2023:BHC-AUG:25583

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2344 OF 2008

United India Insurance Co.Ltd.
Branch Office Shahada
Through its Divisional Manager and Authorised
Representative and Signatory, Jalgaon Divisional
Office, Mansing Market, Opp. Atul Dairy, Jalgaon. ...<u>APPELLANT</u>
[Ori. Oppo. No. 2]

VERSUS

1. Smt. Raisabi wd/o Nazim Haji
   Aged about 41 years, Occu. Housewife,

2. Shaikh Sajid s/o Nazim Haji
   Aged about 20 years, Occ- Education,

3. Shaikh Parvin d/o Nazim Haji
   Aged about 17 years, Occ- Education,

4. Shaban Parvin d/o Nazim Haji,
   Aged about 15 years, Occ- Education,

   [Res. No. 3 and 4 are minors;
   represented by through
   Their natural guardian/mother viz, Res No. 1]

   All r/o Garib Nawaz Colony, Shahada
   Tah. Shahada, Dist. Nandurbar (Mah.) ...<u>RESPONDENTS</u>
   [Res. No. 1 to 4 Ori. Claimants]

5. Vilas Gopal Marathe
   Aged adult, Occ. Business,
   R/o Velda, Tah. Nizar, Dist. Surat (Guj). Appeal dismissed
   as against respondent
   No. 5 vide order dated 17.11.2006

....

Mr. A.B. Gatne, Advocate for the Appellant.
Mr. L.S. Mahajan, Advocate for respondent No. 1 to 4.

....

CORAM : KISHORE C. SANT, J.

RESERVED ON : 16th OCTOBER, 2023
PRONOUNCED ON : 7th DECEMBER, 2023

JUDGMENT:

1. This appeal is by the Insurance Company challenging the judgment and award dated 10.04.2007, passed by learned Member, Motor Accident Claims Tribunal, Shahada, District-Dhule, in M.A.C.P. No. 62/2005. The learned Member was pleased to partLy allow the claim petition with proportionate cost. Opponent No. 1 and 2 i.e. the owner of the vehicle and insurer of the vehicle to pay claim amount of Rs. 6,09,500/-, jointly and severally with interest @ 7.5% p.a from the date of filing of petition till its recovery including amount of no fault liability.

2. The present appellant was Opponent No. 2. Present respondent Nos. 1 to 4 are the original claimants and Respondent No. 5 was original Opponent No. 1.

3. Facts in short are that, deceased aged 45 years was proceeding on motorcycle on 27.02.2005. When he was near Korit Fata, a truck bearing registration no. GJ-5/V-8644 gave dash to the motorcycle. Because of said accident deceased

Nazim lost his life. He was working as a driver for 11 years and was getting salary of Rs. 7800/- per month. Claimants/heirs of deceased therefore filed claim petition claiming compensation of Rs. 8,50,000/- including medical expenses and expenses towards last rites. Opponent No. 1 failed to appear and therefore claim petition proceeded exparte against him. Opponent No. 2 filed written statement and denied that accident occurred because of rash and negligent driving of the truck. They denied the age of the deceased as stated in the claim petition and also monthly income.

4. The learned Tribunal recorded the evidence and held that claimants are entitled to receive compensation as stated above.

5. The learned advocate Mr. Gatne for the appellant argued that learned Tribunal has wrongly held that the income of the deceased was Rs. 7800/- per month and that age of the deceased is 45 years. The accident took place because of the mistake of the deceased himself and thus it is the case of contributory negligence. There is no evidence produced on record to show that the deceased was holding license to drive the vehicle. There is no evidence of expert to prove the injuries

on the deceased etc. It is further submission that the accident took place in the year 2005 at that time, drivers' income was around Rs. 3,000/- per month. Considering the personal expenses annual income ought to have taken as 18,000/- per year. He relied upon the judgment in ***Sarla Verma Vs. Delhi Transport Corporation***, 2009 (6) SCC 121. It is further submitted that learned Tribunal has failed to appreciate that it is a case of contributory negligence and claimants were entitled only to 50% of the amount of compensation. As per Schedule II under the Workmen Compensation Act, for the year 2003 deemed salary of a driver was Rs. 4,000/-.

