



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4105 OF 2022

1. Hausabai Bhimaji Gaike,
Age; 64 years, Occ; Household,
2. Sampat s/o Bhimaji Gaike,
Age; 43 years, Occ; Nil,

Both R/o Dhangarwadi,
Tq. & Dist. Ahmednagar.

...APPELLANTS
(Orig. Claimants)

VERSUS

- 1) Suresh s/o Bhanudas Lokhande,
Age; Major, Occu; Transport & Agril,
R/o; Newasa Bk. Tq. Newasa,
District; Ahmednagar.
2. Branch Manager,
The United India Insurance Co. Ltd.
Ahmednagar Divisional Office,
Kisan Kranti Building,
Market Yard, Ahmednagar.

...RESPONDENTS.

...
Advocate for Appellant : Mr. Jayabhar Dattatraya R.
Advocate for Respondent No.1 : Mr.K. N. Lokhande
Advocate for Respondent No. 2 : Mr.Rathi Swapnil S.

...

CORAM : KISHORE C. SANT, J.

DATE : 27th JUNE, 2024.

ORAL JUDGMENT :

1. Heard the learned Advocates for the parties.
2. By consent of both the parties, the matter is taken up for final disposal. I have gone through the record and proceedings.
3. The facts in short giving rise to the present appeal are that the deceased Vilas Bhimaji Gaike met with an accident on 18.10.2010 at around 7.30 p.m. near Dhangarwadi. When he was standing on the road one vehicle i.e. Jeep bearing No. MH-17-T-3330, coming in high speed from Ahmednagar, gave dash to the deceased. The deceased died on the spot. He was bachelor aged 31 years.
4. The present appellants, who happened to be the mother and brother of the deceased approached the learned Motor Accident Claims Tribunal (in short 'Claims Tribunal') Ahmednagar by filing MACP No. 675 of 2010. It is the case of

the Claimants that the deceased was working as Cleaner on a jeep. His earning was Rs. 5,000/-p.m. They prayed for compensation claiming income of the deceased as Rs. 5,000/-p.m. total compensation was Rs. 6,00,000/-.

5. The Insurance Company appeared in the appeal before the Claims Tribunal and resisted the claim on the ground of breach of conditions of policy stating that the driver of the jeep was not holding valid license at the relevant time. The owner of the vehicle Respondent No. 1 did not cause the his appearance and the Claims Tribunal proceeded ex-parte against him.

6. In support of the claim, the mother of the deceased got herself examined. She stated that the deceased was standing on Ahmednagar road at the time of the accident. The vehicle was being driven in negligent manner and it gave dash to the deceased. The mother, however, is not an eye witness to the accident. The parties relied upon the police papers, specially on the spot panchanama Exh. 18. There was no dispute about the fact of the accident. The question mainly is of the income of the

deceased. Since the Claimants could not prove the exact income of the deceased, it was notionally considered as Rs. 3,000/- p.m. and the award thus came to be passed considering the income of the deceased as Rs. 3,000/- p.m.

7. Learned Claims Tribunal thus awarded Rs. 1,05,000/- including Rs. 10,000/- towards loss of love and affection and Rs. 5,000/- towards funeral expenses and for carrying dead body.

8. Learned Advocate for the appellants has vehemently argued that the notional income of the deceased ought to have been considered @ Rs. 5,000/- p.m. An accident took place in the year 2010. Reasonably a person working as Cleaner on jeep would get Rs. 5,000/- p.m. The deceased was of 31 years old. He further argued that the Claims Tribunal ought to have granted an amount towards future prospects @ 40%. He further submits that the Claims Tribunal has awarded a very meager amount towards loss of love and affection of Rs.10,000/- and for funeral expenses only Rs. 5,000/-, as awarded is totally inadequate. He submits that the Claims Tribunal ought to have

granted 40,000/- towards consortium, Rs. 15,000/- towards funeral and other expenses Rs. 15,000/- towards the loss of estate. He prays for allowing the appeal.

