2023:BHC-AS:29280

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1738 OF 2019

RELIANCE GEN INSURANCE CO LTD)
4th Floor, Chintamani Avenue, Off Western)
Exp Highway Next to Virwani Indl Estate)
Goregaon (E) Mumbai-400063)
Ins. Policy No.1105723334001145)
Valid From 14/02/2014 TO 13/02/2015.)...APPELLANT

V/s.

1. SHRI. NITIN MADHUKAR DIGHE)
Aged 57 Years (Father of Deceased))
)
2. SMT. ALKA NITIN DIGHE)
Aged 57 Years (Mother of Deceased))
R/at: Near Ghatkopar Depot, C-11/4)
Casurina Chs Ghatkopar (E), Mumbai)
400075)
)
3. SHRI. RAMAN KUMAR KHOSLA)
(Regd Owner of M/Tanker No.)
MH-43-U-4217) D-184, Cargo Park,)
TTC Indl Area, Behind Lp Factory)
Nerul Thane, Navi Mumbai – 400706)
)
4. SHRI. MOHD SALMAN HAMID ALI)
(Driver of M/Tanker No.MH-43-U-4217))
Prayag Nagar Society, L.U. Gadkari Marg)
Chembur Mumbai – 400074.)...RESPONDENTS

Ms.Shalini Shankar, Advocate for the Appellant.

Ms.Varsha Chavan, Advocate for the Respondents no.1 and 2.

CORAM : ABHAY AHUJA, J.

RESERVED ON : 9th AUGUST 2023
PRONOUNCED ON : 5th OCTOBER 2023

JUDGMENT :

1. This First Appeal has been preferred by the Insurance Company impugning the judgment and award dated 29th June 2019 passed by the Motor Accident Claims Tribunal, Mumbai, (the "MACT/ "Tribunal") in Motor Accident Claim Petition No.84 of 2015.

2. At the outset, Ms.Shalini Shankar, learned Counsel for the Appellant, would submit that, although before the Tribunal, the Appellant Insurance Company filed written statement and took defences including statutory defences with respect to driving license, non-joinder of party, however, on instructions, she submits that the Appellant Insurance Company is not denying that the deceased Mr.Anuj Nitin Dighe died in the motor vehicular accident, due to the rash and negligent driving of the motor tanker bearing no.MH-43-U-4217 (the "offending vehicle") by its driver, as held by the Tribunal, but is only questioning the quantum of compensation awarded to the Respondent claimants.

3. Learned Counsel draws the attention of this Court to paragraph 5 and 14 of the impugned judgment and would submit that while arriving at the average monthly salary of the deceased at Rs.19,000/- per month, the Tribunal has not taken into account that no income tax return of the deceased was adduced in evidence. Learned Counsel would submit that the evidence of appointment letter, salary slips of the deceased for the period April to June 2014 or even Form 16 is not evidence which is satisfactory to hold that the average monthly salary of the deceased was Rs.19,000/- per month. In support, learned Counsel refers to the examination-in-chief of Mr.Abhishek Khopkar, Co-ordinator, HR, working with Convergys India Services Private Limited, the deceased’s employer, who has stated that no income tax return of the deceased was adduced.

4. On the other hand, Ms.Varsha Chavan, learned Counsel for the Respondent claimants, would submit that although there is no income tax return produced in evidence but since the deceased was an employee of Convergys at Thane, receiving salary income for which pay slips, as mentioned above, have been adduced and proved, Form 16 containing the Tax Deducted at Source (TDS) with respect to the TDS

deducted on the salary paid to the deceased would be a sufficient document which can be relied on, and therefore, it was not necessary to adduce the income tax return. Learned Counsel would submit that it is clear from the affidavit of Abhishek Khopkar (AW2) as well as his examination-in-chief and the cross-examination that the salary slips for the months of April, May and June 2014 as well as Form 16 for the Assessment year 2013-14 had all been proved. No objection was raised at any point of time to this and none of these documents can be challenged at the Appeal stage. Learned Counsel for the Respondent claimants therefore, submits that the average monthly salary of Rs.19,000/- per month, as held by the Tribunal, requires no interference. Learned Counsel would, however, submit that, the Tribunal has, on the basis of the Constitutional Bench judgment of the Hon'ble Apex Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and Others***[1] awarded Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses but omitted to award any amount towards loss of filial consortium which is a right of the parents, as contained in the decision of the Hon'ble Supreme Court in the case of ***Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others***[2] and requests that while dismissing the

1 (2017) 16 Supreme Court Cases 680
2 (2018) 18 Supreme Court Cases

Appeal, this Court may award Rs.40,000/- each to the father and mother of the deceased.

