IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4033 OF 2016

Reliance General Insurance Company,
through its Manager,
R/o. Reliance General Insurance Company,
Adalat Road, Aurangabad. … Appellant

Versus

1] Minakshi Babanrao Auti,
Age : 50 years, Occu. Household,

2] Mahesh Babanrao Auti,
Age : 50 years, Occu. Nil,

3] Snehal Babanrao Auti,
Age : 25 years, Occu : Nil,

4] Sau. Savita Avinash Chattar,
Age : 28 years, Occu. Household,

Respondents no. 1 to 4
all R/o. Pokhardi, Taluka and
Dist. Ahmednagar. …Orig. Claimants

5] Pancharatna Tours & Travels
through Chetan B. Pawar,
Age : Major, Occuu : Business,
R/o. Flat No. 5, Rd No. 11,
Dist. Pune,
Also R/o. S. No. 55/3, Bhairavnagar,
Dhanori Road, Pune. [Orig. Respdt no.1]
… Respondents

…

Mr. Rohit H. Dahat & Mr. S. S. Patil – Advocate for appellant
Mr. Shaikh Mazhar A. Jahagirdar – Advocate for respondent nos. 1 to 4

....

CORAM : S. G. CHAPALGAONKAR, J.

ARGUMENTS CONCLUDED ON : 21st June, 2023
JUDGMENT PRONOUNCED ON : 30th June, 2023

JUDGMENT : -

1. The Insurer / Original Respondent no. 2, by this Appeal filed under Section 173 of the Motor Vehicles Act, 1988, impugns the judgment and award dated 24th November, 2015, passed by Motor Accident Claims Tribunal, Ahmednagar [in short "Tribunal"] in Motor Accident Claim Petition No. 153 of 2012.

2. Respondent Nos. 1 to 4 (original claimants) had approached the Tribunal at Ahmednagar seeking compensation of Rs.43,70,000/- under Section 166 of the Motor Vehicles Act, 1988 towards accidental death of Baban Ramchandra Auti. The contention of the appellants is that the deceased Baban was serving as a Development Officer with the Postal Life Insurance at Ahmednagar. They were dependent on his income. On 24th December, 2011, while he was proceeding on his Scooty bearing No. MH-16/AP-3407, the offending Tavera Jeep bearing No. MH-12/AF-4955 dashed him from behind, as a result of which, he

sustained fatal injuries and breathed last on 30th December, 2011.

3. The claim was contested by the appellant/insurer mainly on the ground of quantum. The Tribunal, after recording evidence and hearing the parties, passed an award for Rs. 35,27,338/- in favour of the claimants. The aggrieved Insurance Company assails quantum of compensation before this Court.

4. Mr. S. S. Patil, learned advocate for the appellant / Insurance Company would submit that the Tribunal committed manifest error in computing the compensation. He would submit that the claimant no. 2 is the major son and the claimant no. 4 is the married daughter of the deceased. Therefore, only claimant nos. 1 and 3 were the dependent on the income of the deceased, however, the Tribunal applied 1/4th deduction towards personal and living expenses of the deceased, which is inconsistent with the settled method of assessment of compensation. According to him, the Tribunal ought to have deducted 1/3rd amount towards personal and living expenses while fixing the compensation amount. Mr. Patil raises second contention that the Tribunal has not considered deduction from

salary of deceased towards various statutory liabilities, like income tax, professional tax etc. while fixing the dependency of the claimants and passed excessive award. He would further submit that the claimants are receiving family pension which could have been deducted while making assessment of compensation.

5. Mr. Shaikh Mazhar A. Jahagirdar, learned counsel appearing for respondent/claimants nos. 1 to 4, would submit that the Tribunal has rightly considered the dependency of all the claimants and applied appropriate principles of assessment of compensation. He would urge that no ground for interference in the impugned award is made out. He would further urge that, since the deceased was 52 years of age and having salaried income, the addition of 15% amount towards future prospects could have been made, however, no such addition is made. He would submit that, in fact, the claimants would be entitled for enhanced amount of compensation.

6. Having heard learned advocates appearing for the respective parties, it can be gathered that the contentious issue regarding quantification of compensation is raised in this appeal. The Supreme Court of India in the matter of **<u>National Insurance Company Limited v. Pranay Sethi & Ors.</u>** reported in **(2017) 16 SCC 680,** laid down the principles of assessment of compensation. It

is trite that if number of dependents on the deceased are 2 to 3, the deduction towards personal and living expenses must be considered to the extent of 1/3rd income of the deceased. In case of number of dependents are between 4 to 5, the deduction must be made to the extent of 1/4th of the income of the deceased. In the present case, there are 4 dependents i.e. widow, two sons and a daughter. Although the claimant nos. 2 and 4 were major at the time of the accidental death of the deceased, it cannot be said that they were not the dependents. Unless specific circumstances are brought on record, the major son or the married daughter would also be dependent on their father. Apparently, the Tribunal has rightly applied 1/4th deduction considering the 4 dependents of the deceased. Hence, the first limb of argument advanced on behalf of the appellant/Insurance Company will have to be rejected.

7. Even for the sake of argument the contention of the appellant / Insurance Company that the claimant nos. 2 and 4 cannot be treated as dependent is accepted, since the deceased was in the age group of 50-60 years, the addition of 15% of the actual salary of the deceased was permissible. The Tribunal has not considered the same. Perhaps, because this issue has been settled by supreme court in the judgment of Pranay Sethi (supra), after passing of impugned award. If the entitlement of

the claimants is balanced with the heads of compensation missed by the Tribunal, no fault can be found in the final assessment compensation by the Tribunal.

8. The second contention raised on behalf of the Insurance Company that the amount towards statutory liabilities / deductions from the salary is not given consideration by the Tribunal, however, the submission appears to be fallacious and inconsistent with the record. The Tribunal in paragraph no. 15 of the judgment deducted Rs.2400/- towards professional tax and Rs. 16,793/- towards income tax from the annual income of the deceased, thereafter, the compensation has been assessed. Therefore, no lacunae can be found in the worksheet of the compensation. The last contention raised by appellant that family pension received by claimants needs deduction from award also do not hold water in view of authoritative pronouncement by supreme court of India in the matter of ***Lal Dei vs Himachal Road Transport corporation 2008 ACJ 1107 (SC)*** *and National* ***Insurance co. vs Indira Srivastawa reported in (2008) 2SCC 763*** wherein it is held that deduction of family pension or perks receivable to family of deceased owing to service conditions cannot be considered while assessing "just" compensation. Resultantly, there is no merit in the appeal. Hence, appeal is dismissed with costs. Pending civil application, if any, also stands disposed of.

9. The compensation amount, if any, deposited by the Insurance Company in this court be released in favour of the claimants.

[S. G. CHAPALGAONKAR]
JUDGE

SGP