IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.888 OF 2013
WITH
CIVIL APPLICATION NO. 4266 OF 2012
IN
FIRST APPEAL NO. 888 OF 2013

United India Insurance Company Limited …. Appellant
v/s.
Mr. Ratnakar Vasudeo Rao Tellichery
and ors. …. Respondents

WITH
INTERIM APPLICATION NO. 3172 OF 2023
IN
FIRST APPEAL NO.888 OF 2013

Ratnakar Vasudeorao Tellichery (since
deceased) :
Smt. Maya Mangalore and ors. ….Applicants

In the matter between :-
United India Insurance Company Limited …. Appellant
v/s.
Mr. Ratnakar Vasudeo Rao Tellichery
and ors. …. Respondents

Mr. Rahul Mehta i/b. KMC Legal Venture for the Appellant.
Mr. Ritesh Wagh for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 24th AUGUST, 2023.

P. C. :-

. The Appellant – Insurance Company has filed this Appeal under section 173 of the Motor Vehicles Act challenging the judgment and award dated 06/03/2012 passed by the MACT, Mumbai in Claim Application No.2096/2001.

2. The Respondent Nos.2 to 6 being the widow and children had filed Claim Application No.2096/2001 under section 166 of Motor Vehicles Act in view of death of deceased – Jayshree Ratnakar Tellichery in a motor vehicular accident on 23/03/2001 involving Kinetic Honda scooter No.MH-01-D-8588 owned by Respondent No.6 and insured by the Appellant – Insurance Company.

3. The Claimants have alleged that the accident was caused due to rash and negligent driving by the rider of the scooter and that the death of Jayshree was on account of the injuries sustained in the said accident. The Claimants therefore claimed compensation of Rs.30,00,000/- from the owner and the insurer of the said vehicle.

4. The owner of the vehicle did not contest the claim. The Appellant – Insurance Company claimed that the accident was caused due to negligence of the deceased and that the Claimants are entitled only for compensation towards loss of estate and medical expenses.

5. The Tribunal, after considering the evidence on record, held that the accident was caused due to rash and negligent driving by the rider of the scooter. The Tribunal further held that the deceased expired as a result of the injuries sustained in the said accident. The Tribunal computed loss of dependency on the basis of the notional income of Rs.3,000/- per month. Considering the age of the deceased as 67, the Tribunal applied multiplier of 5 and after deducting 1/3rd towards personal expenses, computed loss of dependency at Rs.1,20,000/-. In addition, the Tribunal awarded compensation towards loss of consortium, pain and suffering, medical expenses, loss of estate, etc. and thus awarded total compensation of Rs.8,63,187/- with interest 7.5% p.a. Being aggrieved by the said order, the Appellant – Insurance Company has filed the present Appeal.

6. Mr. Mehta, learned counsel for the Appellant – Insurance Company submits that the death of the deceased was not caused due to the injuries sustained in the said accident. He further submits that the compensation awarded by the Tribunal is exorbitant. He claims that the Claimant Nos.2 to 5 are the married children of the deceased and are not entitled for compensation.

7. Per contra, learned counsel for the Respondents/Claimants submits that the evidence on record amply proves that the deceased had expired as a result of the injuries sustained in the said accident. He further submits that the Tribunal has not awarded compensation towards loss of parental consortium and that the compensation awarded by the Tribunal needs to be enhanced.

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

9. Before adverting to the facts of the case, it would be relevant to note that in ***National Insurance Company Limited v/s. Birender AIRONLINE 2020 SC 21,*** the Apex Court has observed that – *it is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representatives was fully dependent on the deceased and not to limit the claim towards conventional heads only.* Hence, the married

daughter of the deceased are entitled to seek compensation.

