IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1136 OF 2022

Kanta Shashikant Jahdav & Ors. ...Appellants
Versus

Raghvendra Krushna Nayak & Anr. ...Respondents

Mr. Sanjeev Deore a/w Ms. Suchita Pawar & Jidnyasa Choudhari i/by Adityaraj Gaikwad for the Appellants.
Mr. Sarthak Diwan for Respondents.

CORAM : RAJESH S. PATIL, J.

DATED : 4 NOVEMBER, 2023.

P.C.:

1. This First Appeal is filed the legal heirs of the deceased Shashikant Jadhav, for enhancement of compensation.

2. There is no dispute that after passing of impugned Award dated 5 October, 2018 by MACT, Nashik, the Insurance Company has not challenged the said Award. Subsequently, the Insurance Company deposited the entire Award amount along with accrued interest. Immediately thereafter, the legal heir of the deceased withdrew the entire amount.

3. The challenge to the impugned Award is only as far as quantum is concerned as the Appellants have disputed

(i) the grant of consortium which according to them should have been per Applicant and not Rs.40,000/- together to all the Claimants. *(ii)* Further the Appellants have also challenged that future prospects has not been added by the MACT Court.

4. Heard both the sides and I have gone through the documents on record.

5. The deceased was working with the India Security Press and drawing salary of Rs.58,000/- per month. He was 50 years old at the time of accident.

6. The Advocate for the Appellants have relied upon two Judgments of the Supreme Court in support of his submissions the first Judgment relied upon by him is that of ***National Insurance Company Limited V/s. Pranay Sethi And Others,***[1] and the second Judgment of ***Magma General Insurance Company Limited V/s. Nanu Ram Chuhru Ram And Others***[2].

7. Paragraph No.59 of the Judgment of Constitution Bench in ***Pranay Sethi (Supra)*** reads as under :-

> *"**59.** In view of the aforesaid analysis, we proceed to record our conclusion:*
>
> ***59.1.*** *The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was*

1 (2017) 16 SCC 680
2 (2018) 18 SCC 130

taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

59.2. *As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*

59.3. *While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*

59.4. *In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The establishment income means the income minus the tax component.*

59.5. *For determination of the multiplicand, the deduction for persona and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma which we have reproduced bereinbefore.*

59.6. *The selection of multiplier shall be as indicated in the Table in Sarla Verma read with para 42 of that judgment.*

59.7. *The age of the deceased should be the basis for applying the multiplier.*

59.8.*Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."*

8. In the Judgment of ***Magma General Insurance Company Limited (Supra),*** Paragraph No.24 reads as under :-

> *"**24.** The amount of compensation to be awarded on consortium will be governed by the principles of awarding compensation under "Loss of Consortium" as laid down in Pranay Sethi. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000/- each for loss of fillal consortium".*

9. Taking into consideration the law has laid down by the Supreme Court in the above two Judgments. I hereby modify the impugned Award only to the extent that the *(i)* consortium amount as fixed by MACT Court in impugned Award, Paragraph No.18 should be Rs.40,000/- each for Claimants which total amount would be Rs.1,20,000/-. Therefore, there is rise of Rs.80,000/- as far as consortium is concerned. *(ii)* As far as Loss of income is concerned, in Paragraph No.17 of the impugned Award passed by MACT, it has granted it at Rs.33,30,536/-. However, while calculating the said amount the MACT has not considered future prospects. As per the law has laid down by the Supreme Court in the Judgment of ***Pranay Sethi (Supra)***, additional 15% on account of future prospects would be payable to the claimant as he had a permanent job and he was aged 50 years. The said 15% amount has to be calculated on Rs.4,54,160/-, which comes to

Rs.68,124.6/- after multiplier on 11 and further deduction of 1/3rd the total amount will now come to Rs.38,30,116.4/-.

10. Therefore, the amount overall payable as compensation to the Original Claimants would stand corrected to Rs.39,80,116.4/-, which was earlier calculated in impugned Award at Rs.34,00,536/-. As the Original Claimants have already withdrawn the amount as calculated on the basis of Rs.34,00,536/- along with accrued interest. The claimant would be entitled to a further sum of Rs.5,79,580/-, there will be also a further interest at the rate of 6% from the date of the Petition till its realization. The impugned Award dated 5 October, 2018 is accordingly modified and rest of the part of the impugned Award remains as it is.

11. For sake of clarification the ratio of distribution of compensation would be as mentioned in Paragraph No.21 of the impugned Award.

12. The above mentioned amount should be directly transferred to the Bank Account of the Original Claimants.

13. The Registry to see that the money is transferred to the account of the Applicant.

14. All the parties to act on an authenticated copy of this order.

15. The First Appeal is accordingly disposed as partly allowed.

(RAJESH S. PATIL, J.)