

(2020) 01 BOM CK 0108
In the Bombay High Court
Case No : First Appeal No. 70 Of 2019

United Indian Insurance Company Limited	APPELLANT
Vs	
Ujwala Salgonkar And Ors	RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Citation : (2020) 01 BOM CK 0108

Hon'ble Judges : Nutan D. Sardessai, J

Bench : Single Bench

Advocate : R.S. Netravalkar, Salil Saudagar

Final Decision : Dismissed

Judgement

1. The insurer has taken exception to the judgment by the learned Motor Accident Claims Tribunal (MACT) dated 14.11.2018 questioning the quantum of compensation awarded in favour of the respondent nos.1, 2 and 3 and with the interest thereon calculated at 9% per annum till full and final payment.
2. A petition came to be filed by the respondent nos.1, 2 and 3 on the death of Saish Salgaonkar, the son of the first respondent and the brother of the second and third respondents claiming compensation from the appellants herein alongwith the interest thereon from the driver and owner of the vehicle in question. The learned MACT was pleased to award the compensation of Rs. 14,40,800/- with interest thereon at 9% per annum till full and final payment and fastening the liability on the appellants herein and the driver and owner being jointly and severally liable to pay the compensation to the said respondents.
3. Heard Shri A.R. S. Netravalkar, learned Advocate for the appellant who contended that there was no material placed on record on behalf of the said respondents to establish the employment of the deceased nor was any muster roll placed on record despite the examination of the so called employer. The said respondents had also not placed any bank passbook on record and therefore,

there was no basis for the learned MACT to fix the income of the deceased at Rs. 9,000/- per month and award the compensation as it did. He placed reliance in Rani Vs. National Insurance company Ltd. and others,{Civil Appeal Nos. 9078 - 9079 of 2017}, to buttress his contention that in the absence of any proof of income, the learned Tribunal was in error to fix the income of the deceased at Rs. 9000/- per month and award the compensation as it did which was exorbitant. The said respondents had neither proved the income nor the employment of the deceased and the learned MACT could at the highest have taken the income of the deceased at Rs. 4000/-per month and computed the compensation appropriately while praying for a reversal of the judgment of the learned MACT.

4. Shri Salil Saudagar, learned Advocate for the said respondents submitted at the outset that the judgment in Rani (supra) was clearly distinguishable and on the contrary adverted to the impugned judgment and submitted that the learned MACT had rightly considered the testimony of the employer and taken the income of the deceased at Rs. 9000/-per month. On his part, he placed reliance in Sangita Vs. Aslam Altaf Shaikh & ors. {2019 ACJ 2816}, Vishan Das and Ors. Vs. Suwa Lal and ors.,{2007 ACJ 1477}, and in Supe Dei and ors. Vs. National Insurance Co. Ltd. and ors., {2002 ACJ 1166} to substantiate his contention that the learned MACT was within its powers to award the compensation as it did and fixing the rate of interest at 9% per annum. I would consider the submissions of Shri Netravalkar, learned Advocate on behalf of the appellant and Shri Salil Saudagar, learned Advocate on behalf of the said respondents, the judgments relied upon by both of them and proceed to decide the appeal appropriately.

5. In Rani (supra) the legal representatives of the deceased had not produced any documents to show his monthly income from mechanic work and on that basis the Tribunal took the notional income of the deceased at Rs. 3000/- per month and after deducting 1/3rd towards his personal expenses and after applying the multiplier of 17 determined the loss of dependency at Rs. 4,08,000/- apart from granting expenses towards the transportation of the body from the hospital to home, loss of consortium, loss of love and affection, loss of estate and funeral expenses with interest at the rate of 6% per annum. The High Court while deciding the appeal relied upon the driving license of the deceased and his training certificate and determined the income of the deceased at the time of the accident at Rs. 10,000/- per month which did not find favour with the Hon'ble Apex Court as neither the driving licence nor the training certificate could per se be made the basis to assume or infer that the deceased was gainfully employed at the relevant time and was earning an income of Rs. 10,000/- per month. In that backdrop, the Hon'ble Apex Court held that the reason assigned by the High Court for enhancing the notional income of the deceased from Rs. 3000/- to Rs. 10,000/- per month was irrational and tenuous and no tangible logic had been assigned to discard the just finding recorded by the Tribunal.

