

(2019) 10 BOM CK 0118

In the Bombay High Court

Case No : First Appeal No. 164 Of 2005 In Civil Application No. 3288 Of 2019

New India Assurance Co. Ltd. And Ors

APPELLANT

Vs

Umedlal Samanaji Oswal (Since Deceased Through Legal Heirs) And Ors

RESPONDENT

Date of Decision : 09-10-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168, 173
Code Of Civil Procedure, 1908 — Order 41 Rule 33

Citation : (2019) 10 BOM CK 0118

Hon'ble Judges : Anuja Prabhudessai, J

Bench : Single Bench

Advocate : Shalini Shankar, Gajanan M. Savagave, Prashant R. Suryawanshi

Final Decision : Dismissed

Judgement

1. The appellant - insurance company has challenged the impugned judgment and award dated 21/07/2004 in Motor Accident Claim Petition No.903 of 1999 passed by the Claims Tribunal, Pune. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.6,90,000/- with interest @ 6% p.a. from the date of the application till final realization.

2. The respondent no.1 (since deceased) was the father, the respondent no.3 is the mother and the respondent no.2 is the widow and the respondent no.4 is the daughter of the deceased Lalit Oswal. The respondent nos.1 to 4 who shall be hereinafter referred to as 'the claimants' had filed Claim Petition under Section 166 of the Motor Vehicles Act, 1988 in view of death of Lalit Oswal in a motor vehicular accident involving Tata Sumo Jeep No.KA-22/M-4174. On 29/09/1998, the deceased Lalit Oswal was travelling by the said Tata Sumo Jeep which was driven by the respondent no.5. The said Jeep plunged in Koyna river at Patan. Said Lalit Oswal expired as a result of the injuries sustained in the accident.

3. The claimants alleged that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle. The claimants claimed

that the deceased was 32 years of age and was earning Rs.4,500/- p.m. The claimants alleged that they were dependent on his earnings. The claimants therefore claimed total compensation of Rs.10,00,000/- from the owner and the insurer of the offending vehicle.

4. The respondent no.6, the owner of the vehicle did not contest the proceedings. The appellant - insurance company also did not file its written statement.

5. Upon appreciating the evidence adduced by the claimants, the Tribunal recorded a finding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. For the purpose of determining the quantum of compensation, the Tribunal relied upon the income tax returns filed by the deceased in the year 1997-98 and 1998-99 and held that the income of the deceased was Rs.42,775/- to Rs.50,133/- per annum. The Tribunal held that the income of the deceased had increased from Rs.42,775/- to Rs.50,133/- within a period of one year. The Tribunal therefore considered the annual income of the deceased as Rs.60,000/-. The Tribunal deducted 1/3rd of the income towards personal expenses of the deceased. The Tribunal applied multiplier of 17 and computed loss of dependency to Rs.6,80,000/-. The Tribunal also awarded compensation of Rs.10,000/- towards funeral expenses and thus awarded total compensation of Rs.6,90,000/-. Being aggrieved by the said judgment and award, the appellant - insurance company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Ms. Shalini Shankar, the learned counsel for the appellant submits that though the appellant - insurance company has raised several grounds, the challenge is restricted only to the quantum of compensation.

7. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

8. It is seen that the Tribunal has committed serious errors in computing the quantum of compensation. The Tribunal has applied the multiplier of 17, whereas as per the judgment of the Apex Court in *Sarla Verma v/s. Delhi Transport Corporation*, 2009 ACJ 1298 (SC) as well as *National Insurance Co. Ltd. v/s. Pranay Sethi and ors.* 2017 ACJ 2700, the multiplier applicable to the persons within the age group of 36-40 years is 15. The Tribunal has added approximately 20% of the established income towards future prospects, when as per the age of the deceased and the nature of employment, addition ought to have been 40%. The Tribunal has not awarded any compensation towards loss of consortium and loss of estate. The compensation awarded by the Tribunal cannot be considered as 'just'. Hence, it is necessary to quantify 'just compensation' on the basis of the binding principles and formula laid down by the Apex Court.

9. The claimants had produced the school leaving certificate at Exhibit - 38, which indicates that the deceased was 38 years of age. The claimants had relied upon the income tax returns at Exhibit - 47 and 48 for the assessment year

1997-98 and 1998-99. These tax returns which were filed prior to the accident indicate that the income of the deceased for the year 1997-98 was Rs.42,775/- and Rs.50,133/- for the year 1998-99. The deceased had paid income tax of Rs.376/-. Upon deducting the same, the net income of the deceased for the year 1998-99 works out to Rs.49,757/-. Considering the age of the deceased and applying the principles laid down by the Apex Court in Pranay Sethi (supra), 40% of the established income is required to be added towards future prospects. Upon adding 40% of the established income, the annual income of the deceased works out to Rs.69,660/-. Upon deducting 1/3rd towards personal expenses of the deceased and applying multiplier of 15, loss of dependency comes to Rs.6,96,597/-.

