

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.304 OF 2001

- 1] Balwant Vinayak Kulkarni,
(Waklekar), Age 61 years,
occu.Nil, r/o. "Bhagyashree",
Plot No.2, Vidyut Colony,
Jalgaon, Tq. And Dist.Jalgaon
- 2] Sau. Nirmala Balwant Kulkarni,
Age 54 years, occ. Household,
r/o. "Bhagyashree", Plot No.2,
Vidyut Colony, Jalgaon, Tq.
and Dist.Jalgaon ..Appellants

Versus

- 1] Suresh Punju Amrutkar,
age 45 years, occ.Truck
owner, r/o. Rath-Galli,
Parola, Tq. and Dist.Jalgaon
- 2] United India Insurance Co.
Ltd., 2nd Floor, Mansing Market,
Jalgaon, Dist.Jalgaon. ..Respondents

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Mr.U.S.Malte, advocate for appellants

Mr.D.B.Shinde, advocate i/b. Mr.M.S.Deshmukh,
advocate for respondent no.1

Mr.S.G.Chapalgaonkar, advocate for respondent no.2

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CORAM : M.T. JOSHI, J.
DATE : FEBRUARY 11, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the direction to pay lesser compensation than claimed by the present appellants in a Motor Accident Claim Petition, the present appeal is preferred.

3] The necessary and relevant facts as well as the record would show that deceased – Ravindra was taking education and was in B.A. Final year at the time of his accidental death. The present appellants are the parents of the deceased. They claimed that at the time of the accident, the deceased was working as a Salesman in Saibaba Agencies at Jalgaon and his monthly income was Rs.3,000/-. They also claimed compensation on non-pecuniary head and thus, they claimed total compensation of Rs.3,00,000/-.

4] Learned Member took into consideration the cross-examination of appellant no.1 that the family of the deceased was not depending on the income of the deceased as the father of the deceased was getting pension, he had two elder earning sons and even certain investments were made in the name of the deceased. Therefore, no amount was granted towards loss of dependency. However, towards mental shock, inconvenience and loss of love and affection etc., an amount of Rs.1,00,000/- was granted.

5] Mr.Malte, learned counsel for the appellants, submits that merely because, appellant no.1 is self-sufficient and having earning two elder sons, it cannot be said that there was no loss of contribution to the family expenses on account of death of the deceased. He submits that though the deceased was studying in B.A. final year, he was

also serving and getting salary of Rs.3,000/- per month.

6] On the other hand, Mr.Chapalgaonkar submits that the evidence of the so called employer of the deceased would show that except the certificate issued by him (Exhibit 34), there was no material corroboration to come to the conclusion that the deceased was earning while learning. He, therefore, submits that the appeal may be dismissed.

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

“ Whether the compensation arrived at by learned Member is just compensation ?”

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

R E A S O N S

8] The certificate issued by the employer of the deceased at Exhibit 34 shows that the deceased was working with the said agency as a Salesman and he was earning Rs.3,000/-. Even if we ignore this evidence, it cannot be gainsaid that the deceased was studying in final year of B.A. and was soon to be a Graduate. In the circumstances, there may be future loss of earning. Taking into consideration that the accident has occurred in the year 1997, it can very well be assumed that after completing Graduation, the deceased would have earned Rs.2,000/- per month and considering that he was a bachelor, he would have spent half of the income for himself and would have contributed an amount of Rs.12,000/- per annum towards family expenses. Considering the age of appellant no.2 that she was 45 years old at the time of the accident, multiplier of 11 would be proper. Thus,

the loss of dependency would be Rs.1,32,000/-
(Rs.12,000/- X 11).

9] Mr.Chapalgaonkar submits that learned Member has granted excessive amount of Rs.1,00,000/- towards non-pecuniary heads, probably because, learned Member has not granted compensation towards the above loss of dependency.

10] Considering the conventional amount, which used to be granted during the relevant period, in my opinion, an amount of Rs.22,000/- could have been granted towards non-pecuniary heads. Thus, the total compensation of Rs.1,54,000/- (Rs.1,32,000/- + Rs.22,000/-), would be just and proper.

11] In the result, the following order :-

a] The appeal is partly allowed.

b] Respondent nos.1 and 2 are hereby directed to pay additional compensation of Rs.54,000/- with interest at the rate of Rs.7% per annum from the date of filing of present appeal till realisation of the same. The additional amount be deposited within ninety (90) days from the date of this judgment. In default, the additional amount of compensation would carry interest at the rate of 10% per annum.

[M.T. JOSHI, J.]

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