IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO. 680 OF 2015

New India Assurance Co.Ltd.
Divisional Manager,
Yeshowallabh Shopping Complex, Dhule
Through its authorized signatory,
Mr. Vishwas s/o Bansi Gaikwad,
Age 55 yrs, Occ. Service, Sr. Div. Manager,
New India Assurance Co.Ltd.
R/o Aurangabad … Appellant/
Orig. Resp. No.2

Versus

1. Pundlik Ratan Patil
Age 51 yrs, Occ. Agri./Transport

2. Sau. Vajaya w/o Pundlik Patil
Age 44 yrs, Occ. House hold

Both R/o Dalwel, Tq. Parola, Dist. Jalgaon Orig. Claimants

3. Sitaram s/o Ramsharan Yadav,
Age 47 yrs, Occ. Transport
R/o 128/B, GTA Compound
Purna Village, Tq. Bhivandi,
Dist. Thane …Respondents/
Orig. Claimants & Resp.No.1

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Mr. Dhananjay P. Deshpande, Advocate for Appellant
Mr. S.S. Patil, Advocate for Respondent Nos.1 & 2

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 09th JULY, 2024

ORAL JUDGMENT :

1. By this appeal appellant/Insurance Company challenges the judgment and award dated 01/09/2009, passed by Motor Accident Claims Tribunal, Dhule, in M.A.C.P. No.629/2007.

2. Respondent Nos.1 and 2 being parents of Ganesh Pundlik Patil filed claim petition contending that on 29/08/2007

Ganesh was driving motor cycle bearing No.MH-18-T-2421. His friend Vivek was pillion rider. Ganesh was riding behind one truck bearing No. MH-04-CA-3879. Driver of the truck suddenly applied breaks because of which Ganesh dashed the truck. He suffered head injury in the accident and was taken to the hospital, where he expired after four to five hours. It is contended that at the time of accident deceased was 20 years old and he was studying in 12th standard. He was also doing agricultural work and claimants were dependent on him. They, therefore, claimed compensation of Rs.4,50,000/-. After recording evidence and hearing the parties, Tribunal partly allowed the claim petition and awarded compensation of Rs.2,93,000/-, along with simple future interest @ 7.5% per annum. This appeal challenges quantum of compensation awarded by the Tribunal.

3. Heard learned advocate for appellant and learned advocate for respondent Nos.1 and 2.

4. Insurance Company has raised various grounds while assailing the impugned judgment and award. Main ground of challenge was that deceased himself was rash and negligent. He dashed the truck from behind and criminal case was also lodged against deceased for rash and negligent driving. Hence, claimants are not entitled for compensation. In view of decision of the Apex Court in ***United India Insurance Company Limited Vs. Sunil Kumar and Another, [(2019) 12 SCC 398]***, the said ground is not

available to Insurance Company, hence, it was not pressed into service at the time of hearing. Learned advocate for Insurance Company assailed the impugned judgment and award contending that claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988. As per this provision 2nd Schedule of Section 163-A will have to be followed. By relying on 2nd Schedule under Section 163-A, he submits that non-earning person's notional income has to be taken @ Rs.15,000/- per annum, whereas in present case it is taken @ Rs.2,400/- per month. Further submission is that, in view of decision in ***Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another and Others, [AIR 2009 SC 3104]***, 50% deduction is to be made from the bachelor's income, wherein in the case in hand 1/3rd amount is deducted, which is not proper. The quantum of compensation is, therefore, impugned by learned advocate for Insurance Company.

5. Learned advocate for respondent Nos.1 and 2/claimants, on the other hand, supported the impugned judgment and award. He submits that claimants have categorically stated in the Tribunal that deceased was doing agricultural work and was earning Rs.3,000/- per month. Tribunal is, therefore, right in taking notional income of deceased @ Rs.2,400/- per month. He submits that no compensation is awarded by Tribunal under the head 'future prospects'. If future prospects are taken into consideration, the Tribunal has rightly awarded compensation of Rs.2,93,000/-.

6. Heard learned advocate for appellant/Insurance Company and learned advocate for respondent Nos.1 and 2 /claimants at length. Perused the record.

7. In ***Smt. Sarla Verma*** (supra), it is held that, "the *principles relating to determination of liability and quantum of compensation are different for claims made under Section 163-A of Motor Vehicles Act and claims under Section 166 of the Motor Vehicles Act. Application seeking compensation under Section 163 A of the Act needs to be considered and decided in terms of compensation to be assessed on the basis of structured formula given in 2nd Schedule of the Act. It is further held that while determining compensation age of deceased and not the claimants, is to be considered for the purpose of selecting multiplier".*

8. Considering the above ratio structured formula given under Section 163-A needs to be followed as the claim petition field by claimants is under Section 163-A. Therefore, notional annual income of deceased will have to be taken as Rs.15,000/- per annum. In terms of ***Smt. Sarla Verma*** (supra) the Tribunal has erred in applying multiplier of 15 by considering age of claimants. Considering the age of deceased, multiplier of 18 ought to have been applied by the Tribunal. Tribunal has also not awarded compensation under the head 'future prospects'.

9. In the case in hand Tribunal has accepted the contention of claimants that deceased was also doing agricultural work and by

holding that minimum wage at the relevant time was Rs.80/- per day, Tribunal has calculated notional income of deceased @ Rs.2,400/- per month. Tribunal has rightly held notional income on the basis of material placed before it. In that view of the matter, clause 6(a) of the 2nd Schedule would not be applicable to the facts of the present case.

10. While awarding compensation the Tribunal has not awarded compensation under the head 'future prospects' as per the decision in ***Smt. Sarla Verma*** (supra) and ***National Insurance Company Limited Vs. Pranay Sethi and Others [AIR 2017 SC 5157]***, which would be 40% of the notional income i.e. Rs.15,000 x 40% = Rs.6,000/-. Therefore, notional income would come to Rs.15,000 + Rs.6,000/- = Rs.21,000/-. By deducting 1/3rd amount towards personal expenses of deceased, his annual notional income would be assessed at Rs.14,000/- and after applying multiplier of 18 the compensation amount comes to Rs.2,52,000/-. Tribunal has further not awarded any compensation towards non-pecuniary losses. Claimants are, in fact, entitled for loss of consortium @ Rs.40,000/- each i.e. Rs.40,000/- x 2 = Rs.80,000/-, loss of estate at Rs.15,000/- and funeral expenses at Rs.15,000/-. Thus, the Tribunal ought to have assessed just and fair compensation at Rs.2,52,000 + Rs.80,000 (loss of consortium) + Rs.15,000/- (loss of estate) + Rs.15,000/- (funeral expenses) = Rs.3,62,000/-. However, the Tribunal as awarded compensation of Rs.2,93,000/-.

11. In this view of the matter, quantum of compensation awarded by the Tribunal is not liable to be interfered with. Appellant has failed to make out case to interfere in the impugned judgment and award passed by Motor Accident Claims Tribunal. Appeal being devoid of merit is, therefore, dismissed.

(NITIN B. SURYAWANSHI, J.)