IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.1019 OF 2018

Shriram General Insurance Co.Ltd.,
Through its Branch Manager,
T-5, Sharda House, 3rd Floor, 345,
Kingsway, Nagpur. ..... **Appellant**.

:: **V E R S U S** ::

1. Vasant Shankar Bhende,
Aged 65 years, occupation retired.

2. Veena Vasant Bhende,
Aged 50 years, occupation housewife.
Both r/o plot No.1434, New Nandanwan,
Nagpur.

3. Sahidabi Ajij Sheikh,
Aged major, occupation owner,
R/o house No.1128/5/1039,
Hasanbag, Nagpur. ..... **Respondents**.

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Shri A.V.Joshi, Counsel for the Appellant.
Shri P.S.Mirache, Counsel for Respondent Nos.1 and 2.

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CORAM : SMT.ANUJA PRABHUDESSAI, J.
DATE : FEBRUARY 04, 2022

ORAL JUDGMENT

1. Hearing was conducted through Video Conferencing and learned counsel for parties agree that Video and Audio quality was proper.

2. By this appeal, the appellant-Insurance Company has challenged the judgment and award dated 7.5.2018 passed by learned Member, Motor Accident Claims Tribunal, Nagpur in Claim Petition No.193/2013. By the impugned judgment and award, the Tribunal has allowed the claim petition under Section 166 of the Motor Vehicles Act, 1988 filed by respondent Nos.1 and 2 and awarded compensation of Rs.13,90,800/- with interest @ 7.5% per annum from the date of the petition, till final realization.

3. Respondent Nos.1 and 2 (hereinafter referred to as, “claimants”) are the parents of the deceased Shivangi, who expired on 21.1.2013 due to the injuries sustained in a motor vehicular accident involving Mini Truck bearing registration No.MH-31/AP/6836. The said truck was owned by respondent No.3 and insured by the appellant-Insurance Company. Claimants had alleged that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. Claimants further stated that the deceased was 21 years of age and was an engineering student and had a bright future. The Claimants filed a claim petition claims compensation of Rs.16.00 lacs from the owner and the Insurance Company of the offending vehicle.

4. In response, the appellant-Insurance Company claimed that Activa bearing registration No.MH-31/EB/3862, which was driven by

.....3/-

the deceased, had dashed against the offending vehicle. It was further alleged that the deceased did not hold a valid driving licence and the accident was caused due to rash and negligent driving by the deceased herself.

5. Upon considering the evidence on record, the Tribunal has held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal further held that the deceased was an engineering student and had bright prospects. The Tribunal, therefore, considered the notional income of the deceased at Rs.9,000/- per month. The Tribunal added 40% towards future prospects and deducted 50% towards personal expenses. Considering the age of the deceased, the Tribunal applied multiplier of 18 and computed loss of dependency at Rs.13,60,800/-. In addition, the Tribunal awarded compensation of Rs.15,000/- each towards funeral expenses and loss of estate. Thus, the Tribunal awarded total compensation of Rs.13,90,800/-. Being aggrieved by this judgment, the appellant-Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Learned counsel for the appellant/Insurance Company has assailed the impugned judgment solely on the ground that the Tribunal

has erred in considering the notional income of the deceased at Rs.9,000/-. He submits that the deceased was a student and was not an earning member. He submits that the compensation awarded by the Tribunal is exorbitant and needs to be sealed down.

7. Learned counsel for the claimants states that the deceased was a student of engineering and she had already completed five semesters and had a bright future. He, therefore, submits that the Tribunal has not committed any error in computing loss of dependency on the basis of the notional income of Rs.9,000/-. He submits that in similar case i.e. First Appeal No.1264/2019 this Court has considered the notional income of engineering student at Rs.10,000/-. He further submits that the Tribunal has not awarded any compensation towards loss of parental consortium. He has relied upon the decision of the Honourable Apex Court in the case of **Surekha and ors vs. Santosh and ors**, reported at **2020 SCJ 2156** to contend that the Court can enhance the compensation even in the absence of cross objection.

8. I have perused records and considered submissions advanced by learned counsel for respective parties. It is not in dispute that the deceased was 21 years of age and was 3rd year engineering student. She had cleared fifth semester. The statement of marks

(Exhibit-30) reveals that the deceased had secured 409 out of 650 marks. She would have completed the professional course and on having qualified as an engineer, she would have pursued her avocation, but for the unfortunate premature death. As observed by the Tribunal, she had a bright future and would have earned substantial income if her life was not cut short by the accident. The Tribunal was, therefore, justified in computing the compensation on the basis of the notional income of Rs.9,000/- per month. Under the circumstances, I do not find any merit in the challenge raised by the appellant-Insurance Company. Hence, the appeal has no merits and is liable to be dismissed.

9. As regards quantum of compensation, it is seen that the Tribunal has not awarded any compensation towards loss of parental consortium. In view of the decisions of the Honourable Apex Court in the case of **Magma Fincorp Limited vs. Rajesh Kumar Tiwari**, reported at **(2020)10 SCC 399** and **National Insurance Company Limited vs. Pranay Sethi and ors** reported at **(2017)16SCC 680**, claimants are entitled for compensation of Rs.40,000/- each towards loss of parental consortium. It is also well settled that the Tribunal as well as the Court is under obligation to award just and reasonable compensation. The Court, therefore, can enhance compensation even in the absence of cross

objection. Reliance is place on the decision of the Honourable Apex Court in the case of Surekha and ors vs. Santosh and ors cited *supra*.

10. In the light of the above, in my considered view, claimants are entitled for enhanced compensation even in the absence of the cross objection. The Tribunal has awarded compensation of Rs.13,90,800/-. In addition, the claimants are entitled for compensation Rs.80,000/- towards loss of parental consortium. Therefore, claimants are entitled for total compensation of Rs.14,70,800/-.

11. Under the circumstances, in view of decisions cited *supra* the appeal filed by the appellant-Insurance Company is dismissed. It is held that claimants are entitled for total compensation of Rs.14,70,800/- with interest @ 7.5% per annum from the date of application, till final realization. Award stands modified accordingly.

12. Learned counsel for the appellant-Insurance Company states that amount towards enhanced compensation shall be deposited within a period of four weeks from today. Claimants are entitled to withdraw the balance compensation as well as enhanced compensation in equal proportion with interest accrued thereon.

JUDGE

!! BRW !!