

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

First Appeal No. 25 of 2001

* Vithal Wamanrao Mukhede
Since deceased, through
legal representatives

1/A) Shivraj s/o Vitthal Mukhede,
Age 52 years,
Occupation : Agriculture,
R/o Hokarna, Taluka Jalkot,
District Latur.

1/B) Balaji s/o Vittha Mukhede,
Age 50 years,
Occupation Agriculture,
R/o As above.

.. Appellants.

Versus

1) Maharashtra State Road
Transport Corporation
Through Divisional Controller,
Division, Nanded.

2) M.P. Birajdar, Driver.
(appeal dismissed as against
him vide order dt 3-2-2004)

.. Respondents.

Shri. P.P. Mandlik, Advocate, holding for Shri. Amol
Gandhi, Advocate, for appellant.

Shri. M.K. Goyanka, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 16th DECEMBER 2015

JUDGMENT:

1) The appeal is filed to challenge the judgment and award of Claim Petition No.77/1988 which was pending before Member, Motor Accident Claims Tribunal, Nanded. In the claim filed for compensation in respect of injury sustained in motor vehicle accident the Tribunal has granted compensation of Rs.33,000/- along with interest at the rate of 12% per annum. Both the sides are heard.

2) The main grievance of the appellant is that the Tribunal has not awarded anything under the head of loss of earning capacity. On the other hand learned counsel for the respondent MSRTC submitted that the claimant died in the year 2010 and in view of this circumstance nothing can be granted under the head of loss of future income. He submitted that the legal representatives of the deceased who are issues, are major, they have even crossed 50 years of age and so it cannot be said that they are entitled to get compensation

under the head of loss of future income of the deceased. He submitted that death did not take place due to injury so such compensation cannot be granted. He also submitted that the Tribunal has held that the deceased was at the most supervising the agriculture and as he was bed ridden for about 4 months and so the loss can be only of that period.

3) There is record produced to show that the deceased was having agriculture land which was to the extent of 4.5 hectares. He was taking crops like hybrid and cotton. He was personally cultivating the land as per the revenue record. Even if it is presumed that he was only supervising cultivation of the land, due to nature of injury there was certainly loss of earning capacity. Handicap certificate produced shows that disability was around 62%. This certificate is not in form B and the Doctor is not examined to give substantive evidence to show relationship between the injury and the job of the injured. In view of these circumstances this Court holds that at the most it can be presumed that the earning capacity has come down by 40%. It can be presumed that

the deceased was earning monthly of Rs.1000, annually Rs.12,000/-. For the age group 50 to 55 years nine can be adopted as multiplier for calculating the loss of future earning. The accident took place on 3-5-1987 and the claimant died in the year 2010. It cannot be said that his legal representatives are not entitled to get anything under that head. Things which were in existence on the date of the filing of the claim petition need to be considered. The injured survived till 2010 and that period is more than 20 years. In view of this circumstance this Court holds that under head of loss of earning capacity the Tribunal ought to have given separate compensation. The Tribunal has granted compensation under the head of permanent disability only. In the result, this Court holds that amount of Rs.43,200/- can be given under the head of loss of earning capacity (Rs.400 x 12 x 9).

4) The Tribunal has granted interest at the rate of 12% per annul. Interest can be granted at the rate which national banks are giving. So this Court holds that interest at the rate of 9% per annum on this enhanced compensation can be given.

5) In the result, the appeal is allowed. The judgment and award of the Tribunal is modified to enhance compensation by Rs.43,200/- with interest at the rate of 9% per annum. The interest would be payable from the date of filing of the petition till the date of realisation. The award is to be modified accordingly. Disbursement of the amount be made equally amongst the legal representatives.

Sd/-
(T.V. NALAWADE, J.)

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