(2018) 11 BOM CK 0096

In the Bombay High Court

Case No : First Appeal Stamp No.8524 Of 2016, Civil Application No.2598 Of 2016 , Cross Objection Stamp No.33774 Of 2018

New India Assurance Co. Ltd. APPELLANT

Vs

Mr. Ashish Ravindra Kulkarni And Ors. RESPONDENT

Date of Decision : 30-11-2018

Acts Referred:

Indian Penal Code, 1860 — Section 279, 337, 338, 304A
Motor Vehicles Act, 1988 — Section 149, 185

Citation : (2018) 11 BOM CK 0096

Hon'ble Judges : R. M. Savant, J;N. J. Jamadar, J

Bench : Division Bench

Advocate : Ketan Joshi, Vishwanath S Talkute

Final Decision : Disposed Off

Judgement

Sr.No,Issues,Findings

1,"Whether the applicants prove that on 17/06/2008 Yes at about

03/30 p.m. on East Coast road, Salavankuppam, opposite Tiger

Caves, Tamilnadu, impugned accident occurred due to rash and

negligent driving of Innova Car bearing registration

No.PY/01/AC/4466 by its driver?",Yes

2,"Whether the applicants prove that in the impugned Yes accident,

Ravindra Prabhakar Kulkarni died?",Yes

3,"Does opponent No.3 prove that the tribunal has no No

jurisdiction to try and entertain the present claim petition?",No

4,Whether claim is bad for nonÂ?joinder of necessary party?,No

5,"Whether the applicants are entitled forÂ As per final order

Â compensation? If yes, what amount and fromÂ Â Â

Â whom?",As per final order

6,What order?Â,"Â Â Â Â Â Â Â

6Â As per final order.

10Â On behalf of the Respondents â?" Claimants the evidence of Ashish Ravindra Kulkarni (PWÂ1) and the representative of the TATA Precision,,

Industries, Singapore â?" Kirti Keshav Naik (PWÂ2) was led. In so far as the Appellant â?" Insurance Company is concerned, it did not step into the",,

witness box. It is through the evidence of the said Kirti Naik (PWÂ2) that the appointment letter of deceased Ravindra issued by the TATA Precision,,

Industries, Singapore as also his salary slip were produced and therefore the said factum was got proved through the evidence of the said Kirti Naik.",,

11Â The MACT, Pune on the basis of the material which had come on record held that the income i.e. the basic salary of the said Ravindra would",,

have to be calculated at $ 8000 Singapore dollars by excluding House Rent Allowance as also CPF i.e. festival allowance at $ 653 Singapore dollars.,,

The MACT, Pune also deducted the amount of Rs.3,00,000/Â which was paid by the TATA Precision Industries, Singapore by way of compensation",,

to the Respondents â?" Claimants. The MACT also held that since the deceased Ravindra was working on temporary basis, no amount could be",,

granted to the Respondents â?" Claimants on account of loss of future prospects. The MACT also deemed it appropriate to grant interest at 6% p.a..,,

As indicated above, the amounts granted by the MACT are mentioned in the operative part of the impugnedÂ orderÂ andÂ theÂ totalÂ",,

compensationÂ grantedÂ isÂ inÂ theÂ sumÂ of Rs.2,50,60,000/Â. It is the said judgment and award of the MACT, Pune which is taken",,

exception to by way of the above First Appeal.,,

12Â The challenge to the said judgment and order of the MACT, Pune is two fold, firstly based on the Grounds C, E and F which are appearing in the",,

memo of above First Appeal and thereafter Grounds J, L and T. The said Grounds C, E, F, J, L and T are reproduced herein under for the sake of",,

ready reference :Â?,,

â??C.Â That the learned Tribunal ought to have appreciated that the driver of

Innova car bearing registration No.PY/01/AC/4466 was fully drunk,,

and, therefore, ultimately he was charge sheeted under Section 185 of the Motor Vehicles Act along with Section 279 of the Indian Penal Code, which",,

itself is a criminal act and as per the Division Bench judgment of this Hon'ble Court the vicarious liability of master for an unauthorized and illegal act,,

of the driver was discussed and ultimately it was held that the master is not vicariously liable for any illegal act of the driver, who carries passenger in",,

goods carrier and thereafter even commits an offence during the course of such ride injuries were caused to the passengers the owner is not liable.,,

E.Â The learned Tribunal ought to have appreciated the position of law that if the law does not require the insured to be vicariously liable for his,,

criminal acts such as act contemplated under Section 185 of the Motor Vehicles Act, 1988 then the Insurance Company/Insured who is playing the",,

role of indemnifier can be made liable to pay compensation by no stretch of imagination.,,

F.Â The learned Tribunal ought to have appreciated the law laid down by this Hon'ble Court in the judgment of Maimulna Begam vs. Taju reported in,,

1989(1) B.C.R. 673.,,

J.Â The learned Tribunal ought to have appreciated that there was a report given by the Inspector of Police dated 15th September, 2008 thereby",,

clearly stating that on 17th June 2008 at around 3.30 p.m. the opponentnamely Sivaguru was driving the Innova Car bearing No. PY/01/AC/4466 from,,

