IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2916 OF 2023
WITH
CIVIL APPLICATION NO. 8888 OF 2023
AND
CIVIL APPLICATION NO.15078 OF 2022

The Reliance General Insurance Co. Ltd.,
Through its Officer,
Age: Major, Occu: Service,
R/o: C/o Reliance General Insurance Company Ltd.,
Chintamani Avenue, in front of Western Express Highway,
Goregaon, Mumbai **... Appellant**
[Orig. Respondent No.2]

Versus

1. Smt. Dipika Sacheen Bhawsar
   Age: 34 years, Occu: Household,

2. Chi. Akshat Sacheen Bhawsar
   Age: 10 years, Occu: Student,
   Under Ghardianship of Respondent No.1
   natural mother

3. Chi. Vedant Sacheen Bhawsar
   year, 6 yrs Occu: Nil,
   Under Guardianship of respondent no.11
   natural mother

4. Smt. Nirmalabai Bhlachandra Bhawsar
   Age: 65 years, Occu: Nil,
   All R/o: Gandhipura, Erandol, Tal. Erandol,
   Dist; Jalgaon **... Orig. Claimants**

5. Shri. Shankar Batukmahharaj Kewar
   Age; Adult, Occu: Vehicle Owner,
   R/o: Jetharpeth, Near Ice Factory, Akola,
   Tal. Akola, Dist. Akola
   Mobile No. 9823677883 **... Orig. Respondent No.1**
   Respondents

...

Mr. Swapnil S. Patil h/f Mr. R. H. Dahat, Advocate for Appellant
Mr. Patil Vijay Bhalerao, Advocate for Respondent Nos.1 to 3
Mr. A. I. Deshmukh, Advocate for Respondent No.5

...

CORAM : S. G. CHAPALGAONKAR, J.
DATE : 28.07.2023

JUDGMENT :

1. The appellant / insurer impugns the judgment and order dated 08/02/2022, passed by the Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claims Petition No.203/2016 under the provisions of Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short].

2. The respondents / claimants had approached the Tribunal at Jalgaon under Section 166 of the Act, thereby raising the claim for compensation of Rs.40,00,000/- towards accidental death of Sacheen Bhalchandra Bhawsar in an accident dated 28/09/2015.

3. The contention of the claimants is that the deceased Sacheen was travelling in a Maroti car bearing registration No. MH-19-AE-4370. At that time, the offending truck bearing registration MH-30-L-4481 dashed against the car. On account of the said accident, the deceased suffered fatal injuries. He was working as a Cable Operator and also running a flour mill. According to the claimants, he was earning Rs.25000/- per month.

4. The claim petition was contested by the respondents i.e. owner and insurer of the truck contending that the car driver was responsible for the accident. Rest of the contentions of the claimants were denied. The claimants in order to establish their claim relied upon the evidence of claimant no.1, namely, Smt. Dipika Sacheen Bhawsar and also recorded the evidence of Mr. Ratneshkumar, Income Tax Officer at Exhibit-38. The claimants have further relied upon the oral evidences of Paresh Lalit Thakkar as PW-3 [Exhibit-49] and Mahesh Balkrishna Manudhane as PW-4 [Exhibit-60]. No evidence is adduced on behalf of the respondents. The Tribunal, after considering the submissions advanced, passed an award of Rs.39,88,500/- in favour of the claimants directing respondent nos.1 and 2 to pay the amount jointly and severally along with interest @ 9% per annum from the date of institution of claim petition.

5. The aggrieved appellant / insurer filed the present appeal mainly on the ground of quantum and negligence.

6. Mr. Swapnil Patil, learned Advocate appearing for the appellant – insurer submits that the Tribunal has wrongly decided the issue of negligence. The owner and driver of insured car were necessary parties. He would submit that the income of the deceased has been wrongly assumed based on the Income Tax Returns [ITR] of last

assessment year. He would also submit that excessive interest @ 9% is awarded by the Tribunal. He would further submit that the award is excessive and exorbitant and the same requires to be modified.