10. Reverting to the facts of the case, it is not in dispute that the deceased – Jayshree had met with an accident on 23/03/2001 and had sustained injuries in a motor vehicular accident involving Kinetic Scooter which was insured by the Appellant – Insurance Company. The evidence on record indicates that she had suffered head injury, was bleeding from ear and was admitted to Nanavati Hospital from 23/03/2001 to 21/05/2001 as an indoor patient. The CT Scan revealed that she had sustained acute brain sub dural hamatoma with fracture of skull on left side on 23/03/2001. She was operated for craneocerebral injury and the hamatoma was removed. She was again operated on 12/04/2001 and 17/04/2001. During her hospitalization, she developed hydrocephalus i.e., accumulation of excess fluid for which reason, the bone flap was removed. She developed weakness in power of Grade I in upper limb and Grade II in the lower limb. She was thereafter shifted to Nanawati Hospital. Dr. Harsha Parekh, Neuro Surgeon who had treated her, has certified that the injury sustained by the deceased – Jayshree was due to sub dural hamatoma of brain. The deceased was discharged from Nanawati Hospital on 21/05/2001 in a bedridden condition and was advised physiotherapy. Dr. Ali Irani and

Dr. Deepanjay Bedi provided physiotherapy services at her residence and conducted therapeutic exercises to improve her mobility. She was once again shifted to Bhatia Hospital on 29/07/2001 and was operated for Hydrocephalus. She was discharged on 09/08/2001. She never fully recovered and succumbed to the injuries on 25/07/2002.

11. The material on record amply proves that Jayshree had expired as a result of the injuries sustained in the accident and that it was not a natural death due to pre-existing ailments. Hence, I am unable to accept the contention of the Mr. Mehta, learned counsel for the Appellant that the cause of death had no nexus with the injuries sustained in the accident.

12. As regards the quantum of compensation, the deceased was a home maker and the loss of dependency of Rs.1,20,000/- has been computed on the basis of the notional income of Rs.3,000/- per month. I do not find any illegality or infirmity in computing the loss of dependency. The Tribunal was also justified in awarding compensation of Rs.1,00,000/- towards pain and suffering considering the fact that the deceased had undergone several surgeries and had to go through physical as well as emotional pain. Compensation of Rs.6,18,187/-

towards medical expenses incurred during hospitalization of the deceased, physio therapist, nursing services and other medical expenses including the CT scan is based on documentary evidence and does not warrant interference.

13. As regards compensation on conventional heads, as per the decision of the Apex Court in ***National Insurance Company Limited v/s. Pranay Sethi and others 2017 16 SCC 680***, the Claimant No.1 being the widower and Claimant Nos.2 to 5 being the children of the deceased, are entitled for compensation of Rs.44,000/- each towards loss of spousal and parental consortium which works out to Rs.2,97,000/-. In addition, the Claimants are entitled for compensation of Rs.16,500/- towards loss of estate and Rs.16,500/- towards funeral expenses. The Claimants are therefore entitled for total compensation of Rs.11,40,187/- as against compensation of Rs.8,63,187/- awarded by the Tribunal which cannot be considered as just and reasonable compensation.

14. It is true that the Claimants had not filed cross objection or cross appeal. It is however well-settled that the Appeal being continuation of the claim petition, the Appellate Court is under an obligation to

determine just compensation even in the absence of cross appeal or cross objection. Reliance is placed on the judgment of the Apex Court in ***A.P.S.R.T.C. Rep. by its General Manager and anr. v/s. M. Ramadevi and ors. 2008(1) T.A.C.714 (S.C.).*** In view of the above, in my considered view, the Claimants are entitled for additional compensation of Rs.2,77,000/-.

15. Under the circumstances and in view of discussion supra, the Appeal is dismissed. It is held that the Claimants are entitled for total compensation of Rs.11,40,187/- with interest @ 7.5% p.a. from the date of the application till realization. It is stated that the Appellant – Insurance Company has already deposited an amount of Rs.8,63,187/- with interest. The Appellant – Insurance Company to deposit the balance amount of Rs. 2,77,000/- with interest @ 7.5% p.a. from the date of the application till final realization within a period of six weeks from the date of uploading of the order.

16. Appeal stands disposed of in above terms. Civil/Interim Application(s) stand disposed of in view of disposal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)