5. I have heard the learned Counsel at length and with their able assistance perused the papers and proceedings and considered the rival contentions.

6. It is not in dispute that Anuj Nitin Dighe, who was along with his colleagues proceeding in motor car which his colleague Ajay Pinto was driving, on 2nd July 2014, at about 04.45 hours, met with an accident with the offending vehicle near Kharegaon Toll naka, Nasik Mumbai Highway, Bhiwandi, Thane, which was proceeding ahead of the vehicle in which the deceased was travelling and suddenly applied brakes in a rash and negligent manner, resulting in the said vehicle's collision with the offending vehicle. Due to the said impact, Anuj Nitin Dighe died along with his colleague on the spot. The original claimants filed an application claiming a compensation of Rs.50,00,000/- with interest at the rate of 9% per annum. As mentioned above, the Appellant Insurance Company filed its written statement raising doubts on the claim application and also contending that the said accident had not occurred due to the sole negligence on the part of the driver of the offending vehicle but occurred due to the contributory negligence of

the car driver in which the deceased was travelling. It is also contended that, at the time of the accident, the driver of the offending vehicle was not holding a valid and effective driving license. That, the claim was bad for non-joinder of necessary party.

7. After considering the rival contentions and the evidence of the Applicant, of Mr.Abhishek Khopkar (AW2), employee of Convergys, documentary evidence consisting of certified copy of First Information Report (FIR), Spot Panchnama, Inquest Panchnama, postmortem report, Insurance policy, appointment letter of the deceased, salary slips for the months of April to June 2014, Form 16 for the Assessment year 2013-14 and observing that no evidence was adduced on behalf of the Insurance Company, inspite of granting sufficient time, the Tribunal held that the claimants proved that Anuj Nitin Dighe died in the motor vehicle accident due to rash and negligent driving of the offending vehicle by its driver and that the Insurance Company was not able to prove that the accident occurred due to the negligence of the driver of car no.MH-04-DY-1827 in which the deceased was travelling. It was also held that the Insurance Company had not been able to prove that the owner and driver of the offending vehicle involved in the accident committed breach of the terms and conditions of the Insurance policy.

8. After considering the documentary evidence as well as the testimony referred to above, the Tribunal on the basis of the age of the deceased, income of the deceased and dependency as contained in paragraphs 12 to 14 of the impugned judgment and award, held that the average monthly salary of the deceased was Rs.19,000/- per month on the date of the accident; applying the law settled by the Constitutional Bench of the Hon'ble Apex Court in the case of *National Insurance Company Limited vs. Pranay Sethi and Others (supra)* and ***Sube Singh and Anr. vs. Shyam Singh***[3] the Tribunal in paragraph 20 held that the original claimants were entitled to get a total of Rs.31,08,000/- by way of compensation which included Rs.15,000/- as compensation towards loss of estate and Rs.15,000/- as compensation towards funeral expenses, holding the owner as well as he driver of the offending vehicle and the Insurance Company, jointly and severally liable to pay the same in equal shares to the Respondents no.1 and 2 along with interest at the rate of 7.5% per annum from the date of application till realization.

9. Having perused the compilation of documents filed on behalf of the Respondent claimants and in particular the affidavit of examination-in-chief and cross-examination of the Respondent no.1 as

