IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1079 OF 2001

Smt. Sushma Subhash Kotkar & Ors. ..Appellants.

v/s.

Shri Iftikar Mohammed & Ors. ..Respondents

Ms. Amrin Khan i/b. Mr. A.M.Gokhale for the Appellants.
Ms. Poonam Mittal for the Respondent Nos.3 and 4..

CORAM : ANUJA PRABHUDESSAI, J.
DATED : 1st SEPTEMBER, 2023.

P.C.

1. At the outset, learned Counsel for the Respondent states that the Respondent No.4 has expired leaving behind appellant nos.1 to 3 as sole legal representatives. Necessary entry be made in the cause title against the name of Respondent No.4.

2. The Appellants, original claimants have filed this appeal under Section 173 of the Motor Vehicles Act, raising challenge to the impugned judgment and award dated 18.01.2001 in Claim Application No. 3726 of 1991, passed by the Motor Accident Claims Tribunal, Mumbai.

2. By the impugned judgment and award, the Claims Tribunal allowed the application under Section 166 of the Motor Vehicles Act filed by the Appellants Claimants and awarded compensation of Rs.10,25,000/- with interest at the rate of 12% per anum from 1.1.1998 till final realization.

3. Brief facts necessary to decide this appeal are as under:

The Appellants, who shall hereinafter be referred to as the Claimants had filed an application under Section 166 of the Motor Vehicles Act in view of death of Subhash Kotkar, who died in a motor vehicular accident on 4.9.1991, involving a Fiat car bearing no. MAM 7728 and Maruti Gypsy bearing No. MP-04-C-8394. It is the case of the claimants that the accident was caused due to rash and negligent driving by the driver of the said Maruti Gypsy. Mr. Subhash Kotkar who was traveling by the fiat car had sustained several injuries. He was admitted in Bombay Hospital for treatment. He expired on 4.9.1991 while undergoing treatment.

4. The claimants have stated that the deceased was 32 years of age and was one of the partners of the firm Nilesh Bulk Carriers. The claimants stated that they were solely dependent on the income of the deceased and hence they filed an application under Section 166 of the Motor Vehicles Act, claiming total compensation of Rs.16 lakhs with

interest.

5. The Respondent Nos.1 and 2 did not contest the proceeding. Respondent No.3- Insurance Company denied the age and income of the deceased, and further claimed that the accident was caused due to the rash and negligent driving by the driver of the Fiat car.

6. 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. The Tribunal considered the monthly income of the deceased at Rs.7500/- per month. The Tribunal considered the age of deceased as 35 and applied multiplier of 12 and computed loss of Dependency at Rs.7,20,000/-. The Tribunal also awarded compensation of Rs.2,95,000/- towards medical expenses, and in addition Rs.20,000/- towards loss of consortium and estate, Rs.5000/- towards pain and suffering, and Rs.10,000/- towards funeral expenses. The Tribunal thus awarded total compensation of Rs.10,50,000/-. The Tribunal held that the Claimant was not diligent in pursuing the petition and hence instead of awarding interest from the date of the petition, awarded interest @ 12% from 1.1.1998. Being aggrieved by the quantum of compensation awarded by the Tribunal, the Appellant claimants have filed this appeal under Section 166 of the Motor Vehicles Act.

7. Heard Mrs. Khan, learned Counsel for the Appellant-claimants and Ms. Mittal for the Respondent Nos.3 and 4 – Insurance Company. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

8 . The evidence on record reveals that on 4.8.1991 deceased Subhash Kotkar was proceeding from Versova to Andheri by Fiat Car bearing No.MAM-7728. There was collision between the said car and Maruti Gypsy bearing No.MP-04-C-8394 at J.P.Road Junction. Said Subhash Kotkar sustained serious injuries in the said accident and was admitted in Bombay Hospital. He expired on 4.9.1991 as a result of the injuries sustained in the said accident. The Tribunal has recorded a finding that the accident was caused solely due to the rash and negligent driving by the driver of Maruti Gypsy, which was insured by the Respondent No.3 herein. There is no challenge to these findings. The only question for consideration in the present appeal is whether the compensation awarded by the Tribunal is just and reasonable.

9. The Claimant No.1 who is the widow of the deceased has given the date of birth of the deceased as 29.03.1956. The evidence of AW1 as well as AW3 Bhailal Chedda reveals that initially the deceased was working in Transport Corporation and was getting salary of Rs.3000/-. He was also maintaining tanker of AW3 for which he was paid Rs.4000/-

per month. Subsequently, the deceased and AW3 started a partnership firm in the name Nilesh Bulk Carriers, wherein the deceased had 50% share. AW3 has placed on record income tax returns at Exhibit 22. His evidence reveals that the deceased was earning Rs.7500/- per month. It is in evidence that the partnership firm was dissolved subsequent to the death of deceased Subhash Kotkar. The evidence on record thus reveals that the income of the deceased was only Rs.7000/- per month. It is pertinent to note that the Tribunal has not added any amount towards future prospects and has also erred in applying multiplier of 12 instead of 16. The compensation awarded under conventional heads is also very meagre. Hence the compensation awarded by the Tribunal can not be considered to be just and reasonable.

10. As noted above, the deceased was earning income of Rs.7500/- per month. The deceased was 35 years of age and he was self employed. Hence on adding Rs.3000/- I.e. 40% needs to be added towards future prospects, the income works out to Rs.10,500/- per month.. Considering the number of dependents, and deducting 1/3rd of income towards his personal expenses and on applying multiplier of 16 loss of dependency works out to Rs.13,44,000/- The Claimant No.1 is the widow, the Claimant No.2 is his minor child, and Claimant Nos.3 and 4 are the parents of the deceased. Hence they are entitled for compensation of Rs.44,000/- each , towards loss of spousal, parental and

filial consortium. In addition the claimants are also entitled for compensation of Rs.33000/- towards loss of estate and funeral expenses.

11. The evidence on record reveals that the deceased had undergone treatment in Bombay Hospital and during his stay in the hospital the claimants had incurred medical expenses of Rs.2,95,000/-. Hence the claimants are entitled for total compensation of Rs.18,48,000/-.

7500 x 12	90,000/-
+ 40%	1,26,000/-
1,26,000/- - 42,000/- (deducting 1/3rd towards personal expenses	84,000/-
Applying multiplier of 16 to 84,000/-	13,44,000/-
+ Medical expenses	2,95,000/-
+ Conventional head Rs.44,000/- to each towards loss of spousal, parental and filial expenses	1,76,000/-
Loss of estate and funeral expenses	33,000/-
Total	18,48,000/-

12. The claimant had filed the claim petition in the year 1991. However, the Tribunal has awarded interest from 1.1.1998. The records reveal that though the claim petition was filed in the year 1991, the claimants had neither paid the court fees, nor removed the office objections till 11.10.1993. The claimants would therefore be entitled for interest from 11.10.1993 and not from 1.1.1998 as awarded by the Claims Tribunal. Since the prevailing interest rate at the relevant time was 12%, no interference is warranted. Under the circumstances, and in

view of the discussion supra the appeal is allowed.

13. It is held that the claimants are entitled for compensation of Rs.18,48,000/- with interest @ 12% per annum from 11.10.1993 till final realization.

14. The respondent No.3 Insurance Company shall deposit the balance amount before the Claims Tribunal within a period of four weeks.

15. The Claimant Nos.1 and 2 be paid 80% of the compensation with proportionate interest accrued thereon in equal proportion and the balance 20 % with proportionate interest be paid to claimant no.3.

(ANUJA PRABHUDESSAI, J.)