6. The judgment in Rani (supra) is clearly distinguishable inasmuch as the said respondents had examined the employer of the deceased and shown from his

testimony that he was working as a petrol pump attendant and drawing a salary of Rs. 9000/-per month. The said respondents had relied upon the salary certificate issued by the proprietor of the petrol pump and besides examined him in support of their case. He had asserted on oath in the course of his examination that he was the owner of the petrol pump in question on which he had employed the deceased as a pump attendant on a salary of Rs. 9000/- per month. He would have raised his salary to Rs. 10,000/- per month had he survived the accident since he was given Rs. 500/- increment per year and the other employees too. It is another matter that although he stated that the deceased was working for him from the time he started the petrol pump from October, 2010, he did not have a muster roll of the employees employed by him. He was examined before the Court in August 2018 and fairly conceded that he was maintaining the muster roll since the last two years i.e. after the death of the deceased. At the same time, he had categorically denied the suggestion that the deceased was not working at his petrol pump and maintained that the salary of the deceased was shown in the income tax returns though not individually but cumulatively alongwith his other employees and which he would be in a position to produce. No such direction was issued to him to produce the income tax returns and therefore, it was not available to appellants to raise an issue in the appeal for the first time that no such income tax returns were produced by the employer. Hence, unlike the case of Rani (supra) on which much reliance was placed by Shri Netravalkar, the said respondents had examined Halarnkar, the owner of the Petrol Pump to show that he was the owner of the Petrol Pump and besides he had employed the deceased as a pump attendant from 2010 i.e much prior to the accident and his death in 2016.

7. In Sangita (supra), a learned Single Judge of this Court was dealing with an appeal by the original claimant for enhancement of compensation against the judgment and award passed by the learned MACT, Sangamner. The deceased had died in a dash given by a jeep while he was passing by Sangamner to Loni road on his bicycle as on 15.05.2004. It was alleged that the accident occurred due to the rash and negligent driving of the offending jeep and therefore the petition arose wherein a compensation of Rs. 3,46,000/- was awarded with interest at the rate of 7.5 % per annum from the date of the petition. In the said case the claimants had examined one Shivaji to prove the income of the deceased who was employed as a clerk on his petrol pump on a monthly salary of Rs. 4500/-. He had proved the salary certificate although he had not produced any record showing the appointment of the deceased on the petrol pump or regarding the payment of salary to the deceased. The learned Single Judge observed that however for such small business, maintenance of such record of an employee is not expected and therefore, merely on the ground of non-production of papers regarding the payment of salary to the deceased cannot be a ground to disbelieve the evidence of the employer. In the circumstances, therefore, the appeal was allowed and the insurer was held liable to pay the compensation of Rs. 7,78,750/- with interest at the rate of 9% per annum from the date of the

petition till realisation.

8. In Vishan Das (supra) a learned Single Judge of the Rajasthan High Court observed that once there was evidence of the fact that the deceased was working, the learned Tribunal could safely presume that the deceased was having an income and that a notional income could be presumed only in case the deceased had no income prior to his death and that notional income could not be presumed in such a case. In Supe Dei (supra) the victim of the accident was aged 32 years on the date of the accident. He was a gas cutter earning Rs. 2,015/- per month and including his over time allowance, his monthly income was Rs. 4000/- per month. The Tribunal for the purpose of determination of the compensation had taken the income of the deceased as Rs. 4000/- per month, applied the multiplier of 15 and awarded a sum of Rs. 5,42,000/- as compensation. The High Court on appeal by the owner and insurer of the vehicle excluded the overtime allowance and determined the net income of the deceased as Rs. 1,515/- per month, maintained the multiplier of 15 and computed the compensation at Rs. 3,15,007/- with interest at 6% per annum. In this case, the limited question was on the application of the appropriate multiplier in the case at hand. In so far as the interest was concerned the Hon'ble Apex Court considered its earlier judgment in Kaushnuma Begum & ors. Vs. New India Assurance Co. Ltd. & ors. {(2001) 1 SCR 8} and observed that 9% is the appropriate rate of interest to be awarded and that rate is being applied in motor accident compensation cases and held that the claimants are entitled to the compensation applying 17 as the multiplier and interest at the rate of 9% per annum.

9. Coming back to the facts of the case, the learned MACT considered the fact that the deceased was employed as a pump attendant proved from the examination of the Petrol Pump owner and on that basis took the proved income of the deceased at Rs. 9000/- per month. It considered the other judgment of the Hon'ble Apex Court in National Insurance Company Limited Vs. Pranay Sethi and Ors. {2017 SCC OnLine SC 1270} and on that basis applying the multiplier of 18 computed the compensation at Rs. 14,40,800/-.

10. There is nothing amiss in the judgment of the learned MACT in awarding the compensation as it did either while accepting the income of the deceased and applying the rate of interest to the case at hand. Therefore, no interference is called for with the judgment under challenge. In view thereof, I pass the following:-

ORDER

The impugned judgment and award passed by the learned MACT is confirmed awarding the said compensation in favour of the said respondents with interest at the rate of 9% per annum from the date of the application till the full and final realisation. It goes without saying that the appeal does not survive and is hereby dismissed with no orders as to costs.