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30-CA-8027-2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

30 CIVIL APPLICATION NO. 8027 OF 2025
IN FA/2655/2025

Vishranta Wo Pandurang Thorve And Anr
VERSUS
Devidin Singh So Mangaldeen Singh Gond And Ors.
WITH
CIVIL APPLICATION NO. 5536 OF 2025
IN FA/2655/2025

...

Mr. Gangadhar Patilbuwa Ghule, Advocate for Applicant.
Mr. M. R. Deshmukh, Advocate for Respondent No.3.

CORAM : KISHORE C. SANT, J.

DATE : 29th SEPTEMBER 2025.

PC :-

1. Heard the learned Advocate for the parties.
2. Inspite of service, none appears for the respondent.
3. At the outset, the learned Advocate for the appellants seeks leave to delete the name of Respondent Nos. 3 and 4. Leave granted at the risk of the appellant.
4. The appeal arises out of judgment and award passed by the

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learned Member, MACT, Aurangabad dated 31st August 2024 in MACP No.282 of 2021. The appeal is taken up for final disposal by consent of the parties. As the issues involved are purely issues which can be decided on the basis of impugned judgment and award and legal position. No record is necessary.

5. The appellant is the Insurance Company. The respondent Nos. 1 and 2 are the claimants in death claim and legal heirs of deceased Pandurang Thorve. The respondent No.1 is wife and respondent No.2 is her son.

6. It is the case that on 25th October 2020 at around 09:45 p.m. deceased Pandurang was going on his motorcycle bearing No. MH-20-AC-6814 from Waluj to Aurangabad. While going, one Hyva Truck bearing registration No. MH-20-TR-0383R gave dash from behind. The deceased received serious injuries. He was admitted in the hospital. However, on 27th October 2020, he unfortunately died. Offence came to be registered with MIDC Waluj Police Station.

7. The claimants filed claim petition. In the claim petition, the age of

the deceased is stated to be 60 years. The learned trial Judge on going through the evidence and the submissions allowed the petition and awarded total amount of Rs.7,51,900/-. The Court applied the multiplier of 8 considering the age deceased to be 60 years. The learned trial Judge further enhanced 20% of the amount. The monthly income was taken to be Rs.8,000/-. Now limited grounds raised in the appeal are that the Hywa truck was not registered with the Transport Authority and secondly that the multiplier was not applicable as the age of the deceased was 71 years on the date of driving of the motorcycle.

8. Learned Advocate for the appellant submits that, on record, there is Aadhar Card produced by the claimants themselves which shows the date of birth to be 1st January 1949. Thus, on the date of accident his age was 71 years. The learned trial Judge has wrongly applied the multiplier of 9 which could not have been applied. He further submits that when the vehicle itself was not registered, there was no question of any liability on the insurance company. So far as award of non-pecuniary damages are concerned, he submits that in view of judgment in the case

of *National Insurance Compan Ltd. Vs. Pranay Sethi and Ors.*¹, the amount could have been enhanced at the most by 10% every three years. The judgment is of 2017. The accident took place in the year 2020 and thus the only 10% amount could have been enhanced on non-pecuniary damages. He thus prays for allowing the appeal to that extent.

9. Learned Advocate for the respondent vehemently opposed the appeal. He submits that the trial Court has rightly granted the compensation by applying the multiplier of 9. The 20% height is rightly considered in non-pecuniary damages.

10. Considering the ground of absence of permit, it has come on record that the Hywa truck was delivered at Nagpur. It was being taken to Aurangabad for registration of vehicle. In view of temporary registration under Section 43 of the Motor Vehicle Act and therefore i.e. covered under the insurance policy. It is covered by under Section 66(3) (k) of the said Act and no permission was required as the vehicle was being taken for the purpose of registration itself. So far as the ground of multiplier of 9 is concerned, this Court finds substance in the argument

1 2018(3)Mh.L.J. 70

of learned Advocate Mr. Deshmukh who pointed out paragraph No.25 of the impugned judgment. He submits that the burden of proving the age was wrongly shifted upon the Insurance Company when, in fact, it was for the claimants to prove the age of the deceased. The Aadhar Card is produced on record and proved by the claimant themselves which shows the date of birth to be 1st January 1949. Thus, this Court finds that multiplier is wrongly applied. So far as enhancement of 20% is granted is concerned, this Court finds that it could have been only 10% . In the present case, the consortium amount needs to be paid to both the claimants which comes to Rs.18,000/-, whereas other two heads of Rs.15,000/- each, the said amount would come to Rs.16,500/- on both the heads which would come to be Rs.33,900/-. The total amount would thus come to Rs.4,40,980/- plus medical bills of Rs.33,900/- and total amount would come to Rs.4,74,880/-. This Court finds that award needs to be modified only by replacing the figure of Rs.7,51,900/- with figure of Rs.4,74,880/-. Rest of the award and the order is maintained as it is.

11. With this, appeal stands disposed off.

12. The amount is already deposited with this Court. Except the amount of entitlement of the claimants, the remaining amount shall be refunded to the insurance company alongwith accrued interest.

13. Needless to say that the claimants are entitled to receive the amount as per above calculation alongwith accrued interest from the office of this Court without requiring any separate application to that effect.

14. In view of disposal of the First Appeal, pending civil applications, if any, do not survive and same are also stand disposed off.

[KISHORE C. SANT, J.]