3 TAC 2018 (1) SC Page 689

well as the examination-in-chief and cross-examination of Abhishek Khopkar (AW2), I am in agreement with the findings of the Tribunal in arriving at the average monthly salary of the deceased at Rs.19,000/- per month. The claimants have proved the salary slips of the deceased for the month of April, May and June 2014 issued by Convergys as well as the Form 16 for the Assessment year 2013-14 issued by Convergys to the deceased. No objection was raised by the Insurance Company at the time of the evidence nor any material has been brought on record to disprove these documents nor anything to demonstrate that these documents were not satisfactory enough or insufficient or inadequate to come to a finding that the average monthly salary of the deceased could not be Rs.19,000/-. The Tribunal has categorically recorded in the order that on behalf of the Insurance Company, no evidence was adduced, inspite of granting sufficient time, and therefore, on 24th June 2019, evidence of the insurer or the Appellant came to be closed. In my view, no fault can be found with the approach of the Tribunal. The Tribunal has, on the basis of documentary evidence consisting of certified copy of FIR, Spot Panchnama, Inquest Panchnama, postmortem report, Insurance policy, appointment letter of the deceased, salary slips for the months of April to June 2014, Form 16 for the Assessment year

2013-14 and Achievement certificate of the deceased, the evidence of the co-ordinator of Convergys arrived at the average monthly salary of the deceased as Rs.19,000/-. No evidence has been adduced even at the Appeal stage except a bald argument that the evidence adduced to arrive at the quantum was not satisfactory. Ms.Shalini Shankar has submitted that income tax return was not furnished. In my view, once Form 16, which is a statutory document and indicates the TDS deducted on the salary, is proved, it would not be necessary to produce the income tax return particularly in the case of a salaried person. The evidence of Co-ordinator of Convergys (AW2) clearly indicates that the deceased was a salaried person viz. an employee of Convergys by virtue of the appointment letter which was proved before the Tribunal and that the deceased continued in the employment of Convergys till the date of his death and drew a salary, as per the appointment letter and the salary structure of the Company. It was, therefore, not necessary to furnish the return. Even assuming for a moment that the deceased had any other income, that in my view would only enhance the compensation to the claimants and not reduce it. From the affidavit of AW2 it is clear that the deceased was a permanent employee drawing a salary and had no other income, and therefore, Form 16 for Assessment year 2013-14 would be sufficient.

10. It is also not in dispute that the Tribunal has correctly computed dependency using multiplier of 18 in line with the decision of the Hon'ble Apex Court in *National Insurance Company Limited vs. Pranay Sethi and Others (supra).*

11. Coming to Ms.Chavan's submission that the Tribunal has awarded amounts of Rs.15,000/- each only towards two conventional heads, viz., compensation towards loss of estate and compensation towards funeral expenses, but omitted compensation towards filial consortium, I agree with the submission. Learned Counsel has rightly referred to the decision of the Hon'ble Supreme Court in the case of *Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others (supra)*. Paragraphs 8.6 and 8.7 of the said decision are useful and are quoted as under :

> *"8.6 The MACT as well as the High Court have not awarded any compensation with respect to Loss of consortium and Loss of Estate, which are the other conventional heads under which compensation is awarded in the event of death, as recognized by the Constitution Bench in Pranay Sethi (supra).*
>
> *The Motor Vehicles Act is a beneficial and welfare legislation.*

The Court is duty−bound and entitled to award "just compensation", irrespective of whether any plea in that behalf was raised by the Claimant.

In exercise of our power under Article 142, and in the interests of justice, we deem it appropriate to award an amount of Rs. 15,000 towards Loss of Estate to Respondent Nos. 1 and 2.

8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.3

Spousal consortium is generally defined as rights pertaining to the relationship of a husband−wife which allows compensation to the surviving spouse for loss of "company, society, co−operation, affection, and aid of the other in every conjugal relation."

Parental consortium is grated to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world−over have recognized that the value of a

> *child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.*
>
> *The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.*
>
> *Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.*
>
> *A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.*
>
> *The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).*
>
> *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 Filial Consortium."*

(emphasis supplied)

12. In view of the above decision of the Hon'ble Supreme Court, I am of the view that, in addition to the total amount of Rs.31,08,000/-, the amount of Rs.40,000/- each, be awarded to the two claimants.

13. Ergo, the Appeal of the Insurance Company is dismissed. The impugned judgment and award dated 29th June 2019 be modified to the above extent.

14. The Appellant – Insurance Company to deposit the balance amount in the Tribunal within a period of four weeks.

15. The Respondents no.1 and 2 be permitted to withdraw the amounts less the amounts already withdrawn along with interest @ 7.5% p.a., in the proportion and in the manner, as contained in the impugned judgment and award dated 29th June 2019.

16. Parties to bear their own costs.

(ABHAY AHUJA, J.)