As per the judgment of the Apex Court in National Insurance Company Limited v/ s. Pranay Sethi and Others (2017 16 SCC 680) and Magma General Insurance Co. Ltd. V/s. Nanu Ram alias Chuhru Ram & Ors. 2018 SCC Online SC 1546, the widow and the minor daughter of the deceased are also entitled for compensation of Rs.40,000/- each towards loss of spousal and parental consortium. In addition, the claimants are entitled for compensation of Rs.30,000/- towards loss of estate and funeral expenses. The claimants are therefore entitled for total compensation of Rs.8,06,597/- which can be rounded off to Rs.8,07,000/- as against the compensation of Rs.6,90,000/- awarded by the Tribunal. The challenge in the appeal is therefore devoid of any merits.

10. The next question which falls for consideration is whether this Court can enhance the compensation in absence of cross appeal or cross objection. In this regard, it is relevant to refer to the judgment of the Apex Court in A.P.S.R.T.C. Rep. by its General Manager and anr. V/s. M. Ramadevi and ors. 2008(1) T.A.C. 714 (S.C.), wherein the Apex Court while considering the question whether the High Court could have enhanced the compensation in the absence of an appeal by the claimant, reiterated the principles in Nagappa (supra) that under Motor Vehicles Act there is no restriction that the Tribunal / Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal Court is to award 'just compensation' which is reasonable on the basis of evidence produced on record.

11. In National Insurance Co. Ltd. v/s. Vaishali Harish Devare and ors. in First Appeal No.1068 of 2012, the Division Bench of this Court has held thus:-

" 16.....The claim petition filed under section 166 of the said Act is not in the nature of a suit. Under section 168 of the said Act, the Tribunal is duty bound to hold an inquiry to determine the amount of compensation which appears to be just. Thus, the concept of just compensation has been incorporated in section 168 of the said Act. It is well settled that the Tribunal constituted under the said Act is not bound by the strict rules of the evidence. As we have stated earlier, the claim petition under section 166 is not a suit . While deciding the claim petition, the Tribunal is under an obligation to determine just compensation payable to the Claimants. This appeal being the continuation of the claim petition, even this

Court is under an obligation to determine the just compensation payable to the claimants. Even if there is no cross appeal or cross - objection preferred by the claimants, the exercise of determining the just compensation will have to be carried out. After carrying out the said exercise if it is found that the claimants are entitled to more amount than what is granted under the impugned Judgment and Award, in absence of appeal or cross objection, this Court may not enhance the compensation amount payable. Therefore, while deciding this appeal, an adjudication is required to be made whether the compensation granted by the Tribunal is a just compensation. Such adjudication can be made even without taking recourse to Rule 33 of Order XLI of the said Code. "

12. Similar view has been taken by the Single Judge of this Court in The State of Maharashtra (Through the Collector of Nashik) and ors. v/s. Smt. Kamaladevi Kailashchandra Kaushal and ors. in First Appeal No.103 of 2017 and in New India Assurance Company Ltd. v/s. Smt. Seema Sudam Auti and ors. 2017(5) ALL MR 552.

13. It is thus well settled that while computing the quantum of compensation, the endeavour of the Tribunal / Court has to be to ensure awarding of 'just compensation'. There is no bar for the Claims Tribunal or the Court to award the compensation in excess of what is claimed. It is the obligation of the Court to decide 'just compensation' even in the absence of cross appeal or cross objection.

14. In the instant case, the deceased died in an accidental death at a prime age of 35 years. He was survived by parents, young widow and a minor child who were dependent on his income. In the light of the above, the claimants are entitled for compensation of Rs.8,07,000/-which in my considered view, is just and fair compensation. Hence, the following order:-

(a) The appeal is dismissed.

(b) The claim is enhanced from Rs.6,90,000/- to Rs.8,07,000/-.

(c) The appellant - insurance company and respondent no.6 are jointly and severally directed to pay / deposit the balance compensation of Rs.1,17,000/- with interest @ 6% p.a. from the date of the application till realization of the amount before the Tribunal within a period of six weeks from the date of uploading of this order.

(d) Statutory deposit be transferred to the Claims Tribunal, if not already transferred.

(e) Liberty is granted to the claimants to apply for withdrawal of compensation before the Tribunal.

(f) Record and proceedings be returned to the Tribunal.

15. Civil Application stands disposed of in view of disposal of the appeal.