9. The Claims Tribunal has committed patent error in applying multiplier '5' on considering the age of the Claimant mother of the deceased who was 60 years of age. The multiplier ought to have '16', considering the age of the deceased.

10. The appeal is vehemently opposed by the learned Advocate for Respondent No. 2 Insurance Company. Learned Advocate for the Insurance Company submits that at the relevant time the notional income of the deceased was Rs. 3,000/- p.m. as is rightly held by the Claims Tribunal. He further submits that there was no proof of the income of the deceased produced before the Claims Tribunal. So far as the loss of estate and consortium, he submits that the Claims Tribunal has taken into consideration the actual expenses and no fault can be found. So far as, 40% of the amount towards future prospect is concerned, he submits that there are judgments of the Supreme Court on this point and there is no

dispute on the said position.

11. Considering the above facts and submissions this Court has to see as to whether the Claims Tribunal has wrongly considered the income of the deceased as Rs. 3,000/- p.m. and whether the Claims Tribunal has committed any error in granting only Rs.10,000/- towards consortium and Rs.5,000/- towards the funeral expenses and whether the Tribunal has committed mistake in not awarding 40% amount for future prospects. Whether the Claims Tribunal has committed mistake in applying multiplier of '5' instead of '16', considering the age of the deceased.

12. This Court has gone through the discussion. The learned Claims Tribunal in paragraph No. 12 of the judgment has applied the multiplier as '5' stating that the Claimant No.1 is of 60 years. So far as Claimant No.2 is concerned, the Claims Tribunal has rightly considered that the Claimant No. 2 is brother and hence he cannot be said to be dependent upon the deceased. The learned Tribunal ought to have considered the age of the deceased for the purpose of applying the multiplier.

The learned Tribunal though considered the judgment of the - **Sarla Warma (SMT) and Others Vs. Delhi Transport Corporation and Another- (2009) 6 SCC 121**, has failed to consider the said judgment correctly and has committed a patent error.

13. So far as, the future prospects are concerned, which ought to have been granted @ 40%, in view of the judgment reported in **National Insurance Company Ltd. Vs. Pranay Sethi and Others, (2017) 16 SCC 680**. The loss of estate also ought to have been granted at Rs. 15,000/-, the funeral expenses ought to have been granted @ 15,000/- and loss of consortium ought to have been granted as 40,000/-. The learned Tribunal also failed to award Rs. 40,000/- towards consortium.

14. Considering the above, this Court finds that the learned Claims Tribunal should have been calculated the amount as given in foregoing paragraphs.

15. The Tribunal has considered the monthly income at Rs. 3,000/-. Considering addition of 40% income, it would be Rs. 4,200/-. 50% deduction towards personal expenses would

make loss of income of Rs. 2100/- p.m. The amount of Rs. 2100/- p.m. would make Rs. 25,200/- per year. The amount of loss thus would be Rs. 25,200/- per year. '16' is the appropriate multiplier to be applied. By applying said the amount would come to Rs. 4,03,200/-, Plus 40,000/- towards loss of consortium, Plus Rs. 15,000/- towards funeral expenses, Plus 15,000/- towards loss of estate. The total amount would thus come to Rs. 4,73,200/-. The learned Claims Tribunal awarded Rs.1,05,000/-. By deducting Rs. 1,05,000/- the amount comes to Rs. 3,68,200/-.

16. As per above calculations, this Court comes to the conclusion that the learned Claims Tribunal ought to have awarded total amount of Rs. 4,73,200/-. Now the Claimant No. 1 i.e. appellant No. 1 would be entitled to receive Rs. 3,68,200/- alongwith interest accrued from the date of filing of the Claim Petition till the realization of full amount, excluding delayed period.

17. In view of the said, this Court has partly allowed the First Appeal. The Insurance Company shall pay Rs. 3,68,200,

over and above the amount already paid alongwith interest @ 7% from the date of the filing of the appeal till realization, except for the delayed period of 2606 days. The award thus modified accordingly.

18. The First Appeal stands disposed off in above terms, alongwith pending Civil Applications, if any.

(KISHORE C. SANT)
JUDGE

mahajansb/