IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1571 OF 2018

Oriental Insurance Company Ltd.,
Through its Branch Manager,
Branch Office, Parbhani,
Tal. & Dist. Parbhani. .. Appellant
(Orig. Respt. No. 2)

Versus

1. Kausar Begum w/o Yunus Khan,
Age : 34 years, Occu. : Household,
R/o. : Vazirabad, Dist. Parbhani.

2. Needa Khanam D/o Yunus Khan,
Age : 12 years, minor u/g. Respondent No. 1,

3. Mahin Aara D/o Yunus Khan,
Age : 7 years, minor u/g. Respondent No. 1,

4. Rehan Khan S/o Yunus Khan,
Age : 4 years, minor u/g. Respondent No. 1,

5. Mahemooda bee W/o Wahed Khan,
Age : 69 years, Occu. Nil.
R/o. : Vazirabad, Dist. Parbhani. .. Orig. Claimants

6. Prabhakar S/o Baburao Gite,
Age : Major, Occu. : Business,
R/o. : Shivaji Nagar, Jintur, Tq. Jintur,
Dist. Parbhani. .. Respondents
(Respt. No. 6 is
Orig. Respt. No. 1)

Mr. U. S. Malte, Advocate for the Appellant (case through V.C.).
Smt. A. N. Ansari, Advocate for Respondent Nos. 1 to 5.
Mr. Anand Dale, Advocate h/f Mr. S. S. Rathi, Advocate for Respondent No. 6.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 12th October, 2023.

Date on which order pronounced : 06th December, 2023.

ORDER :-

. The Insurance Company has filed this appeal challenging the judgment and award dated 06.10.2016 passed by the learned Member, M.A.C.T./Adhoc District Judge – 1, Parbhani in M.A.C.P. No. 372/2013. By way of impugned judgment the learned Member, M.A.C.T. has partly allowed the claim directing the respondents i.e. the Insurance Company and the owner of the vehicle to pay an amount of Rs. 5,00,000/- including NFL to the claimants – present respondent Nos. 1 to 5 in the proportion as stated in the award. The present appellant was respondent No. 2 and present respondent No. 6 was respondent No. 1/ owner of the vehicle.

2. The facts in short are that the claimant No. 1 is widow of one Yunus Khan Wahed Khan. The claimant Nos. 2 to 4 are daughters and son of claimant No. 1. The claimant No. 5 is the mother of deceased. The deceased was coming to Aurangabad in a vehicle bearing registration No. MH-20-N-1011 on 23.09.2013 by driving. While coming towards Aurangabad on Jintur-Parbhani road near Sai Nagri he met with an accident. A Tempo vehicle bearing registration No.

MH-4-AG-7693 came from the opposite direction on wrong side in a high speed gave dash to the vehicle of the deceased. In the said accident deceased died on the spot. A crime was registered against the driver of the offending vehicle. At the time of death deceased was of 37 years of age. He was engaged in the business of selling of plots. He was also having agricultural land of 15 Acres. His income was taken to be Rs. 25,000/- per month. Since the deceased died in an accident the claimants lodged claim under Section 166 of the Motor Vehicles Act.

3. The owner of the vehicle – respondent No. 1 in the claim petition filed written statement. It is denied that, the offending vehicle was driven in rash and negligent manner. It is alleged that, it was the deceased who was driving a vehicle in rash and negligent manner.

4. The respondent No. 2 Insurance Company – present appellant also opposed the claim petition. It is not disputed that the offending Tempo was insured with the Insurance Company. It is alleged that, the driver of the offending vehicle was not holding valid and effective driving license at the time of alleged incident. There is no evidence certificate obtained for the said Tempo vehicle. Thus, there was breach of terms and conditions of the policy. The age and income of the deceased is totally denied. The total claim was opposed being

excessive and exorbitant.

5. The claimants in support of their case examined two witnesses i.e. claimant No. 1 herself and one Dayan Khan, an eye witness to the accident. The learned Member, M.A.C.T. thus on recording the evidence accepted the case of the claimants that the accident took place because of rashness and negligence of the offending vehicle and the same was coming in wrong side. So far as income is concerned, the learned Member, M.A.C.T. held that the deceased was holding agricultural land only to the extent of 34 R at village Satla, Tq. And Dist. Parbhani and 40 R from another land at village Satla. Thus, the total holding was taken only of 74 R and both the lands are dry land. There is no evidence produced on record about the income of his agricultural land. So far as income out of his business is concerned, the learned Member, M.A.C.T. considered the account statement of the bank wherein it is shown that the amount standing in the accounts are as Rs. 40,059/-, Rs. 5,10,176/- and Rs. 13,774/- in three different accounts. No regular deposit is seen in the bank. Since there was no any other proof, the learned Member, M.A.C.T. considered his monthly income to be Rs. 10,000/-. Thus, about the compensation the learned Member, M.A.C.T. took the income as Rs. 10,000/- per month. The total income of the deceased was Rs. 1,20,000/- per year. 50% towards

future prospects is added to his income. Thus, the yearly income was taken to be Rs. 1,80,000/-. Considering the number of dependents 1/4th income was deducted towards personal expenses. Since age of the deceased was 37 years as per the case of the claimants, multiplier of 15 is applied. Thus, the total compensation taken to be Rs. 20,25,000/-. In addition to this, consortium of Rs. 1,00,000/- was granted. Towards love and affection Rs. 50,000/- was granted. Rs. 25,000/- towards funeral expenses was granted. Thus, the total amount of Rs. 22,00,000/- was directed to be paid to the claimants.

