IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1842 OF 2019

The New India Assurance Co. Ltd.
Through its Sr. Divisional Manager
(Legal Hub),
D.O. No. 1, Adalat Road, Aurangabad,
Ravikant Rajendra Yadav (A.O.),
Age; 27 years, Occ; Service, **...APPELLANT.**
R/o; Aurangabad. **(Orig. Resp. No. 2)**

V E R S U S

1) Smt. Jayshree Sanjay Mengade,
Age; 29 years, Occ; Household,

2) Rohan Sanjay Mengade,
Age; 09 years, Occ; Nil,

3) Shubham Sanjay Mengade,
Age; 07 years, Occ; Nil,

Nos. 2 & 3 are minors,
Through their natural guardian
Mother Respondent No. 1.

4) Ambadas Sahadu Mengade,
Age; 64 years, Occ; Agriculture,

5) Sau. Rajubai Ambadas Mengade,
Age; 59 years, Occ; Agriculture,

All R/o; Nimbodi Tq. Karjat,
District; Ahmednagar.

6) Ajit Janardan Ursal,
Age; 33 years, Occ; Business,
R/o; Singapur, Tq Purandar,
District; Pune.

...RESPONDENTS
(R-1 to 5, Orig. Claimants
(R-6, Orig. R-1)

Advocate for the Appellant : Mr. S.R. Bodade
Advocate for the Respondent Nos. 1 to 5 : Mr. D.R. Markad

CORAM : KISHORE C. SANT, J.

Date of Reservation : 11.09.2023
Date of Pronouncement : 07.11.2023

ORDER :

1. Insurance company has filed this appeal challenging the judgment and award passed by the learned Member, Motor Accident Claims Tribunal (for short 'MACT'), Ahmednagar dated 15.06.2017 in MACP No. 188 of 2013. The learned Member by way of impugned judgment and award has allowed the claim petition of the appellants/original respondent Nos.1 to 5 herein. An amount of Rs. 35,65,000/- including NFL is awarded. Respondent Nos. 1 to 5 are the original claimants, respondent No. 6 is owner of the vehicle and respondent No. 7 is opponent No. 1 before the Tribunal.

2. The facts in short are that the deceased Sanjay Ambadas Mengade was having a Tempo vehicle. He himself used that vehicle

for goods transport. On 29.01.2013 at 4.15 a.m. he was tying rope of his tempo bearing No. MH-12-AD-842 at Paranwadi-Somatane road in front of Pawana Hospital. At that time a truck bearing No. MH-12-FZ-4712 came in reverse direction without giving any signal or call and the said truck collided with the tempo. The deceased crushed in that collision and died on the spot. Police registered an offence against the driver and filed a charge-sheet for the offences punishable under Section 279, 304-A of the Indian Penal Code. The claimant, his wife, two children and parents therefore filed claim petition in the Court of MACT, Ahmednagar.

3. It is the claim of the claimants that the deceased was 32 years old at the time of accident. He was doing transport business. He was also having agricultural land and from both the business he was getting income of Rs. 6,00,000/- p.a. Therefore, compensation of Rs. 20,00,000/- is claimed. The owner of the offending truck denied the allegations, except admitting ownership of the truck. He also denied that there was negligence on the part of the truck driver. The claimant has to give strict proof about the involvement of the truck and that the said truck is ensured with the Insurance Company. It is the case of the Insurance Company that an

accident took place because of the fault of the deceased. The driver of the offending vehicle was not having effective and valid license. The opponent also submits that there was breach of terms and conditions of the insurance policy and therefore the opponent is not liable to pay compensation.

4. The learned Member held that the truck driver was responsible for taking the truck in reverse direction in negligent manner. The insurance company did not lead any evidence about the breach of conditions. The claimants were held liable to get compensation considering the judgment reported in **(2009) 6 SCC 121- Smt. Sarala Warma and Ors. Vs. Delhi Transport Corporation and Anr**. He took into consideration three major factum one, the age of the deceased, second, the income of the deceased and third, number of dependents. The Court also considered the additional income and deductions those are required to be made and incurred losses. There is School Leaving Certificate showing the date of birth of the deceased is 15.06.1979 and at the time of accident, he was 33 years old. It is accepted that the deceased was doing transport business, jointly with the transport Company and was earning Rs. 30,000/- p.m. He was also getting income from the agricultural and

milk business. The Court considered income of the deceased as 15,000/- p.m. The Court added 50% as future prospects as the deceased was below 40 years of age. On the basis of judgment in the case of Rajesh and Ors. Vs. Rajbir Singh and Ors, **2013 ACJ 1403**, Court has taken his annual income as Rs.2,70,000/-. 1/4th income from the said income is deducted towards personal expenses. The multiplier of 16 was applied in view of Smt. Sarla Warma's judgment and considered loss of future earning to be Rs. 32,40,000/- towards consortium out of love and affection, Rs. 1,00,000/- to the wife and Rs.1,00,000/- towards the children and parents, Rs. 25,000/- was towards funeral expenses including transportation of the dead body total amount of Rs. 35,65,000/- is considered by the Tribunal.

