IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2930 OF 2019

CHOLAMANDALAM GENERAL INSURANCE CO. LTD., THR ITS DIV. MANAGER, AURANGABAD
**VERSUS**
ASHABAI SUNIL KOLI AND ORS

Mr. Anirudha Usmanpurkar, Advocate for the appellant
Ms. S. T. Kazi, Advocate for respondent Nos. 1 to 4.

CORAM : R. M. JOSHI, J.
DATE : 16th JANUARY, 2024

P.C. :-

1. This appeal is filed under Section 173 of Motor Vehicle Act (for short 'MV Act') taking exception to the judgment and award dated 14/03/2019 passed by the Motor Accident Claims Tribunal, Dhule in MACP No. 807 of 2016 allowing the claim.

2. Parties are referred to as claimants, insurer, owner and driver for the sake convenience.

3. The facts which led to the filing of present appeal can be narrated in short as under:

4. On 11/09/2016 deceased Akshay was travelling in Auto Rickshaw

bearing No. MH 18/AJ-6349 from Arni to Waghoda. As the driver of the rickshaw lost his control over the vehicle, it turned turtle. In the said accident deceased sustained fatal injuries. Claimants are parents and sister of deceased filed claim seeking compensation of Rs.20 lakhs from owner, driver and insurer of the vehicle. Deceased was aged about 18 years and was taking education at the relevant time. Insurer contested the claim on various ground by denying the contentions of claimants in respect of age, education and compensation.

5. Tribunal framed issues at Exhibit 33. Claimant No.1 examined herself at Exhibit 15 and placed reliance on documentary evidence. They also led evidence of Ganesh (Exhibit 26). The learned Tribunal considered the notional income of the deceased to the tune of Rs.5,000/- per month and after adding 40% amount towards future prospect claim was allowed to the extent of Rs.10,53,000/-.

6. Learned counsel for the insurer takes exception to the impugned judgment and award contending that the Tribunal has committed error in not deducting ½ income towards personal expenses of the deceased who was bachelor and instead deducted 1/3 amount which is incorrect. Similarly, it is claimed that assessment of income of deceased is not correct as though claimants have examined witness Ganesh (Exhibit 26)

however, he has admitted in his cross examination that he has not kept the record regarding payment of salary to the deceased nor any appointment letter was issued to him. Thus, it is his contention that the learned Tribunal has committed error in considering the income of deceased at the rate of Rs.5,000/- per month. On the point of interest he submits that the Tribunal has granted interest at the rate of 9% which is excessive and without recording any reason therefor.

7. Learned counsel for the claimant opposed the said contention by relying upon the evidence led by the claimant. It is argued that in the cross examination of witness Ganesh it was suggested on behalf of the insurer that the deceased was earning at least Rs.300/- per day. Thus, it is her contention that there is no error committed by the Tribunal in considered the income of the deceased at the rate of Rs.5000/- per month. As far as interest is concerned, it is submitted that it is a discretion of the Tribunal to grant interest which is mandated by Section 171 of the Motor Vehicle Act. Learned counsel for the respondent sought to place reliance on judgment in case of ***Magma General Insurance Company LimRamcjhandited Vs. Nanu Ram Alias Chuhru Ram and Others, (2018) 18 SCC 130*** to contend that the deduction of personal expenses in case of a bachelor was considered to the extent of 1/3.

8. There is no serious dispute with regard to the occurrence of the

accident and death of the deceased in the said accident. The initial burden would be certainly on the claimant to prove the income of the deceased. Apart from examining mother of the deceased, claimants led evidence of Ganesh Mali at Exhibit 26. He is the proprietor of Omsai Enterprises, a contract labour supplier. He has deposed about the deceased working with him as a Supervisor and he being paid Rs.10,000/- per month. In the cross examination on behalf of the insurer it is suggested that the deceased was earning Rs.300/- per day. The suggestion made to witness being case of insurer, this Court finds no error committed by the Tribunal in ascertaining the income of deceased at Rs.5,000/-.

9. Undisputedly deceased was bachelor. In view of the judgment of *Sarla Verma V. Delhi Transport Corporation, (2009) 6 SCC 121*, approved by Full Bench of Apex Court in case of ***National Insurance Co. Ltd Vs. Pranay Sethi & Ltd, 2017 SCC OnLine SC 1270*** , the personal expenses of bachelor would be ½ of the income, which requires deduction for the compensation of quantum of compensation. In case of ***Magma General Insurance Company Limited*** (cited supra) the issue of deduction of ½ amount towards personal expenses is not discussed and decided but Hon'ble Apex Court in its discretion has allowed such deduction to extent of 1/3. Thus, the judgment of ***Magma General Insurance Company***

*Limited* (cited supra) would not help claimants to support their case. The Tribunal committed error in deducting 1/3 amount instead ½ towards personal expenses of bachelor deceased. The compensation awarded by the Tribunal therefor deserves modification.

10. As far as the charge of interest at the rate of 9% per annum is concerned, Section 171 of the Act mandates the Tribunal to grant interest in addition to the amount of compensation from date of claim. No doubt it would be open for respondent to challenge the rate of interest if it is exorbitant and not justifiable. Having regard to the fact that the accident in question has occurred in the year 2016, considering the average prevailing rate of the interest during entire period of lis, the interest at the rate of 9% per annum as fixed by the Tribunal is not excessive. Hence no interference is called for therein.

11. Amount of compensation payable is determined as below:

| Sr. No. | Heads | Calculations in (Rs.) |
|---|---|---|
| 1. | Income of deceased Akshay Rs.5,000.00 x 12 | 60,000.00 |
| 2. | 50% future prospect Rs. 60,000.00 x 40% | 24,000.00 |
| 3. | Total Income of the deceased | 84,000.00 |
| 4. | ½ (one half) deducted for the personal and living expenses of deceased Akshay, as the deceased was bachelor (as per the Full Bench judgment of ***National Insurance Co. Ltd Vs. Pranay Sethi & Ltd, )*** (Rs.84,000.00 – Rs.28,000.00) = Acutal Income | 42,000.00 |

| | | |
|---|---|---|
| 5. | Deceased was 18 years old, hence multiplier '18' is applicable.<br>Rs.42,0000.00 x 18 = | 7,56,000.00 |
| 6. | Consortium for parents : Rs.40,000/- each as per *Pranay Sethi & Ltd* judgment | 80,000.00 |
| 7. | Funeral expenses | 25,000.00 |
| | **Total** | **8,61,000.00** |

12. Admittedly, the insurer has deposited a sum of Rs.13,20,054/- in this Court out of which the amount of Rs. 6,72,527/- is already been withdrawn by the claimants. In view of the modification of the compensation as stated herein above, the claimants would be entitled to withdraw a sum of Rs.1,88,473/- deposited in this Court by insurer with accrued interest thereon. The remaining amount is permitted to be withdrawn by the insurer with accrued interest thereon.

13. Appeal stands disposed of in above terms.

**(R. M. JOSHI, J.)**

ssp