6. Against this award the Insurance Company has filed this appeal. It is vehemently argued by learned advocate Mr. Malte for the appellant that in absence of any proof towards income the learned Member, M.A.C.T. has wrongly taken the income to be Rs. 10,000/- per month. He further assailed the finding that the learned Member, M.A.C.T. has deducted personal expenses only to the extent of 1/4th which ought to have been 1/3rd. He relied upon the following judgments.

(i) **Sumitra Dwarkanath Sirsat (Smt.) and others Vs. Shivanand Hanumantappa Bisirotti** reported in **2015 (3) AIR Bom R 136.**

(ii) **Savita Vs. Bindar Singh and others** reported in **2014 AIR (SC) (Supp) 275**.

(iii) **Ladu Pandurang Korgaonkar Vs. Gokuldas R. Sawant & ors.** reported in **2011 (1) Bom.C.R. 67**.

(iv) **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **AIR 2017 Supreme Court 5157.**

7. Learned advocate Smt. Ansari for respondent Nos. 1 to 5 vehemently opposed the appeal. She submits that the learned Member, M.A.C.T. has rightly considered the facts and the evidence in the case. So far as liability is concerned, there is no dispute that the vehicle was insured with the company. The company could not prove any breach of condition. From the bank statement it is seen that there was continuous deposit of the amount in the bank account. Future prospects are rightly considered to be 50% considering the age of the deceased below 40 years. No case is made out to call for interference and she prayed for dismissal of the appeal.

8. In the case of **Sumitra Dwarkanath Sirsat (Smt.) and others** (supra), this Court has considered that there was no evidence about the income and therefore, it was taken to be Rs. 3,000/- per month. In that case, the accident had taken place in the year 2004 and considering that the notional income was taken to be Rs. 3,000/- per month. From the said judgment it is seen that, there the deceased was 71 years of age at the time of accident. Thus, on facts the present case

is different from the facts of the said case.

9. In the case of **Savita** (supra), the Hon'ble Apex Court has taken the notional income as Rs. 3,000/- per month. In that case, the accident had taken place in the year 2010. The Hon'ble Apex Court taken the income Rs. 3,000/- per month in that case as deceased was working as labourer. Here in the present case, the deceased was self employed and was in the business of plotting. He was having his own vehicle. His saving also shows that he was man of sufficient means. On this, this Court does not find that, to consider his income as Rs. 10,000/- is unreasonable.

10. In the case of **Ladu Pandurang Korgaonkar** (supra), the income was taken to be Rs. 4,000/- per month as the deceased was working as a Carpenter. In that case the accident had taken place in September 1998. The income was thus taken in 1998 i.e. much prior to the present case and hence the figures of income in the said judgment cannot be made applicable in this case.

11. Lastly the reliance is place in the case of **National Insurance Company Limited** (supra), to show that the personal deduction should have been 1/3rd of the total income. However, looking to the dependents i.e. five persons this Court finds that, the learned Member,

M.A.C.T. has rightly considered the deduction as 1/4th of the income.

12. Considering the case this Court finds that, the only thing required to consider is about the income of the deceased. It is the case of the claimants that the deceased was doing a business of selling of plots. Though the claim is made about agricultural land, however, nothing is shown to prove the income out of agricultural land. The agricultural land is shown to be only 74 R. Though the land is considered to be a dry land, in absence of any proof of agricultural income the learned Member, M.A.C.T. was correct in considering the agricultural land. So far as the notional income is concerned it needs to seen that the deceased was having Rs. 5,10,176/- in his account. In other two accounts he was having an amount of Rs. 40,059/- and Rs. 13,774/-. If income is to be taken as per the submission of Mr. Malte, learned advocate for the appellant to be Rs. 3,000/- it hardly can be believed that a person could not make such savings. Rs. 5,00,000/- must be a saving at least of two-three years. Since the person is making saving more than Rs. 2,00,000/- per year, certainly he would earn double of the said amount. It is also seen that, the vehicle was his own vehicle which again shows that he was a person having sound position. The accident took place in the year 2013. Considering that a person having own vehicle in the year 2013 certainly this Court finds

that the learned Member, M.A.C.T. has rightly drawn inference that the income of the deceased would be around Rs. 10,000/-.

13. In the appeal, the appellant was directed to deposit the amount in this Court which was accordingly deposited. This Court by order dated 06.04.2018 had allowed the claimants to withdraw 50% of the amount deposited in this Court along with interest accrued thereon which is accordingly withdrawn.

14. This Court finds that, absolutely no case is made out to call for interference in the impugned judgment. In view of the same, the following order is passed.

ORDER

(i) The first appeal is dismissed.

(ii) The impugned judgment and award is confirmed.

(iii) Since the appeal is dismissed, it would be proper to direct the office of this Court to allow the claimants to withdraw remaining amount lying in this Court along with interest if any accrued thereupon.

(iv) If any amount is still not deposited by the Insurance Company the same shall be paid to the claimants within a period of ninety (90) days from today.

15. The first appeal stands disposed off.

(KISHORE C. SANT, J.)

P.S.B.