5. The learned Advocate for the insurance company Mr. Bodade submits that the learned Tribunal has committed mistake in holding income of the deceased to be Rs. 15,000/- p.m. in absence of any proof, when there was no document to show the income on record. Then it ought to have been notionally considered as Rs. 3,000/- p.m. He submits that unless any proof is on record about the income, it needs to be considered notionally. About

consortium he submits that it ought to have been 40,000/- and not 1,00,000/-. Thus, in his submissions an amount of compensation awarded is excessive and exorbitant. The notional income at the most could have been Rs. 6,000/- p.m. as nothing is produced on record to show that the deceased used to pay income tax. It is also submitted that in fact it was a fault of the deceased as well and therefore, it was a case of contributory negligence. There is also no record to show that the deceased was paying installments of loan, except oral testimony of wife is on record. He relied on following judgments :

a) ***2019 (6) ALL MR 208*** *- National Insurance Company Ltd. Vs. Smt. Rupali Kailas Mamode & Ors.*

b) ***2018 (2) SCC 753*** *- Reliance General Insurance Company Ltd. Vs. Shalu Sharma and Ors.*

c) ***2018 SC 3107*** *- United Indian Insurance Company Ltd. Vs. Indiro Devi and Others.*

d) ***2018 (4) ALL MR 494 (SC)*** *– ICICI Lombard General Insurance Co. Ltd. Vs. Ajay Kumar Mohanty & Anr.*

6. The learned Advocate for the Respondents/Claimants Mr. Markad, submits that before the Tribunal the insurance company accepted the evidence on record and the same is not

denied by the insurance company and now they cannot raise such a ground in absence of denial before the Tribunal. A tempo was stationary, is accepted by the parties. It is the truck which came reverse in direction and therefore the driver of the truck is rightly held responsible. The tempo was used for business purpose and therefore the income tax returns needs to be recorded. Tempo vehicle was purchased just a year back before the death of the deceased and it was a new tempo. The deceased was earning income from running said tempo for carrying goods. The deceased himself was using the tempo and thus his income including agricultural income has rightly been considered to be Rs. 6,00,000/- p.a. It is further submitted that the other components are also rightly awarded by the Tribunal and no case is made out to allow the appeal. The learned Advocate submitted that appeal needs to be dismissed.

7. The learned Advocate for the Insurance Company however submits that though the tempo was purchased by the deceased, however, the same cannot be taken to consider earning capacity. To show that the deceased was earning profit out of that then certainly there sould have been some proof produced on

record. Even the deceased should have taken proper care to avoid accident. He was also negligent as he could not notice the truck that was coming in reverse direction and there is also negligence on his part. There is no record produced for showing the repayment of installments of Rs. 28,000/- p.m. by the deceased. The funeral expenses also are wrongly granted as Rs. 35,000/- when in fact it should have been Rs. 15,000/- as per the judgment in **2017 SCC Online SC 1270** - National Insurance Company Ltd. Vs. Pranay Sethi case.

8. Coming to the judgment in **Reliance** (supra) the Hon'ble Apex Court considered the judgment of in National Insurance Company Ltd. Vs. Pranay Sethi, has laid down criterion for calculations. This judgment is of no help to the case in hand. In the case of **National Insurance** (supra) this Court considered the judgment in the case of Reliance General Insurance Company and corrected the mistake committed by the Tribunal by giving proper calculations of the compensation and award is modified accordingly.

9. In the case of **United India** (supra) the Hon'ble Apex Court held that the income tax return should not be ignored. The

claimants evidence was held to be reliable in that case. However, said was discredited by the Tribunal. To consider income only on the basis of salary certificate is not correct, as the person may have income from other sources also. In that case the Tribunal had considered that there is also income to the deceased from the agricultural land and thus, this case is also not of any help to the appellant insurance company.

10. In the case of **ICICI** (supra) the Full Bench of the Hon'ble Apex Court had considered that the average income of Rs. 1,45,231/- is taken by the Tribunal on the basis of income tax returns of three years, as was available on record. While calculating ultimate annual income of the driver, Tribunal considered income to be Rs. 2,22,000/-. The Hon'ble Apex Court held that same is contradictory when there is income proof in the form of income tax return. The Hon'ble Apex Court held that in such case the Tribunal should not have accepted earlier testimony and arrive at conclusion that such income to be more than restricted in the income tax return. Ultimately in that case it was held that the income ought to have been considered as per the income tax returns. Further the Hon'ble Apex Court considered aspect of disability as in the case

only injury claims.

11. This Court has considered the submissions and judgments as already observed the judgments in the case of **Reliance** (supra) and National Insurance Company (supra) are of no help to the insurance company.

12. In the case of **United India** (supra) the Hon'ble Apex Court considered that the income of the deceased cannot be taken only on the basis of salary certificate as there may be other source of income.

13. In the judgment of **ICICI** (supra) a question was when there was proof of income in the nature of income tax return, still the Tribunal has accepted the oral testimony and held the income on the basis of oral testimony.

14. In the present case it is seen that the proof of income was not on record except oral testimony of the claimant No.1 i.e. the wife of the deceased. At the same time it is seen that nothing can be discarded from the oral testimony if the deceased had purchased a Tempo just one year prior to the incident. Secondly, as per the testimony the wife, it is clear that the deceased was having

agricultural land and this fact is not denied. So it can be safely taken that deceased was also getting income from the agricultural land. For agricultural income there is no income tax and therefore the Tribunal has accepted oral testimony as regards the agricultural income. Taking into consideration this aspect, this Court finds that there is no perversity and illegality committed by the Tribunal in taking income of the deceased to be of Rs. 15,000/- p.m. On the other heads, this Court finds that the learned Member of Tribunal has rightly considered the Hon'ble Apex Court's Judgments and has arrived at a proper conclusion. Considering all these aspects, this Court finds that no case is made out to allow the appeal. Hence the appeal deserves to be dismissed and the same is hereby dismissed. No order as to the costs.

(KISHORE C. SANT)
JUDGE

mahajansb/