Pondicherry to Chennai and he was fully drunk and after the medical test on the date of accident itself it was found that the driver was under the,,

influence of alcohol to the extent that he was unable to appreciate the objects, walk or stand steadily and even to recollect the past events.",,

L.Â As far as quantum of the Award is concerned, the learned Tribunal ought to have appreciated that the Claimants have not brought sufficient",,

evidence on record to prove the salary of the deceased and they have failed to prove by leading cogent evidence when the deceased was earning,,

11,153 Singapore Dollars per month.",,

T.Â The learned Tribunal ought to have appreciated that M. Kirti Naik, P.W.2, clearly admitted in her cross examination that Tata Precision",,

Industries, Singapore has independent H.R. Department and also admitted that Tata Precision Industries Branch Singapore is having independent H.R.",, Branch and she is not aware about the financial and fiscal matters pertaining to it.,,

The learned counsel for the Appellant â?" Insurance Company Shri Ketan Joshi vehementlyÂ reiteratedÂ theÂ aforesaidÂ groundsÂ duringÂ,,

theÂ courseÂ ofÂ his submissions before us. The learned counsel would submit that the Respondents â?" Claimants in terms of the five judge,,

bench judgment of the Apex in National Insurance Company Limited v/s. Pranay Sethi and Ors. reported in AIR 2017 SC 515.7 case would be,,

entitled to only Rs.70,000/Â? under conventional heads i.e. for loss of consortium, funeral expenses and towards loss of care of minor children.",,

In so far as Grounds C, E and F are concerned, it is pertinent to note that the Appellant â?" Insurance Company has not pleaded the case sought to be",,

urged by the said grounds in the written statement. As indicated above, the Appellant â?" Insurance Company has not led any evidence in rebuttal.",,

Hence in the absence of any pleadings to that effect in the written statement, the Appellant â?" Insurance Company would not be entitled to raise the",,

said grounds. In any event the said grounds do not fall within the statutory defences which are available to an insurer under Section 149 of the Motor,,

Vehicles Act to the Insurer.,,

In so far as Grounds J, L and T, which we have reproduced herein above, are concerned, it is pertinent to note that before the MACT, Pune the",,

appointment letter as well as the salary slip of the deceased Ravindra were produced through the representative of the TATA Precision Industries,",,

Singapore â?" Kirti Naik (PW 2). In the absence of any contra material, the MACT was right in relying upon the said material to come to the",,

conclusion as regards the income of the deceased Ravindra.,,

We therefore do not find any merit in the challenge raised to the Award passed by the MACT, Pune on behalf of the Appellant â?" Insurance",,

Company.,,

13Â In so far as the Respondents herein i.e. the Claimants are concerned, they have also filed the above Cross Objection Stamp No.33774 of 2018.",,

The said Cross Objection is revolving around the denial of future prospect, deduction of the House Rent Allowance and Festival Allowance, and the",,

interest which has been granted at 6% p.a. which according to the Respondents â?" Claimants is too meagre a rate of interest having regard to the,, fact that the said rate was not even the Bank rate at the relevant time.,,

14Â In so far as the aforesaid aspects are concerned, the relevant grounds in the Cross Objections are A, B, C, D, E, F, G and H which are produced",,

herein under :Â?,,

â??AÂ It is submitted with respect that the Ld. Tribunal ought to have taken into consideration the allowances while calculating the income of the,,

deceased. The Ld. Tribunal committed error in deducting the housing allowances and other allowances while calculating the Net Income. The Ld.,,

Tribunal ought to have considered the salary of 11,153 Singapore Dollars.",,

BÂ It is submitted with respect that the Ld. Tribunal committed a serious error in not granting and calculating compensation for loss of future,,

prospects of the deceased.,,

CÂ It is submitted with respect that the approach of the Ld. Tribunal in not granting compensation against the loss of future prospects in contrary to,,

settled principles of law.,,

DÂ It is submitted with respect that the Ld. Tribunal erred in observing that the deceased was not a permanent employee of Tata Precision,",,

Singapore Branch.,,

EÂ It is submitted with respect that the Ld. Tribunal ought to have considered the legal principle by which, given the age of the deceased, his future",,

prospects should have been taken note of, and 50% should have been added under the head of future prospects to the actual salary.",,

FÂ It is submitted with respect that the Ld. Tribunal ought to have granted Rs.1,00,000/Â? each as parental consortium of each of the parents.",,

GÂ It is submitted with respect that the Ld. Tribunal ought to have granted | Rs.1,00,000/Â? for loss of estate.",,

HÂ It is submitted with respect that the Ld. Tribunal ought to have awarded interest @ 9% p.a. and erred in awarding a low rate of interest of 6%,,

p.a.â??,,

The learned counsel for Respondents herein i.e. the Claimants during the course of his submissions reiterated the said grounds and in support thereof,,

relied upon the following judgments of the Apex Court in :Â?,,

[1]Â National Insurance Company Limited v/s. Pranay Sethi and Ors. reported in AIR 2017 SC 5157.,,

