IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 469 OF 2019
WITH
CIVIL APPLICATION NO.7455 OF 2020 IN FA/469/2019

ICICI Lombard General Insurance Company Ltd., Through its Manager
A/p. Third Floor, Adventure Towners,
In front of Boeroy Hotel, Manmad Road,
Dist. Ahmednagar. … Appellant
(Orig. Respondent No.2)

VERSUS

1. Meena Parmanand Pandey
   Age: 39 years, Occu.: Nil.
2. Anjali @ Sikha Parmanand Pandey
   Age : 15 years, Occu.: Nil.
3. Akash @ Sibu Parmanand Pandey
   Age : 13 years, Occu.: Nil.
4. Vikas @ Risu Parmanand Pandey
   Age : 10 years, Occu.: Nil.
5. Suryanath Ramlal Pandey
   Age : 80 years, Occu.: Nil

   Respondent No.1 is natural legal guardian mother of Respondent Nos. 2 to 4

   All R/o. Paraspura, post Dumrao, Thana, Saray Lakhansi, Dist. Mau, (Uttar Pradesh)

6. V.E. Commercial Vehicles Ltd.
   (A Volvo Group & Eicher Motors Joint Venture)

   At 102, Industrial Area No.1,
   Pithampur, Dist. Dhar,
   Madhya Pradesh
   Pin Code No.454 775
   [Owner of vehicle Chassis No.MC2RTFCO 41761] … Respondents
   (Resp. Nos.1 to 5 Ori. Respondents & Resp No.6 Orig. Resp. No.1)

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Mr. Abhijit G. Choudhari, Advocate for Appellant
Mr. A.C. Darandale, Advocate for Respondent Nos.1 to 5
Mr. V.L. Bhange, Advocate h/f Mr. K.D. Jadhav, Advocate for Respondent No.6

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th AUGUST, 2024

ORAL JUDGMENT :

1. Heard.

2. Admit. Taken up for final hearing with consent of the parties.

3. By this appeal filed under section 173 of the Motor Vehicle Act, insurance company challenges the judgment and award passed by Motor Accident Claims Tribunal, Ahmednagar in M.A.C.P. No.356 of 2015.

4. Paramanand Pandey was proceeding on his bicycle from Nagapur towards Nagar city on Nagar-Manmad road on 20.08.2015, at about 8.00 a.m., when he reached in front of Hundekari showroom, one vehicle having chassis body make 2015 Eicher bearing chassis No. MC2R1NRTOFC041761 came from back side and gave forceful dash to the bicycle of deceased. Paramanand sustained serious injuries in the accident and was taken to the Civil Hospital, Ahmednagar, but was declared dead on reaching the Hospital. Crime No. I-

100/2015 under sections 304-A, 279, 338 of the Indian Penal Code and under sections 184, 134 (a)(b), 171 of Motor Vehicles Act, was registered with Tofkhana Police Station.

5. Wife, children and father of the deceased filed claim application claiming compensation of Rs.31,50,800/- contending that, Paramanand was aged 42 years at the time of accident and was serving as Supervisor in M/s. S.M. Engineering Company, M-19, M.I.D.C., Ahmednagar and he was getting salary of Rs.16,000/- per month with increment of Rs.1,000/- per year.

6. Opponent No.1/owner filed written statement and denied the claim. It is contended that, at the relevant time, the offending vehicle was insured with opponent No.2/insurance company.

7. Opponent No.2/insurance company filed written statement and claimed breach of terms and conditions of insurance policy. It is also claimed that driver of the vehicle was not holding valid and effective driving licence. The Chassis was being used without valid permit and fitness and in violation of provisions of Motor Vehicles Act. Hence, the insurance company is not liable to pay compensation.

8. The Tribunal after recording evidence and hearing parties, allowed the claim and awarded compensation of Rs.29,10,800 along with 9% interest per annum. Insurance company is aggrieved by the quantum of compensation.

9. Heard learned advocate for insurance company, learned advocate for claimants and learned advocate for owner. Perused the record.

10. Learned advocate for the appellant submits that the Tribunal has wrongly calculated the compensation and has erred in adding 30% future prospects. The Tribunal has awarded excess compensation towards non-pecuniary heads. Therefore, he submits that compensation awarded by the Tribunal needs to be reduced.

11. Learned advocate for claimants No.1 to 5 supported the impugned judgment and award. According to him, the Tribunal has rightly calculated the compensation amount and there is no merit in the appeal.

12. Learned advocate for owner/respondent no.6 submits that at the relevant time, the offending vehicle was insured with the appellant/insurance company and the driver was holding valid licence, therefore, insurance company is liable to pay compensation.

