IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.608 OF 2018

Reliance General Insurance Company Ltd. ...Appellant

Versus

Nandkumar Rajnikant Shirwadkar and Ors. ...Respondents

...

Mr. Rahul Mehta i/b. M/s. KMC Legal Venture for the Appellant.
Mr. T.J. Mendon for Respondent Nos.1 and 2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 23rd AUGUST, 2023.

P.C.:-

1. The Appellant-Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988, challenging the Judgment and Award dated 01/11/2017 passed by the Member, Claims Tribunal, Mangaon, District-Raigad, in M.A.C.P. No.110 of 2011. By the impugned Judgment and Award dated 01/11/2017, the Claims Tribunal awarded compensation of Rs. 27,99,700/- with interest @10% per annum from the date of the application till realization of the amount.

2. Respondent No.1 is the husband and Respondent No.2 is the son of the deceased-Shruti @ Pinky Nandkumar Shirwadkar, who expired on 02/03/2011 in a motor vehicular accident involving luxury bus

No.MH-02/BQ-44. The deceased was passenger in the offending vehicle, which met with an accident. She expired as a result of the injuries sustained in the said accident. The Respondent Nos.1 and 2, hereinafter referred to as the 'Claimants' alleged that the accident was caused due to rash and negligent driving by the driver of the bus. The deceased was 23 years old and was serving in M/s. Fine Support Services Pvt. Ltd. as Tele Calling Executive and was earning salary of Rs.11,920/- p.m. The Claimants filed an application under Section 166 of the MV Act seeking compensation of Rs.30,00,000/- from the insurer as well as the insured.

3. The insured did not contest the proceedings. The Appellant-Insurance Company denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Appellant also disputed the income of the deceased and claimed that they are not liable to indemnify the insured for breach of terms and conditions of the policy.

4. The Tribunal upon considering the evidence on record held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle and the deceased-Shruti expired as a result of the injury sustained in the said accident. As regards the quantum of

compensation, the Tribunal relied upon the evidence of AW2- Jayant Joshi and AW3- Shashikant Bhalekar vis-a-vis the salary certificate at Exhibit-41 and bonus slip at Exhibits-33 and 34 and accepted the contention of the Claimants that the deceased was earning a salary of Rs.11,920/- p.m. The Tribunal deducted 1/3 towards personal expenses and further added 50% towards future prospect and on applying multiplier of 18, computed loss of dependency at Rs.25,74,720/-. The Tribunal awarded compensation of Rs.1,00,000/- towards loss of spousal consortium and Rs.1,00,000/- to the minor son of the deceased towards loss of love, care and guidance and Rs.25,000/- towards funeral expenses. The Tribunal thus awarded total compensation of Rs.27,99,700/-. Being aggrieved by the quantum of compensation, the Appellant-Insurance Company has filed this appeal under Section 173 of the MV Act.

5. Mr. Mehta, learned counsel for the Appellant has restricted the challenge only to the quantum of compensation. The contention of the learned counsel for the Appellant is that the compensation could not be computed without deducting professional tax.

6. Per contra, Mr. Mendon, learned counsel for the Claimants relied upon decision of the Apex Court in ***Vimal Kanwar and Others Vs. Kishore Dan and Ors. (2013) 7 SCC 476,*** wherein the Hon'ble Supreme

Court while considering the question whether income tax liable to be deducted, has held that in case the income of the victim is only from "salary", the presumption would be that the employer under Section 192(1) of the Income Tax Act, 1961 has deduced the tax at source from the employee's salary. In case an objection is raised by any party, the objector is required to prove by providing evidence such as Last Pay Certificate to suggest that the employer failed to deduct the TDS from the salary of the employee.

7. The evidence adduced by the Claimants amply proves that the deceased was 23 years of age and that she was employed as Tele Calling Executive in M/s. Fine Support Services Pvt. Ltd., at Lower Parel, Mumbai. The evidence of AW3-Shashikant Bhalekar vis-a-vis salary certificate at Exhibit-41 and the evidence of AW2- Jayant Joshi amply prove that the deceased was drawing monthly salary of Rs.11,920/- per month.

8. The Appellant-Insurance Company had not raised the issue of deduction of income tax /professional tax before the Claims Tribunal and none of the witnesses were cross examined on the said issue. Hence, I am not inclined to accept the contention of the learned counsel for the Appellant that professional tax payable to the deceased was not deducted at source and that any amount is required to be deducted from the

monthly income indicated in the salary certificate/salary slip, towards professional tax or income tax. In my considered view there is no error in computing loss of dependency.

9. The compensation awarded by the Tribunal is not in consonance with the quantum specified by the Hon'ble Supreme Court in ***National Insurance Company Limited v/s. Pranay Sethi and Others (2017) 16 SCC 680, Magma General Insurance Company Limited V/s Nanu Ram (2018) SCC 1546, Rajwati Vs. United India Assurance Co. Ltd. 2022 ACJ 2754*** and ***United India Assurance Co. Ltd. vs. Satinder Kaur, 2020 ACJ 2131 SC .*** The Claimants being the husband and minor son of the deceased are entitled for compensation of Rs.44,000/- each towards loss of spousal and parental consortium instead of compensation of Rs.1,00,000/- towards loss of spousal consortium and Rs.1,00,000/- towards love, care and guidance to the minor child. Considering the fact that the accident was of the year 2011, the Claimants are entitled for funeral expenses and loss of estate @ Rs.20,000/- each.

10. Having considered the facts and circumstances, the Claimants are entitled for compensation as under:-

Heads	**Amount**
Income per month	Rs.11,920/-
Add: 50% towards future income	

(Rs.11,920 +5960)	Rs.17,880/-
Less: Personal deductions 1/3 (Rs.17,880-5960)	Rs.11,920/-
Loss of Dependency after applying multiplier of 18 (Rs.11,920 x12x18)	25,74,720/-
Add:- Spousal Consortium	44,000/-
Add: Parental Consortium	44,000/-
Add:- Funeral Expenses	20,000/-
Add:-Loss of Estate	20,000/-
Total Compensation	**27,02,720/-**

11. Hence, the appeal is partly allowed. The Claimants are held to be entitled to total compensation of Rs.27,02,720/-with interest @ 8% p.a. from the date of the petition till realization as against compensation of Rs.27,99,700/-awarded by the Tribunal. The Claimant No.1 shall be paid 50% of the compensation with the proportionate interest accrued thereon. The Claimant No.2 being minor, 50% of the compensation be invested in his name in any Nationalised Bank till the date he attains the age of majority. The balance amount of Rs.96,980/-with the proportionate interest accrued thereon be refunded to the Appellant-Insurance Company.

12. The statutory deposit be transferred to the Claims Tribunal, Mangaon @ District-Raigad.

13. Interim application (s), if any, stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)