[2] National Insurance Co. Ltd. V/s Indira Srivastava and others reported in (2008) 2 SCC 763,,

[3]Â Vimal Kanwar and others v/s. Kishore Dan and others reported in (2013) 7 SCC 476,,

[4] Magma General Insurance Co. Ltd. V/s Nanu Ram and Ors. Reported in 2018 (11) SCALE 247.,,

15Â In so far as future prospects are concerned, the same has been denied to the Respondents â?" Claimants on the ground that the deceased",,

Ravindra was not a permanent employee. It is required to be noted that the deceased Ravindra was engaged as a Chief Executive Officer with,,

TATA Precision Industries, Singapore, and it is the case of the Respondents â?" Claimants that the monthly salary of the deceased Ravindra was $",,

11,153 Singapore dollars. The concept of temporary/permanent, in our view, cannot be made applicable to the Chief Executive Officer in a Company",,

which is based abroad. In fact the concept may be alien to such company. It would therefore have to be held that the deceased Ravindra was a,,

permanent employee of the said TATA Precision Industries, Singapore. In so far as the said aspect is concerned, a useful reference could be made to",,

the judgment of the Apex Court in Pranay Sethi's case (supra). The 5 Judge Bench of the Apex Court after referring to various judgments of the,,

Apex Court has culled out its conclusions which are appearing in paragraph 61 of the said judgment which for the sake of ready reference are,,

reproduced herein under :Â?,,

â??61. In view of the aforesaid analysis, we proceed to record our conclusions:Â?",,

(i)Â The twoÂJudge Bench in Santosh Devi (AIR 2012 SC 2185) should have been well advised to refer the matter to a larger Bench as it was,,

taking a different view than what has been stated in Sarla Verma (AIR 2009 SC 3104), a judgment by a coordinate Bench. It is because a coordinate",,

Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.,,

(ii)Â As Rajesh has not taken note of the decision in Reshma Kumari (AIR 2013 SC (Supp) 474), which was delivered at earlier point of time, the",,

decision in Rajesh is not a binding precedent.,,

(iii)Â 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)Â In case the deceased was selfÂemployed 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.,,

(v)Â For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs",,

30 to 32 of Sarla Verma which we have reproduced hereinbefore.,,

(vi)Â The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.,,

(vii)Â The age of the deceased should be the basis for applying the multiplier.,,

(viii)Â Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/Â, Rs.",,

40,000/Â? and Rs. 15,000/Â? respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.â??",,

16Â In our view, the Respondents â?" Claimants would be entitled to future prospects in terms of clause (iii) of the said conclusions as the deceased",,

Ravindra had a permanent job. Hence an amount of 30% of the amount calculated as the total income of the deceased by applying concerned,,

multiplier would have to be added to the compensation. The said 30% amount towards loss of future prospects would come to Rs.12,04,524/Â?.",,

17Â In so far as the deductions of the amounts of House Rent Allowance and Festival Allowance are concerned, in our view, the said deductions are",,

also not permissible. A useful reference could be made to the judgment of the Apex Court in Indira Srivastava and others's case (supra) wherein the,,

Apex Court has held that the benefits meant for family, as distinguished from personal benefits like conveyance allowance, etc. also form part of",, income. Hence the amounts paid by way of House Rent Allowance and Festival Allowance would have to be taken into consideration whilst,,

calculating the total income of the deceased Ravindra.,,

18Â In so far as deduction of Rs.3,00,000/Â which amount has been granted by the employer TATA Precision Industries, Singapore to the",,

Respondents â?" Claimants is concerned, the said deduction is not permissible. A useful reference could be made to the judgment of the Apex Court",,

in Vimal Kanwar's case (supra) wherein the Apex Court in the context of the salary receivable by the dependent claimant upon compassionate,,

appointment due to victim's death held that it does not come within the periphery of Motor Vehicles Act to be termed as â??pecuniary advantageâ??.,,

19Â In so far as the amounts to be awarded under conventional heads i.e. for loss of consortium, funeral expenses and towards loss of care and",,

guidance for minor children are concerned, the Apex Court in Pranay Sethi's case (supra) in paragraph 54 held that the reasonable figures on",,

HEAD,AMOUNT,

1) Loss of Dependency,"Rs.4,52,36,568/Â?",

2)Â Loss of Love and AffectionÂ,"Rs.1,50,000/Â? (Rs.50,000 each to the

Respondents/Claimants.",

3)Â Funeral ExpensesÂ,"Rs.1,00,000/Â?",

Â Â Â Â Â

4)Â Loss of EstateÂ","Â Â Â Â Â

Rs.15,000/Â?",

Â Â Â Â Â

5)Â Loss of Parental and FilialÂ","Rs.1,20,000/Â? (Rs.40,000/Â? to each of

Â Â ConsortiumÂ the Respondents/Claimants.",

6)Â Total CompensationÂ,"Â Â Â Â Â

Rs.4,56,21,568/Â?",

