

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.294 OF 2000

- 1] Kashinath s/o. Vishwanath
Morkhande, Age 35 years,
occ. Nil,
- 2] Tejabai w/o. Kashinath
Morkhande, age 50 years,
occ. Nil,
- 3] Prakash s/o. Kashinath
Morkhande, age 25 years,
occ. labour,
- 4] Sulochanabai w/o. Nagsheeti
Birajdar, age Nil

All r/o. Nagalgaon, Tq.Udgir,
Dist. Latur.

..Appellants

Versus

- 1] M.S.R.T.C.,
through its Divisional Controller,
Latur.
- 2] Ramesh s/o. Dnyanoba Dhepe,
age Major, occ. S.T. Driver,
of Latur Depot, Latur
- 3] Ravishankar s/o. Ramchandra
Shetkar, age 32 years, occ. Service,
c/o. Karnataka State Road Transport,
Corporation Humanabad Depot,
Dist. Bidar (Karnataka State)

4] Deepak s/o. Ramchandra Shetkar,
age 22 years, occ. Education,
r/o. Nagalgaon, Tq. Udgir,
Dist. Latur

5] The Oriental Insurance Co.
Ltd., through Branch Manager,
Latur

..Respondents

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Mr.S.S.Manale, advocate for appellants

Mrs.R.D.Reddy, advocate for respondent no.1

Mr.A.M.Gaikwad, advocate for respondent nos.3
and 4

Mr.S.M.Godsay, advocate for respondent no.5

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CORAM : M.T. JOSHI, J.

DATE : JANUARY 20, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by grant of lesser compensation by
learned Member, Motor Accident Claims Tribunal,
Latur, present appeal is preferred by the original
claimants.

3] The deceased met with an accident on 25th June, 1996 and died on the same day. The deceased was a bachelor young man. The claim petition was filed by the present appellants i.e. parents as well as elder brother and sister of the deceased, claiming compensation of Rs.1,00,000/-. The pleadings as well as the evidence would show that the present appellants have placed on record the salary certificate issued by PW 2 – Umakant. They deposed that the deceased, during the relevant period, was working as an Electric Motor Rewinder and used to get salary of Rs.3,000/- per month. PW 2 – Umakant, during cross-examination, admitted that he has not paid income tax. Learned Member, therefore, has disbelieved his version that a small businessman, who even was not an income tax payer, would give salary of Rs.3,000/- to a worker i.e. the deceased. Therefore, learned Member assumed that since the deceased was an able-bodied

person, he was earning Rs.1,000/- per month and out of that, he was spending Rs.300/- towards his personal expenditures. Thus, the amount of dependency was calculated at Rs.700/- per month.

4] Learned Tribunal has arrived at a conclusion that since appellant nos.3 and 4 are elder brother and sister, they would not be dependents of the deceased. Appellant no.1 and 2, however, were held as dependents of the deceased. It was found that the age given by them as 55 years and 50 years, respectively, were false as, Madhavrao i.e. one of the elder brothers of the deceased, has filed F.I.R. (copy at Exhibit 45), which would show that said Madhavrao was a school teacher and he himself gave his age as 40 years. In the circumstances, learned Member has estimated the age of the appellant no.1 - father, between 60-62 years and appellant no.2 as 55 years and therefore, the multiplier of 10 was applied to the

loss of dependency. Thus, towards the loss of dependency, amount of Rs.84,000/- was granted. Additionally, an amount of Rs.6,000/- was granted towards transportation charges and funeral expenditure and in total, compensation of Rs.90,000/- was granted.

5] Mr.Manale, learned counsel for the appellants, relied on the ratio in the case of **State of Haryana and anr. Vs. Jasbir Kaur and ors., AIR 2003 SC 3696** wherein, the deceased, who claimed to be an agriculturist, had died due to motor vehicle accident on 3rd February, 1999. In absence of any documentary evidence, the Supreme Court held that the monthly income of the deceased can be fixed at Rs.3,000/- per month and accordingly, necessary calculations were made. He further submits that so far as multiplier is concerned, in view of the ratio in the case of **Sarla Varma and ors Vs. Delhi Transport Corporation & anr., JT 2009 (6) SC**

495, the proper multiplier would be 11. He submits that towards non-pecuniary damages, a meager amount is granted by learned Member.

6] On the other hand, Mrs.Reddy and Mr.Godsay, learned counsel for the respective respondents submit that it was proved before learned Member that though the family had an educated person i.e. Madhavrao, who was a school teacher, still false pleading regarding the age of parents was made. Therefore, the oral testimony regarding the income of the deceased was not believed by learned Member. Learned counsel submit that the ratio of the above referred case would not applicable to the facts of the present case, therefore, the appeal may be dismissed.

7] On the basis of this, following point arises for my determination :-

a) Whether learned Member has granted just compensation to the claimants ?

. My answer to the above point is in negative and hence, the appeal is partly allowed for the reasons to follow.

8] As the deceased has 40 years old elder brother, learned Member has rightly assumed that the father of the deceased i.e. appellant no.1 would be between 60 to 62 years and his mother would be of 55 years old at the time of the accident. As per the ratio in the case of Sarla Varma (detailed supra), multiplier of 8 would be applicable as regards appellant no.1. Therefore, multiplier of 10 applied by learned Member as an average would be reasonable multiplier.

9] Now coming to the multiplicands, in the case of ***State of Haryana and anr. Vs. Jasbir Kaur and ors.*** (detailed supra), in absence of any proof regarding income of the deceased, who was an agriculturist, the Supreme Court held that the income of the deceased can be fixed at Rs.3,000/- per month. In the present case, as the deceased was claimed to be a worker in a small scale motor rewinding work shop, in place of Rs.1,000/- per month as estimated by learned Member, in my view, the income at Rs.1,500/- per month would be appropriate.

10] Since the deceased was a bachelor, it would have to be assumed that he was expending 50% on himself and 50% on his parents. As his elder brother was a school teacher at the time of the accident, dependency would come to Rs.750/- in place of Rs.700/- arrived at by learned Member.

11] Learned Member has granted Rs.6,000/- towards transportation charges and funeral expenditure, however, no amount was granted towards the loss of love and affection. Having considered that the accident has occurred in the year 1995, an amount of Rs.10,000/- on this count would be just and sufficient.

12] The total compensation amount would, thus, come as under :-

Monthly income of the deceased	:	Rs.1,500.00
(-) 50% deductions towards personal expenditures	:	Rs.750.00
		Rs.750.00
Loss of dependency = Rs.750 x 12	:	Rs.9,000.00
(X) multiplier of 10 (9000x10)	:	Rs.90,000.00
(+) Funeral Expenses	:	Rs.6,000.00
(+) Amount towards love and affection	:	Rs.10,000.00
		Rs.1,06,000.00

(-) Compensation awarded by : Rs.90,000.00
Tribunal

Enhanced Compensation : **Rs.16,000.00**

Thus, the total enhanced compensation would come to Rs.16,000/-.

13] In the circumstances, the following order :-

a] The appeal is partly allowed with proportionate costs.

b] Respondent nos.1 to 5 are directed to pay enhanced compensation of Rs.16,000/-. Interest on the enhanced compensation be paid at the rate of 7% from the date of filing of the present appeal till realisation of the amount.

[M.T. JOSHI, J.]