



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

992 CIVIL APPLICATION NO. 696 OF 2023 (DELAY)
IN FAST/1822/2023

WITH

FAST No.1822/2023

WITH

CIVIL APPLICATION NO. 697 OF 2023 (stay)
IN FAST 1822/2023

The New India Assurance Co Ltd

VERSUS

Smt Kamal Sanjay Varpe

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Advocate for Applicant : Mr. Gatne Atul B.

Advocate for Respondents : Mr. V.S .Bedre For R-1 To 4

Advocate Mr. Shaikh Mazhar A. Jahagirdar For R-6

Advocate Mr. Choudhari Deepak D. For R-5.

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WITH

CIVIL APPLICATION NO. 8902 OF 2024 (withdrawal)
IN FAST 1822/2023

Kamal Sanjay Varpe And Ors

VERSUS

Pramod Kaluram Gawali And Ors

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Advocate for Applicant : Mr. Bedre Vinayak Sudhakar

Advocate for Respondents : Mr. Deepak D. Choudhari For

R/1, Adv. A. B. Gatne For R/4,

Adv. Shaikh Mazhar A Jahagirdar For R/3

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : August 23, 2024

ORAL JUDGMENT :-**CA No. 696 of 2023 (Delay) :-**

1. For the reasons as stated in the application, application is allowed in terms of prayer clause “B”. Delay stands condoned. Civil application stands **disposed off**. Appeal be registered.

2. On registration of the appeal, parties are heard finally at the stage of admission.

First Appeal Stamp No.1822 OF 2023:-

3. Heard learned advocates appearing for the respective parties finally at the stage of admission.

4. Mr. Gatne, learned advocate appearing for the appellant submits that Tribunal held that deceased was aged about 45 years at the time of death. Accordingly applied multiplier of ‘14’ but committed mistake in adding 40% amount towards future prospects which could have been restricted to 25% in view of the law laid down by the Supreme Court of India **National Insurance Company Limited *Versus* Pranay Sethi & Ors. (2017)16 SCC 680.**

5. Mr. Bedre, learned counsel appearing for the respondents submits that Tribunal considered all attending circumstances and found that 40% addition can be adopted in the present case. Therefore, he justifies the award.

6. The Supreme Court of India so as to maintain parity in the matter of grant of compensation has laid down that, in case of a person having earning out of his business, addition towards future prospects shall be 40% when age of the deceased is less than 40 years. However, in case of victim aged more than 40 to 50 years, such addition shall be 25%.

7. In the present case, admittedly, age of the deceased was more than 40 years. Therefore, the Tribunal apparently failed in error while adding 40% amount towards future prospects. Therefore, award to that extent needs to be corrected.

8. Mr. Gatne, would further submits that in connected matter arising out of same accident, Tribunal has accepted defence of the Insurer on the point of driving licence and passed an Award in the nature of pay and recover. He urges that same course needs to be followed in the present case.

9. Perusal of judgment of the Tribunal shows that insurer has not led evidence on the point of driving licence nor evidence is brought on record to suggest breach of policy. Although, it is accepted that in connected matter, Tribunal has accepted defence of the insurer, no efforts are made to bring such defence on record in this case. Therefore, no error can be found in the award passed by the Tribunal thereby fixing liability to pay compensation against respondent nos.1 to 4 jointly and severally.

10. Consequently, first appeal is **partly allowed**. The amount of compensation shall be therefore reassessed by applying 25% addition towards future prospects instead of 40% as considered by the Tribunal under the impugned award. Except above, rest of the Award is maintained. First appeal stands **disposed off**. Award be modified accordingly.

11. Since the appellant insurer has deposited entire amount of award with interest, after releasing amount as per the modified award to the claimants, balance amount, if any, be refunded to the Insurer with proportionate interest accrued thereon.

12. Pending civil application/s stand disposed off.

(S. G. CHAPALGAONKAR)
JUDGE

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