

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.3125 OF 2013

Jyoti Prakash Shinde
and ors.

..Appellants

Versus

Jagannath Dhondiram Gane
and ors.

..Respondents

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Mr.Shaikh Mazhar A. Jahagirdar, advocate for
appellants

Mr.S.R.Pande, advocate for respondent no.1

Mr.A.G.Kanade, advocate for respondent no.2

Mr.A.S.Gandhi, advocate for respondent nos.3 and 4

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CORAM : M.T. JOSHI, J.

DATE : JANUARY 20, 2015

PER COURT :

Heard both sides.

2] Admit. By consent of both the sides, heard
finally.

3] The only issue involved in this appeal is regarding the quantum of compensation granted to the present appellants by learned Member of Motor Accident Claims Tribunal, Ahmednagar.

4] Deceased – Prakash was proved to be 34 years old at the time of his death in a motor vehicle accident. In the accident, he was seriously injured and was admitted in the hospital for five days. There is no dispute that the salary of the deceased was rightly calculated by learned Member at Rs.2,100/-. The dispute is regarding the amount deducted by learned Member at 1/3rd towards the personal expenses of the deceased.

5] Learned counsel for the appellants submits that the deceased has left five dependents i.e. present appellants and respondent nos.3 and 4. The proper multiplier would be 16 in place of 17 as held by learned Member. He further submits

that when the deceased was in a stable job, learned Member ought to have assumed the future increase in wages at the rate of 50%. In this regard, learned counsel for the appellants has relied upon the ratio laid down in the case of ***Rajesh and others Vs. Rajbir Singh and ors., 2014(1) Mh.L.J. 79.*** He further submits that towards the loss of consortium, an amount of Rs.5,000/- was granted, however, towards the loss of love and affection, no amount was granted by learned member. In the circumstances, he submits that towards the loss of consortium and loss of care and guidance for minor children, Rs.One Lakh each may be granted relying on ratio in the case of *Rajesh (as detailed supra)*.

6] Mr.Kanade, learned counsel for respondent no.2 – insurer opposes the appeal. He submits that the accident has occurred in the year 2000. The petition was filed in the same year and it was

decided in the year 2009. It is further pointed out that the present appeal is delayed by 1002 days and the delay came to be condoned on the condition that no interest towards the delayed period would be granted. He further submits that the compensation granted by learned Member is just and proper and therefore, the appeal may be dismissed.

7] In view of the above, following substantial question of law arises for determination :-

Whether the compensation granted by
learned Member is just ?

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

8] It is well established by catena of cases including the case of ***Sarla Varma and ors Vs. Delhi Transport Corporation & anr., JT 2009 (6) SC 495*** that when the deceased has left more than three dependents, it should be assumed that he was expending more on his family than himself and in such circumstances, deduction towards personal expenditure should be one fourth. Further, though in some cases including the case of *Rajesh (as detailed supra)*, it held by the Supreme Court that if the deceased was below 40 years of age and had fixed income, it should be estimated that there would be revision in the income at the rate of 50%, the principle, as has been emerged in various authorities of the Supreme Court, would show that the judgments of the Supreme Court in this respect delivered recently need not be applied to old cases.

9] In the present case, as the original application was filed in the year 2000, in my view, the ratio in the case of *Sarla Varma* (as detailed *supra*) regarding future increase in the salary would not be applicable. Since the deceased was working with Co-operative Society and was 34 years old, in my view, the increase in the salary can be assessed at 30%. Towards loss of consortium for the death of the deceased in the year 2000, learned Member has granted amount at Rs.5,000/-. In my view, this is a just compensation. However, towards the loss of love and affection, no amount was granted, therefore, considering the facts of the case, Rs.5,000/- needs to be granted.

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

Net salary of the deceased :	
per annum	Rs.25,200.00
(+) 30% addition in income :	Rs.7,560.00

Rs.32,760.00

(-) One fourth deduction
towards personal expenses
of the deceased : Rs.8,190.00
Rs.24,570.00

(X) multiplied by :
multiplier of 16 Rs.3,93,120.00

Addition of amount towards :
loss of love and affection Rs.5,000.00
: **Rs.3,98,120/-**

. Learned Member has already granted Rs.2,000/-
towards funeral expenses and also an amount of
Rs.15,000/- towards the medical expenses. The
same need not be interfered with. The total
compensation would be Rs.3,98,120/- (+)
Rs.17,000/- = 4,15,120/-

11] Learned Member of Motor Accident Claims
Tribunal has granted compensation at
Rs.3,10,600/-. In the circumstances, the enhanced
compensation would be Rs.1,04,520/-.

12] Hence, the following order :-

a] The appeal is partly allowed.

b] The amount of compensation is enhanced by Rs.1,04,520/- (as detailed supra). On the enhanced compensation, the interest shall be payable at the rate of 7% per annum from the rate of registration of present appeal till realisation of the amount.

[M.T. JOSHI, J.]