

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.632 OF 2020

Reliance General Insurance)
 Company Limited,)
 135, Ground Floor Pushpam Plaza,)
 Near Nandadeep Hotel,)
 Tadiwala Road, Pune – 1.)Appellant

Versus

1. Sandesh Shivram Kadam)
 Age : 38 years, occ : service)

2. Manshi Sandesh Kadam)
 Age : 13 years, occ: student)

3. Siddhi Sandesh Kadam)
 age: 11 years, occ : student)

4. Shruti Sandesh Kadam)
 age : 7 years, occ: nil)
 (Respondent Nos. 2 to 4 are minor)
 hence claiming through their father)
 i.e. Respondent No.1))
 All residing at Gokhale Nagar,)
 Janwadi 31/114, P.M.C. Colony,)
 Near Kusalkar Statue,)
 Pune – 411 016.)

5. Anand Shamrao Manjalkar)
 age : adult, occ: not applicable,)
 r/o. Arun Housing Society,)
 Plot No.1/4, Chatursingi Road,)
 Gokhale Nagar, Pune – 411 016.)Respondents

Mr. Pandit Kasar, Advocate for the Appellant.

Mr. Yogesh Pande, Advocate for the Respondent Nos.1 to 4

CORAM : S. G. DIGE, J.

DATE : 16th FEBRUARY 2023.

Judgment :

1. Heard learned counsel for the appellant and learned counsel for the respondents.

2. The issue involved in this appeal is the amount awarded under future prospects is on higher side.

3. It is the contention of learned counsel for the appellant that the Tribunal has awarded 50% future prospects instead of 40%. At the time of the accident, the deceased was 30 years old and she was self-employed. As per the view of the Hon'ble Apex Court in **National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)**, the future prospects should be 40% but the Tribunal has awarded 50% which is improper. Hence, requested to allow the appeal.

4. Learned counsel for the respondent Nos.1 to 4 submits that while calculating future prospects, the Tribunal has considered all the aspects and, on that basis, future prospects is awarded, which is proper. Learned counsel further submits that the Tribunal has considered 30% contributory negligence of the deceased, which is improper. The accident had occurred due to sole negligence of the driver of the offending vehicle but this fact is not considered by the Tribunal and the Tribunal has fixed 30% negligence of the deceased without any evidence. Hence, requested to fix sole negligence on the driver of the offending vehicle.

5. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

6. The issue involved in this appeal is compensation awarded under the head of future prospects is on the higher side. Admittedly, the deceased was 30 years old at the time of the accident. She was a maid, she was self-employed. As per the view of the Hon'ble Apex Court in the case of **Pranay Sethi (Supra)** if the deceased is self-employed and below 40 years age, the future prospects should be 40%. The Tribunal has awarded 50% future

prospects, which is illegal and improper. Hence, I am considering 40% future prospects instead of 50% future prospects.

7. It is the contention of learned counsel for the respondent Nos.1 to 4 that there was no negligence on the part of the deceased. In spite of that, 30% contributory negligence is fixed on deceased.

8. In my view, this appeal is preferred by the appellant-Insurance Company and not by the claimants. While exonerating the contributory negligence of the deceased, this Court has to consider the facts disputed by the claimants. The claimants have not challenged the order passed by the Tribunal. Without appeal, this Court cannot consider the theory put forth by the learned counsel for the original claimants. Hence, I do not find any merit in the contention of learned counsel for the respondent Nos.1 to 4 that there was no contributory negligence of the deceased.

9. As this Court has considered that the claimants are entitled for 40% future prospects instead of 50% which is awarded by the Tribunal, the difference amount comes to Rs.96,390/-. The appellant-Insurance Company is entitled for refund of this amount.

10. In view of the above, I pass the following order:

1. The appeal is allowed.
2. The claimants are entitled for compensation of Rs.13,98,460/- @ 8% per annum from filing of the claim petition till realisation of the amount instead of Rs.14,94,850/-.
3. The appellants are entitled to withdraw the amount of Rs.96,390/- along with interest accrued thereon, if not, withdrawn by the claimants.
4. The statutory amount with accrued interest thereon be transmitted to MACT, Pune. The parties are at liberty to withdraw it as per Rule.

The appeal stands disposed of.

11. Pending applications, if any, stands disposed of.

(S. G. DIGE, J.)