(2022) 10 BOM CK 0074

In the Bombay High Court

Case No : First Appeal No. 1901 Of 2015, Cross Objection Petition No. 117 Of 2022

New India Assurance Company Ltd And Others — APPELLANT

Vs

Manohar And Others — RESPONDENT

Date of Decision : 12-10-2022

Acts Referred:

Citation : (2022) 10 BOM CK 0074

Hon'ble Judges : Sandipkumar C. More, J

Bench : Single Bench

Advocate : S. G. Chapalgaonkar, D. S. Chavan, L. B. Palod

Final Decision : Partly Allowed/ Dismissed

Judgement

Sandipkumar C. More, J

1. The Appellant – Insurance Company has challenged the judgment and award dated 16.05.2015 passed by the learned Member, Motor Accident Claims Tribunal, Aurangabad (hereinafter referred to as the 'learned Tribunal') in Motor Accident Claims Petition No.844/2012, only on the point of quantum of compensation.

2. On the other hand, the cross -objectors, who are the original claimants in claim petition have claimed enhancement of compensation.

3. The appellant – Insurance Company has not disputed the accidental death of Sushma Manohar Naik, her salary and the liability of Insurance Company to pay the compensation. However, the appellant – Insurance Company has only raised the objection that wrong multiplier of '15' instead of '14' considering the completed age of the deceased of 40 years is applied by the learned Tribunal. Further, the appellant – Insurance Company has also disputed the funeral expenses of Rs. 25,000/- granted by the learned Tribunal and consortium of Rs. 1,00,000/- in respect of husband of deceased and compensation of Rs. 1,00,000/- towards the love and affection in respect of the children of deceased.

4. On the contrary, the claimants, who are the cross – objectors and original respondent Nos. 1 to 3, have also claimed the enhancement of the compensation amount by claiming additional amount of Rs. 9,56,650/- by contending that the learned Tribunal should have granted Rs. 1,00,000/-each to claimant Nos. 2 and 3 under the head of 'love and affection' and also ought to have granted amount of Rs. 1,00,000/- instead of Rs. 25,000/- under the head of 'funeral expenses'. The claimants also claimed that the learned Tribunal should have considered future prospects to the extent of 50% of the actual salary of deceased instead of 30%, since it is agreed that deceased was between the age of 40 to 50 years. The appellant -Insurance Company as well as the claimants, who are respondent Nos. 1 to 3, have submitted their respective calculations.

5. The learned counsel for the appellant – Insurance Company has submitted proposed calculations for arriving at just compensation as follows :

PROPOSED CALCULATIONS

Notional Income of deceased

Rs. 32,569/-

Annual Income

32569 x 12 = 3,90,828/-

Addition of 30% amount towards future prospects

390828 + 117248 = 5,08,076/-

1/3rd Deduction towards personal expenses

508076 -169358 = Rs. 3,38,718/-

Multiplier of 14 (As against 15)

338718 x 14 = Rs. 47,42,052/-

Funeral Expenses

Rs.15,000/-

Loss of Estate

Rs.15,000/-

Consortium of Rs. 40,000/- each (As against Rs. 1,00,000/-)

Rs. 1,20,000/-

Total Compensation payable to claimants

Rs. 48,92,052/-

However, he agreed for the rate of interest at the rate of 7% per annum on the compensation as awarded by the learned Tribunal.

6. On the contrary, the claimants have also submitted calculations as to what should be the amount of enhanced compensation which is as follows :

Amount of dependency : Rs. 58,62,420/-

(-) : Rs. 50,80,770/-

i.e. : Rs. 7,81,650/-

Love and Affection : Rs. 1,00,000/-

Funeral expenses : Rs. 75,000/-

Total : Rs. 9,56,650/-

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7. It is significant to note that the learned Tribunal has granted compensation of Rs. 53,05,770/- to the claimants which is inclusive of amount of 'No Fault Liability' while assessing the compensation. However, on going through the proposed calculations submitted by the appellant – Insurance Company, it has not disputed the annual income, addition of 30% amount towards future prospects and 1/3rd deduction on account of personal expenses. The appellant - Insurance Company has disputed the applicability of the multiplier only. The learned Tribunal has applied multiplier of '15' considering the age of deceased being 40 years. The learned counsel for the appellant -Insurance Company submits that when the deceased had already completed her age of 40 years then she must fall in the age group of 41 to 45 for which the proper multiplier as per the Honourable Apex Court in the case of Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another, reported in 2009 A.C.J. - 1298 is '14' and not '15'.

8. It is extremely important to note that there is no documentary proof in respect of age of deceased such as Birth Certificate, School Leaving Certificate etc. In Sarla Verma's

case (supra), proper multiplier which is to be applied is given as per the 5 years slabs. It is only to be determined here that whether the deceased falls in age group of 35 to 40 years or 40 to 45 years. Admittedly, there is no documentary proof as regards the age of deceased. However, it is normal practice to mention the completed age of a person which according to the post-mortem report on record is 40 years. Therefore, considering this fact the learned Tribunal should have applied multiplier of '14' instead of '15' as the deceased, after completion of age of 40 years, had shifted in subsequent age group of 41 years to 45 years. Further, as per the observation of Honourable Supreme Court in the case of National Insurance Co.Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ)248, the future prospects of 30% added by the learned Tribunal on the income of deceased for age group between 40 to 50 years is appropriate. As such, the compensation of Rs. 47,42,052/- by considering multiplier of '14' as proposed by the appellant -Insurance Company appears proper.

9. Further, the learned Tribunal has granted funeral expenses of Rs. 25,000/-. The claimants under the cross - objections have claimed that instead of Rs. 25,000/- the learned Tribunal should have granted Rs. 1,00,000/- under the head of funeral expenses. Besides, the claimants have also claimed the amount of Rs. 1,00,000/- each to claimant Nos. 2 and 3 being the children of deceased, under the head of loss of love and affection. However, the Honourable Supreme Court in Pranay Sethi's case (supra), has settled that the amount of compensation on conventional heads namely loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. However, the Honourable Supreme Court, thereafter in subsequent judgments clarified the word 'consortium' and made it applicable to parents, spouse and children under the heads of "Spousal consortium", "parental consortium" and "filial consortium". As such, the calculations proposed by the appellant -Insurance Company under the heads of funeral expenses, loss of the estate and consortium appears proper in the view of observation of Honourable Apex Court.

10. The Honorable Supreme Court has already deprecated the practice of awarding any compensation under the head of love and affection, if certain amount is awarded under the head of consortium. Thus, in the light of these facts, the calculations proposed by the appellant – Insurance Company are to be confirmed and the claim of claimants in respect of enhanced compensation needs to be rejected.

11. In view of the same, following order is passed :

ORDER

(i) Appeal is hereby partly allowed.

(ii) The appellants are now entitled for total compensation of Rs. 48,92,052/- inclusive of 'No Fault Liability' along with the interest @ 7% per annum from the date of petition till the date of realization.

(iii) The appellant – Insurance Company shall deposit the balance amount of compensation along with the proportionate interest thereon accrued till date within two months from the date of this order.

(iv) The balance amount deposited by the appellant – Insurance Company be distributed among the claimants in equal proportion.

(v) Award be prepared accordingly.

(vi) The Cross-objection stands dismissed.