6. Learned advocate Mr. Mahajan, for Respondent Nos. 1 to 4 vehemently opposed the appeal. He justified the award saying it to be just and proper. He submitted that the Insurance Company has not adduced any evidence in support of its case. He submitted that appeal is continuation of proceeding and therefore relevant changes took place in the law needs to be considered to arrive at just compensation. In the present case considering the number of dependents, the amount towards personal expenses ought to have been taken only 1/4th as against 1/3rd taken by the Court. He submitted that income of

the deceased ought to have been taken as Rs. 5,000/- per month with future prospects @ 25% as deceased was 45 years of age. He further submits that no separate appeal is required by the claimants seeking enhancement. He submits that there is no challenge by the Insurance Company to the evidence of claimant No. 1.

7. On these rival contentions, this Court has gone through the evidence on record. Claimant No. 1- Smt. Raisabi Nazim Haji, wife of deceased got herself examined in support of her claim. In her evidence she stated that deceased was earning Rs. 60,000/- per year when he met with an accident. In her cross examination about income only a suggestion was given that deceased was not earning Rs. 60,000/- and that earning of deceased was Rs. 2,000/- to 2500/- per month. No any other witness is examined by the parties. On this evidence, learned Tribunal proceeded to hold that deceased was earning Rs. 5,000/- per month inclusive of daily bhatta of Rs. 100/- per day as the deceased was required to go out of station on the vehicle and took income of deceased as Rs. 60,000/- per year. The Tribunal further accepted the age of deceased to be 45 years as Claimant No. 1, his wife was aged about 41 years. The children,

claimants No. 2 to 4 were teen aged children. The learned Tribunal applied multiplier of 15. The amount of loss of future earning was taken to be 9,00,000/- and by deducting 1/3rd income, the same was taken to be Rs. 6,00,000/- as loss of dependency. The statutory benefits were accorded at Rs. 2,000/- towards funeral expenses, Rs. 2500/- towards loss of estate and Rs. 5,000/- towards loss of consortium for applicant No. 1 i.e. wife of deceased.

8. This Court does not find that learned Tribunal has committed any mistake by taking the age of the deceased as 45 years and income of deceased to be 60,000/- per year. The Insurance Company could not produce any evidence in support of its case.

9. Coming to the submission of Mr. Mahajan, learned advocate appearing for respondent Nos. 1 to 4 that though there is no appeal filed for enhancement still claimants can pray for enhancement in view of judgment in ***New India Assurance Company Ltd. vs. Seema Sudam Auti and others***, [2017(6) Mh.L.J. 828]. In the said judgment, this Court considered the judgment in the case of ***Nagappa vs. Gurudayal Singh and others***, (2003) 2 SCC 274, wherein the Apex Court has held that

"it is the duty of the claims tribunal as well as the appeal Court to determine and award just and reasonable compensation and that such duty is statutory irrespective of whether claim has been made in respect thereof or not." In the reported case the Court had enhanced the amount of compensation in the appeal by insurance company and in absence of appeal by claimants.

10. This Court finds that in the present case also no amount towards future prospects was calculated. Considering the age of deceased to be 45 years, 25% amount needs to be added to loss of future income. The learned Tribunal has considered loss of future income to be Rs. 6,00,000/-. There needs to be 25% addition to the said amount. Thus, in addition to compensation already directed to be paid, Rs. 1,50,000/- needs to be added. In view of above, this Court finds that appeal deserves to be dismissed, however, award needs to be modified by adding 25% amount i.e. Rs. 1,50,000/- to the compensation already awarded. The award therefore needs to be modified accordingly. Hence, the following order:

ORDER

(I) First Appeal No. 2344 of 2008 is dismissed.

(II) Award dated 10.04.2007 be modified by adding Rs.

1,50,000/- towards loss of future prospects. Appellant-Insurance Company is directed to deposit amount of Rs. 1,50,000/- in this Court towards future prospects within 90 days from today along with interest from the date of filing of claim petition i.e. 18.03.2005 till its actual realisation. After the deposit of the amount, respondents No. 1 to 4/claimants shall be entitled to withdraw the same without making any formal application.

(III) Appeal stands disposed of accordingly.

[KISHORE C. SANT, J.]