

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 406 OF 2000

1. Smt. Sakibai w/o Gajendra @ Gajanan Pawar (Vanjari), Age : 25 years, Occu. Household
2. Ku. Salubai d/o Gajanan Pawar, Age : 10 years, occu. Education
3. Kum. Punibai d/o Gajanan Pawar, Age : 8 years, Occu. Education
4. Kum. Jayvantabai d/o Gajanan Pawar, Age : 5 years, Occu. Education
5. Kumar Charansing s/o Gajanan Pawar, Age : 9 years, occu. Education
6. Zamu s/o Rupa Pawar, Age : 60 years, Occu. Nil
7. Sau. Maubai w/o Zamu Pawar, Age : 65 years, Occu. Household

Nos. 2 to 5 being minors, represented through their natural guardian mother i.e. appellant No.1

All r/o Pal, Tal. Raver,
District Jalgaon

APPELLANTS

VERSUS

1. Arjunsingh Rantansingh Jadhav,
Age : 40 years, Occu. Trade,
Matador owner, R/o Pal,
Tal. Raver, Dist. Jalgaon
2. Habib Amir Tadvi,
Age : 45 years, occu. Driver,
R/o Pal, Tal. Raver,
District Jalgaon
3. The New India Assurance Company Ltd.,
Jalgaon Division, Dist. Jalgaon
(Copy to be served on its Divisional
Manager, Divisional Office,
Dadhiwala Bungalow, Jalgaon) RESPONDENTS

Mr. D.B. Shinde, Advocate holding for
Mr. M.S. Deshmukh, Advocate for the appellants
None for the respondents

CORAM : M.T. JOSHI, J.

DATE OF JUDGEMENT RESERVED : 16/02/2015
DATE OF JUDGEMENT PRONOUNCED : 12/03/2015

JUDGEMENT :

1. Heard learned counsel for the appellants.
None present for the respondents, though duly
served.

2. The present appeal pertains only to the quantum of compensation awarded by the Motor Accident Claims Tribunal, Jalgaon in Motor Accident Claims Petition No. 120 of 1995.

3. Deceased Gajendra @ Gajanan Zamu Pawar has died in a motor vehicular accident on 3rd March, 1994. He was travelling by the motor vehicle – Matador, bearing registration No. MH-19/2772, owned by respondent No. 1. The appellants/claimants claimed that due to rash and negligent driving of the said Matador by respondent No. 2, deceased Gajendra died. He was working over the said Matador and was earning Rs. 2000/- per month. He was 30 years old and therefore, a composite compensation of Rs. 3,00,000/- was claimed.

4. The respondent No. 2 did not file written statement. Though the written statement was filed

by respondent No. 1, he lateron remained absent during trial. Only present respondent No. 3 - insurer contested the claim. It denied all the adverse allegations.

5. The learned M.A.C. Tribunal held that the accident has occurred due to rash and negligent driving of the vehicle - Matador.

. As regards the compensation, the learned Member took into consideration the admission of the appellant No. 1 - Sakibai that the deceased did not use to contribute anything from his income in the family. However, a suggestion was given from the side of the present respondent No. 3 - the insurer that the deceased was contributing an amount of Rs. 500/- per month for the family expenses. In the circumstances, the same suggestion was accepted. The loss of dependency thus came to Rs. 6000/- per annum. Finding that deceased Gajendra was a young

person, multiplier of 16 was applied and thus, the loss of dependency was calculated at Rs. 96,000/-. Towards the medical expenses, an amount of Rs. 10,000/-, towards loss of consortium, love and affection and funeral expenses, etc., an amount of Rs. 25,000/- was also granted. The total compensation of Rs. 1,06,000/- thus came to be granted. Aggrieved by the lesser compensation, the present appeal is filed.

6. Mr. D.B. Shinde, learned counsel holding for Mr. M.S. Deshmukh, learned counsel for the appellants, submits that the learned Member ought to have considered that the deceased used to contribute all his income towards the family of present seven appellants. The learned Tribunal, however, wrongly relied over the alleged admission of appellant No.1.

7. On the basis of above material on record and the submissions advanced on behalf of the appellants, the following point arises for my determination :-

“Whether the compensation of Rs. 1,06,000/- granted by the learned Member, Motor Accident Claims Tribunal, Jalgaon is a just compensation ?

My finding to the above point is in the affirmative and therefore, the appeal is dismissed, without any order as to costs, for the reasons to follow :-

R E A S O N S

8. The appellants claimed that the deceased was working over the said Matador, besides the driver. He used to get salary of Rs. 2000/- per

month. The original petitioner No.1/present appellant No. 1 Sakibai, in her examination-in-chief, did not depose anything regarding the loss of dependency. In her cross-examination, however, when a suggestion was given to her that the deceased was contributing amount of only Rs. 500/- per month in the family expenses, she denied the same and voluntarily deposed that the deceased "was not giving any amount in the house." On the basis of suggestion advanced by the respondent No. 3, the learned Member figured out the contribution of the deceased and accordingly, granted the compensation.

9. When there is a definite admission on record on the basis of voluntary statement of appellant No. 1 that the deceased did not use to give any amount in the family, no fault can be found with the reasoning of the learned Member of M.A.C. Tribunal. The appeal, therefore, fails.

Hence, the following order:-

10. The appeal is hereby dismissed without any order as to costs.

[M.T. JOSHI]
JUDGE

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