IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2539 OF 2016
WITH
CIVIL APPLICATION NO.9466 OF 2016
IN
FIRST APPEAL NO.2539 OF 2016

Reliance General Insurance Company,
Through its Manager,
R/o Reliance General Insurance Company,
Adalat Road, Aurangabad. Appellant.

Versus

1. Smt. Surekha Nitin Jagtap,
age 25 yrs, Occ. Household work.

2. Smt. Sadhana Arvind Jagtap,
age 59 yrs, Occ. Household work,

Resp No.1 and 2 both R/o Wakdi,
Tq. Rahata, Dist. Ahmednagar. Orig. claimant.

3. Shri Govind L. Kewalramani,
age major, Occ. Business,
R/o B.No.702, Saptarshi Park,
Opp. Swapnanagar, LBS Marg,
Mulund (West Mumbai) 400 080. Orig Resp No.1.
Respondents.

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Mr. S.S. Patil advocate for appellant.
Mr. A.S. Gandhi advocate for respondent nos.1 and 2.
Respondent No.3 – Served.

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CORAM	:	**S. G. CHAPALGAONKAR, J.**
Reserved on	:	April 18, 2024
Pronounced on	:	May 06, 2024

JUDGMENT :-

1. The appellant/insurer filed this appeal under section 173 of the Motor Vehicles Act, impugning the judgment and Award dated 5.11.2015 passed by the Motor Accident Claims Tribunal, Kopargaon, District Ahmednagar in MACP No.7/2011.

2. Mr. S.S. Patil, learned advocate appearing for the appellant submits that present appeal is restricted to the challenge regarding quantification of compensation. He submits that late Nitin lost his life in motor vehicular accident dated 20.4.2010 on account of the rash and negligent driving of the insured car bearing registration No.MH-03/Z-8089. The claimants i.e. mother and widow of the deceased lodged claim for compensation under section 166 of the Motor Vehicles Act against owner and insurer of the offending car. The claimants contend that the deceased was the agriculturist and earning Rs.30,000/- p.m. The Tribunal assumed his notional income @ Rs.10,000/- p.m. and granted excessive and exorbitant compensation. He would submit that 50% amount is added by way of future prospectus, which is inconsistent with the settled legal position. The Tribunal has also granted compensation of Rs.1.00 Lakh by way of mental shock. Therefore, he submits that assessment of compensation is highly excessive and exorbitant.

3. Mr. Gandhi, learned advocate appearing for respondent nos.1 and 2 supports the award. He would submit that deceased was the only bread earner for the claimants i.e. mother and widow.

4. Perusal of the findings recorded in the impugned judgment shows that Tribunal refers nothing except 7/12 extract at exhibit 48. Even, nature of the land and produce from the cultivation of the land is not referred. The Tribunal has notionally assumed loss of agriculture income @ Rs.10,000/- p.m. Addition of 50% amount towards future prospects is also felicious. However, the fact remains that the deceased left behind young widow and old aged mother. Pertinently, during the course of evidence, claimant no.1 admitted that she is looking after the agricultural land since long and getting the income. In this background, assessment of compensation by the Tribunal appears to be excessive.

5. In case of **New India Assurance Company Vs. Charlie and others reported in AIR 2005 SC 2175**, the Supreme Court of India ruled out that in cases of agriculture income to deceased, loss of supervision needs to be considered since the land remains with the family. In the present case, if loss towards supervision coupled with contribution of own labour of the deceased is considered, it can be notionally assumed to the tune of Rs.8,000/- p.m. Looking to the age of the deceased, 40% amount needs to be added towards future prospects. Because there are two dependents 1/3rd amount of assessed income needs to be deducted towards personal and living expenses of deceased. The claimants would be entitled for compensation towards loss of consortium @ Rs.40,000/- each, loss of Estate @ Rs.15,000/- and funeral expenses to the tune of Rs.25,000/-. Therefore, the assessment of compensation will have to be modified as shown below in tabular form:-

Sr. No.	Heads	Amount
1.	Monthly income of the deceased Rs.8,000 x 12 =	Rs.96,000/-
2.	Addition of 40% towards future prospects	Rs.96,000 + 38,400 = 1,34,400/-
3.	Deduction of 1/3rd towards personal and living expenses.	Rs.1,34,400 / 3 =44,800/-
4.	Total income Rs.1,34,400 – 44,800	Rs.89,600/-
5.	Multiplier of '17' (Rs.89,600 x 17)	Rs.15,23,200/-
6.	Towards loss of consortium Rs.40,000/- x 2	Rs.80,000/-
7.	Funeral expenses, loss of estate	Rs.25,000 + 15,000 = 40,000/-
	Total : -	Rs.16,43,200/-

(Rs. Sixteen Lakh forty three thousand and two hundred only)

Hence, the following order.

ORDER

i. First appeal is partly allowed.

ii. The judgment and award passed by the Motor Accident Claims Tribunal, Kopargaon dated 5.11.2015 in MACP No 7 of 2011 is modified.

iii. The original respondent nos.1 and 2 shall jointly and severally pay the amount of Rs 16,43,200/- (Rs. Sixteen Lakh forty three thousand and two hundred only) to the claimants alongwith interest @ 6% p.a. from the date of the application until realization of the amount.

iv. The compensation amount be apportioned equally amongst the claimants.

v. The claimants shall be entitled to receive /withdraw amount deposited in this Court in terms of the modified award. Balance amount if any be **refunded** to the Insurance Company.

vi. In case the claimants have withdrawn excessive amount, they shall re-deposit the same within a period of 8 (eight) weeks in terms of the undertaking furnished to this Court at the time of withdrawal of the amount.

vii. First appeal is accordingly disposed off. Pending civil application, if any, also stands disposed off.

(S. G. CHAPALGAONKAR)
JUDGE.

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