7. Mr. V. B. Patil, learned Advocate appearing for the respondent nos.1 to 3 / claimants submits that the Tribunal has passed the award after considering the evidence on record as per parameters settled for assessment of compensation. He would submit that no good grounds are made out for entertaining the appeal.

8. Having considered the submissions advanced by the respective Advocates appearing for the parties and perusal of the record, it is apparent that there is no dispute regarding accidental death of Sacheen. He was an occupant of car. The offending truck gave a dash to the car causing fatal injuries to the him. The car was driven by a friend of the Sacheen. The offence was registered against the Truck driver. The claimants recorded the evidence of Mahesh Balkrishna Manudhane as PW-4 an eyewitness of the accident. He deposed about the manner of the accident and negligence of the truck driver. No contrary evidence is brought on record. Apparently, this is a case of composite negligence. The claimants have choice to prosecute the remedy against any of the joint tortfeasors. Therefore, even it is assumed that the car driver was also responsible for the cause of

accident, the claim petition cannot be defeated for not joining the owner and insurer of the car as party to the claim petition. In that view of the matter, there is no substance in the contentions advanced on behalf of the appellant on the point of non-joinder of party.

9. The second contention of the appellant is that the Tribunal has erroneously considered the income of the deceased based on his last Income Tax Returns. The claimants have proved the Income Tax Returns for the year 2014-2015 which was submitted on 11/04/2014 i.e. prior to the death of the deceased. The Income Tax Officer proved the contents of returns submitted by the deceased before his death. The copy of the same is placed on record by Ratneshkumar – PW-2, employee of Income Tax Office, before the Tribunal. It can be gathered that the income of the deceased was shown to the tune of Rs.2,29,000/- and the tax of Rs.2900/- is paid for that purpose. Once the income of the deceased is proved on the basis of last Income Tax Returns submitted by him before his death, it would not be necessary to look into any other material. The appellant has not brought any evidence in rebuttal, by which, the contentions of the claimants as to the income of deceased can be discarded. Therefore, the second objection raised on behalf of the appellant is liable to be rejected.

10. The third contention of the appellant is that the Tribunal awarded

excessive interest @ 9% per annum on the compensation amount. Section 171 of the Act provides for grant of interest on the compensation amount. The Tribunal is empowered to grant the interest at appropriate rate. No evidence is brought on record to show that the Tribunal has exercised jurisdiction in arbitrary manner. It would be difficult to interfere in the interest rate awarded by the Tribunal in absence of contrary material.

11. Perusal of the award passed by the Tribunal would show that the assessment of compensation is made based on principles of assessment of compensation laid down by the Supreme Court in the matters of **Sarla Verma and Ors. Vs. Delhi Transport Corporation and Ors.** reported in **(2009) 6 SCC 121** and **National Insurance Company Limited Vs. Pranay Sethi and Ors.** reported in **(2017) 16 SCC 680**. The loss of consortium is compensated relying upon the law laid down by the Supreme Court in the matter of **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram & Ors.** reported in **(2018) 18 SCC 130**. There were four dependents of the deceased. The Tribunal has rightly deducted 1/4th amount towards personal living expenses and the addition of 40% amount made towards future prospects as per the guidelines of Supreme Court in the matter of National Insurance Company Limited Vs. Pranay Sethi and Ors. [*Supra*].

12. In view of above, no case is made out for interference in the award passed by the Tribunal. Hence, this Court proceeds to pass the following order:

ORDER

(i) The appeal stands dismissed.

(ii) The compensation amount deposited by the appellant – insurance company be disbursed in favour of the claimants as per the apportionment made in Paragraph Nos.4 to 7 of the impugned award dated 08/02/2022.

(iii) In view of dismissal of appeal, civil applications, if any, are also disposed of.

[S. G. CHAPALGAONKAR, J.]

Sameer