3 and 4 being parents of the deceased are entitled for compensation of Rs.40,000/- each towards spousal consortium, parental consortium and filial consortium, in addition to Rs.30,000/- towards loss of estate and funeral expenses. Thus the Claimants are entitled for total compensation of Rs.1,23,33,572/- as against Rs.1,29,23,000/- awarded by the Claims Tribunal.

13. Hence, the appeal is partly allowed. It is held that the

Respondents-Claimants are entitled for compensation of Rs.1,23,33,572/- with interest @ 9% p.a. from the date of the application till final realization. It is stated that the Claimants have already withdrawn 40% of the compensation. The excess amount deposited by the Appellant-Insurance Company with proportionate interest be refunded to the Appellant-Insurance Company.

14. The balance amount with accrued interest be paid to the Claimants in the following proportion. 40% each to Respondents Nos.1 and 2 and 10% each to the parents, who are Respondent Nos.3 and 4 before the Tribunal.

15. The appeal stands disposed of.

16. Pending application (s), if any, stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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