IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1019 OF 2018

United India Insurance Co. Ltd. …. Appellant
v/s.
Smt. Jagruti Abhijit Mali and ors. …. Respondents

WITH
INTERIM APPLICATION NO. 2452 OF 2023
IN
FIRST APPEAL NO. 1019 OF 2018

Jagruti Abhijit Mali and ors. …. Applicants

In the matter between :-
United India Insurance Co. Ltd. …. Appellant
v/s.
Smt. Jagruti Abhijit Mali and ors. …. Respondents

Mr. Rahul Mehta i/b. KMC Legal Venture for the Appellant.
Ms. Prachi Khandge i/b. M.P. Vashi and Associates
for Respondent Nos.1 and 2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 24th AUGUST, 2023.

P. C. :-

. With consent, heard finally at the stage of admission.

2. The Appellant – Insurance Company has by this Appeal filed under section 173 of Motor Vehicles Act, challenged the impugned judgment and award dated 19/08/2016 passed by the Member, MACT, Raigad-Alibag in MACP No.364/2012. By the impugned judgment, the

Tribunal allowed the Claim application and awarded compensation of Rs.40,70,000/- with interest @ 7.5% p.a. from the date of the petition till final realization of the amount.

3. The Respondent Nos.1 to 4 who shall be hereinafter referred to as 'the Claimants' had filed the Claim Petition under section 166 of the Motor Vehicles Act in view of death of Abhijit Mali in a motor vehicular accident involving his motorcycle bearing No.MH-06/U-3104 and Tavera vehicle bearing No.MH43/X-5662. It is the case of the claimants that the accident was caused solely due to rash and negligent driving by the driver of the Tavera vehicle.

4. The deceased – Abhijit Mali was 37 years of age and was employed as an Assistant Manager at G.K. Legal Consultant Pvt. Ltd. on monthly salary of Rs.25,000/-. The Claimants being the widow, minor son and parents of the deceased claimed that they were solely dependent on the income of the deceased. The claimants further stated that the Appellant-insurer as well as the Respondent – the owner and driver of the offending vehicle are liable to pay the compensation.

5. The Respondent No.5-insured and the Appellant – Insurance

Company contested the claim on the ground that the accident was caused solely due to rash and negligent driving by the deceased. The Appellant and the insured also disputed the age and income of the deceased and further claimed that they are not liable to pay any compensation.

6. Upon considering the evidence adduced by the Claimants, the learned Judge held that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle. The learned Judge held that the deceased who was employed as an Assistant Manager at G.K. Consultant Pvt. Ltd. was not receiving fixed salary and considering the income of the deceased for the preceding months, considered the monthly income of the deceased at Rs.18,000/- per month. The deceased was a permanent employee and hence, Tribunal added 50% of the income towards future prospects and considering the number of dependents, deducted 1/4th of the income towards his personal expenses. The deceased was 37 years of age, hence, applying multiplier of 15, the Tribunal computed loss of dependency at Rs.36,45,000/-. The Tribunal awarded compensation of Rs.25,000/- towards funeral expenses and Rs.4,00,000/- towards loss of consortium and love and affection and thus awarded total compensation of

Rs.40,70,000/-.

7. Mr. Mehta, learned counsel for the Appellant has restricted the challenge only to the quantum of compensation awarded by the Tribunal. He contends that the Tribunal has erred in considering the income of the deceased at Rs.18,000/- per month. He submits that the last drawn salary of the deceased during the preceding months was between Rs.13,722/- and Rs.15,000/- per month. He therefore contends that the compensation awarded by the Tribunal is exorbitant and cannot be considered as just and fair.

8. Per contra, learned counsel for the Respondents-claimants submits that the evidence adduced by the Claimants proves that the deceased was drawing salary of Rs.25,000/- per month. She states that the deceased was not earning fixed salary and that his income was determined on the basis of his performance. She states that the evidence on record reveals that in the month of January and February, 2012, the deceased earned an income of Rs.25,000/- to Rs.30,000/- respectively. She submits that the compensation awarded by the Tribunal is just and fair and does not warrant any interference.

9. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

10. The records reveal that the motorcycle driven by the deceased and the Tavera vehicle which was insured by the Appellant herein were involved in an accident on 01/06/2012. The deceased – Abhijit Mali expired as a result of the injuries sustained in the said accident. There is no challenge to the finding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle and in the absence of any material to prove breach of terms and conditions of the policy, the Appellant – insured is liable to indemnify the insurer.

11. The evidence on record reveals that the deceased was 37 years of age. He was working as an Assistant Manager with G.K. Consultant Pvt. Ltd. The claimants have examined the employer PW2 – Prafulla Kisan Chaulkar and have also placed on record appointment letter at Exhibit – 35 and salary slips at Exhibit – 36. The evidence of the employer viz-a-viz the documentary evidence at Exhibits-35 and 36 indicate that the monthly increments were based on the performance of the deceased and the deceased was not deriving fixed monthly income. The records reveal that in the three preceding months, the average

income of the deceased was Rs.18,000/- per month. The Tribunal has not committed any error in considering the monthly income of the deceased at Rs.18,000/- and in computing loss of dependency at Rs. Rs.36,45,000/-.

12. The compensation awarded by the Tribunal on conventional heads is not in accordance with the amount stipulated by the Apex Court in ***National Insurance Company Limited v/s. Pranay Sethi and others 2017 16 SCC 680, Magma General Insurance Co. Ltd. v/s. Nanu Ram alias Chuhru Ram and Ors. 2018 SCC Online SC 1546*** and ***United India Insurance Co. Ltd. v/s. Satinder Kaur and others 2020 ACJ 2131***. The Claimants being the widow, children and the parents of the deceased are entitled for compensation of Rs.44,000/- each towards loss of spousal consortium, parental consortium and filial consortium. Thus, the Claimants are entitled for compensation of Rs.1,76,000/- towards loss of consortium. In addition, the Claimants are also entitled for compensation of Rs.16,500/- each towards funeral expenses and Loss of Estate. Thus, the Claimants are entitled for total compensation of Rs.2,09,000/- on conventional heads as against Rs.4,25,000/- awarded by the Tribunal. The Award to that extent needs to be modified.

13. Hence, the Appeal is partly allowed. It is held that the Claimants are entitled for total compensation of Rs.38,54,000/- with interest @ 7.5% p.a. from the date of the Petition till final realization. The balance amount of Rs.2,16,000/- deposited by the Appellant – Insurance Company be refunded along with proportionate interest accrued thereon.

14. Statutory deposit of Rs.25,000/- shall be transferred to MACT, Raigad.

15. Appeal as well as Interim Application stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)