

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1388 OF 2014

The National Insurance Co. Ltd
Through its Divisional Manager
Hazari Chambers, Station Road,
Aurangabad, Dist. Aurangabad.

...Appellant
[Orig. Resp No. 2]

Versus

1. Ramrao Vitthal Ghusale
2. Yamuna Ramrao Ghusale

...Respondents
[Orig. Claimants]

Mr. D.V. Soman, Advocate for appellant.
Mr. V.P. Latange, Advocate for respondents.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 25th SEPTEMBER, 2023

ORDER :

1. By this first appeal, appellant/insurance company has challenged the quantum of compensation awarded to respondents/claimants.

2. Facts leading to this appeal can be summarized as follows:

Son of claimants namely Aniket, aged 4 years succumbed to the grievous injuries in the road accident, which took place on 30.08.2007 near Petrol Pump at Chite-Pimpalgaon, on Aurangabad road. At the time of accident, rickshaw in which

Aniket was travelling was being driven by claimant No. 1. When rickshaw was stopped at the side of road, at that time, private luxury bus bearing No. MH-20-AT-1558 gave dash to the rickshaw, due to which Aniket suffered injuries and succumbed to death. At the time of death Aniket was under 5 years of age. Claimants by filing claim petition prayed for compensation of Rs. 4,00,000/-. After recording evidence and hearing the parties, Tribunal has awarded compensation of Rs. 2,50,000/-. Respondent No. 1 and 2 in the claim petition were held jointly and severally liable for payment of compensation with interest @ 9% per annum. Hence, the present appeal.

3. Heard the learned advocate for appellant and learned advocate for respondents. Perused the appeal memo, impugned award and the citation relied on by the respondents.

4. Learned advocate for appellant has assailed the award by submitting that at the time of accident age of deceased Aniket was under 5 years, therefore the Tribunal has erred in applying multiplier of 17 in the present case. He submits that exorbitant amount is awarded by the Tribunal. He therefore submits that, the impugned award is liable to be quashed and set aside.

5. By relying on *Kishan Gopal & Anr. Vs. Lala & Ors.*, (Civil Appeal No. 7137 of 2013), learned advocate for respondents/claimants supported the impugned award

6. Admittedly, deceased Aniket was below 5 years of age at the time of accident. The Tribunal has awarded lumpsum amount of Rs. 2,50,000/- by applying multiplier of 17. Tribunal has awarded Rs. 14,000/- towards annual dependency, Rs. 2,000/- towards funeral expenses and Rs. 10,000/- towards loss of love and affection. Tribunal has also recorded a finding that there cannot be said to be breach of conditions of policy and therefore, held respondent No. 1 and 2 jointly and severally liable for payment of compensation.

7. Considering the evidence on record and sound reasons assigned by the Tribunal, this Court is of the opinion that the Tribunal has awarded reasonable and fair compensation. The evidence on record is properly appreciated by the Tribunal. Though, Tribunal has erred in applying multiplier of 17 to the present case, however, lumpsum amount of Rs. 2,50,000/- awarded by the Tribunal cannot be said to be unreasonable.

8. In Kishan Gopal (supra), parents of deceased children were well placed officials at TISCO. Considering this aspect, lumpsum amount of Rs. 5,00,000/- was held to be just and proper.

The decision in Kishan Gopal (supra) is distinguishable on facts and hence is of no assistance to the case of claimants.

9. The Tribunal has given sound reasons in support of judgment and award and has awarded reasonable and fair compensation, which is not liable to be interfered with. First appeal being devoid of merit is therefore dismissed.

10. Amount deposited by appellant be paid to respondents/claimants along with accrued interest.

[NITIN B. SURYAWANSHI, J.]