IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 801 OF 2014

Ravindra Sitaram Eshi and another .. Appellants
Versus
Damjibhai Jivarambhai Mange
and another .. Respondents

Ms. Sabahat T. Kazi, Advocate for the Appellant.
The Respondent No. 1 is served.
Shri S. G. Chapalgaonkar, Advocate for the Respondent No. 2.

CORAM : S. V. GANGAPURWALA, J.
DATE : 25TH AUGUST, 2015.

PER COURT :

. Ms. Kazi, the learned counsel for the appellant submits that, the wife of the appellant No. 1 and the mother of the appellant No. 2 died in the accident. The Motor Accident Claims Tribunal came to the conclusion that the loss of dependency is Rs. 32,44,682/-, however, deducted 20% amount on the ground that the driver of the vehicle in which they were traveling was also negligent. The learned counsel submits that, it would be a case of composite negligence and not of contributory negligence, even if it is assumed that the driver of the car was negligence. According to the learned counsel 20% deduction ought not have been made. The learned counsel further submits that, towards loss consortium an amount of Rs. 10,000/- only awarded. Even as per the case of **Asha Verman and others Vs. Maharaj**

<u>Singh and others</u> reported in ***2015 All SLR 1476*** for loss of love and affection Rs. 1,00,000/- ought to have been awarded and for funeral expenses Rs. 25,000/- could have been awarded. Whereas for loss of estate and loss of consortium Rs. 1,00,000/- each could have been awarded and for love and affection to the children Rs. 2,00,000/- were awarded in the said case.

2. Mr. Chapalgaonkar, the learned counsel for the Insurance Company submits that the Tribunal has rightly deducted 20% amount. Moreover 10% deduction of income tax has not been done, as the amount of compensation goes above slab of income tax. According to the learned counsel date of the accident would be relevant and material for considering the grant of funeral expenses and other expenses.

3. I have considered the submissions. The Tribunal has rightly considered the income of the deceased, however, it appears that has wrongly deducted an amount of 20% on the ground of negligence of the driver of the car. Even if it is assumed that driver of the car was negligent, same would be case of composite negligence and not of contributory negligence, as far as 20% deduction of amount is concerned.

4. Even 10% amount of income is already deducted by the learned Tribunal while computing amount of compensation. As such for loss of dependency the Tribunal ought to have considered the total amount arrived at i. e. Rs. 32,44,682/-.

5. As far as loss of love and affection is concerned the appellant No. 1 and the appellant No. 2 each would be entitled for Rs. 1,00,000/-. For funeral expenses I would award Rs. 25,000/-.

6. Considering the above, I pass the following order.

7. I award amount of Rs. 34,69,682/- as compensation. The judgment and award passed by the Tribunal is modified. It is held that the claimants are entitled for an amount of Rs. 34,69,682/- towards the compensation amount. The respondent Nos. 1 and 2 shall jointly and severally pay Rs. 34,69,682/- to the appellants inclusive of no fault liability compensation with interest at the rate of 8% per annum from the date of petition till realization. On depositing the said amount, the amount of Rs. 18,00,000/- be paid to the appellant No. 1. The remaining amount be kept in fixed deposit of any nationalized bank in the name of the appellant No. 2 till he attains the age of majority. In case of any eventuality/contingency, liberty to the appellants to move before the Tribunal for withdrawal, which application would be considered by the Tribunal on its own merits.

[S. V. GANGAPURWALA, J.]

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