13. Neither the accident is disputed nor the death of deceased Paramanand in the said accident. Claimants have produced on record, sufficient evidence to indicate that at the time of accident, deceased was 42 years old and was serving as Supervisor in M/s. S.M. Engineering Company, M-19, M.I.D.C., Ahmednagar and was getting salary of Rs.16,000/- per month with increment of Rs.1,000/- per annum. These contentions of claimants are supported by the evidence of witness No.2 examined by claimants namely; Sarjuprasad Ramdhani Yadav, owner of the Engineering Company. He has also placed on record salary sheet, attendance sheet at Exhibits 31 to 36, which supports the contention of claimants that deceased was getting salary of Rs.16,000/- per month with annual increment of Rs.1,000/- per annum. Nothing damaging to the evidence of claimants or the owner of Engineering Company, is brought on record in his cross-examination by the insurance company. Considering this evidence, the Tribunal has rightly come to a conclusion that deceased was getting monthly salary of Rs.16,000/-.

Learned advocate for insurance company has strenuously urged that the Tribunal has erred in assessing the monthly income to Rs.20,800/-, when there is evidence on record to indicate that he was getting monthly salary of Rs.16,000/-.

14. Learned advocate for claimants, on the other hand, submits that this figure is arrived at by adding 30% future prospects in the monthly earning of the deceased, and therefore, the Tribunal has rightly assessed monthly income of deceased at Rs.20,800/-.

15. There appears merit in the submission of claimants that though the Tribunal has not clarified that 30% future prospects is added in the monthly income of deceased, the calculation arrived at by the Tribunal indicates that 30% future prospects is added in terms of ***National Insurance Company Limited vs. Pranay Sethi and others 2017 (16) SCC 680***, and hence, Rs.20,800/- is arrived at by the Tribunal, which cannot be faulted with.

16. There is no dispute about 1/4th deduction towards personal expenses and applicability of multiplier of 14 as the deceased was 42 years old at the time of accident.

17. Consortium awarded by the Tribunal @ Rs.1,00,000/- towards loss of care and guidance to the children i.e. claimant Nos.2 to 4, appears to be a bit on higher side. As per ***Pranay Sethi and others*** (supra), claimants are entitled for consortium

@ Rs.40,000/- each. Therefore, claimant Nos.2 to 4 are entitled to Rs.1,20,000/- towards consortium. Though claimant No.5 i.e. father of deceased is entitled for filial consortium of Rs.40,000/-, as per ***Pranay Sethi and others*** (supra), the Tribunal has erroneously awarded Rs.10,000/- towards love and affection to him. The Tribunal has awarded Rs.55,000/- towards transportation charges as the dead body was taken to Uttar Pradesh and Rs.25,000/- for funeral expenses, which in the facts of the present case are not liable to be interfered with.

18. In ***Pranay Sethi and others*** (supra), it is held:

> *"61. In view of the aforesaid analysis, we proceed to record our conclusions:*
>
> *(i) …..…*
>
> *(ii) ……..*
>
> *(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*
>
> *(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased*

> *was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

19. In view of above observations in clause (iv), since the deceased was on fixed salary, 25% addition has to be made towards future prospects.

20. In view of the aforestated discussion, claimants are entitled for following compensation:-

Sr. No.	Heads	Amount (Rs.)
1.	Monthly Income + 25% towards future prospects (i.e. 16,000 + Rs.4,000 = Rs. 20,000) 1/4th Deduction from monthly income towards personal expenditure of deceased (i.e. Rs.20,000 - Rs.5,000 = Rs.15,000/-) Annual Income (Rs.15,000 x 12 = Rs.1,80,000/-)	Rs. 1,80,000/-
2.	Annual dependency multiplied by multiplier (1,80,000 x 14)	Rs. 25,20,000/-
3.	Non-pecuniary Losses:- Loss of consortium granted by Tribunal to claimant No.1 = Rs.1,00,000/- Loss consortium to claimant Nos. 2 to 4 (Rs.40,000x3) = Rs.1,20,000/- Loss of filial consortium to claimant No.5 = Rs. 40,000- Transportation Charges granted by Tribunal = Rs. 55,000/- Funeral Expenses granted by Tribunal = Rs. 25,000/-	Rs.3,40,000/-
7.	Total compensation needs to be awarded	**Rs.28,60,000/-**
8.	Compensation awarded by the Tribunal	**Rs.29,10,800/-**
9.	**Excess compensation awarded by Tribunal** (Rs.29,10,800 – Rs.28,60,000)	**Rs. 50,800/-**

21. In the result, following order:-

ORDER

(i) First Appeal is partly allowed with proportionate costs.

(ii) Judgment and award passed by learned Motor Accident Claims Tribunal, Ahmednagar in M.A.C.P No.356/2015 is modified and Respondent Nos.1 and 2 are jointly and severally held liable to pay compensation of Rs.28,60,600/- to the claimants along with interest @ 9% p.a. from the date of claim petition till realization of the amount inclusive of no faulty liability amount

(iii) Rest of the award is maintained.

(iv) Claimants are entitled to withdraw the balance amount along with accrued interest.

(v) Excess amount of compensation along with accrued interest be refunded to the insurance company.

22. Pending civil application, if any, stands disposed of.

[NITIN B. SURYAWANSHI]
JUDGE