IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 755 OF 2014

Yamunabai Sitaram Eshi .. Appellant

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 deceased died in an accident. The 20% amount is deducted on the ground that the driver of the car was negligent. The learned counsel submits that, even if it is assumed that the driver of the car is negligent, at the most it would be a case of composite negligence and not of contributory negligence. The learned counsel submits that, deduction towards personal expenses is illegal. The learned counsel also submits that, the deceased was an agriculturist. The loss of income on account of the same has not been considered. In respect of non pecuniary damages also only Rs. 10,000/- is awarded towards loss of consortium. An amount of Rs. 10,000/- is awarded towards loss of estate. The appellant claims Rs. 1,00,000/- for the same and for funeral expenses Rs. 25,000/- ought to have been awarded.

2. Mr. Chapalgaonkar, the learned counsel submits that, considering the fact that the deceased was an agriculturist and aged about 65 years old just and proper compensation has been awarded by the Tribunal. Even case put forth by the appellant is considered, at the most it is a case of loss of supervision charges. There is also only one dependent and 50% deduction towards personal expenses is also not made.

3. I have considered the submissions. The Tribunal has considered Rs. 3,000/- per month as notional income from agriculture. I have also considered the judgment of the Tribunal. No doubt, the deductions towards personal expenses ought to have been 50% as there is only one claimant. The Tribunal has considered the loss of income considering notional income. The same appears to be reasonable and proper. However, the deduction of 20% made on account of negligence of the driver of the car in which the deceased was traveling is improper. Even if it is assumed that the driver of the car was negligent, still it is a case of composite negligence. As far as claimant is concerned in a case of composite negligence such 20% deduction ought not to be deducted. No doubt, the claimant would be entitled for more

amount towards loss of consortium and loss of estate. However, considering the fact that, only 1/3 deduction has been made instead of 1/2 and so also considering other aspects of the matter, I am not interfering with the same. However, the amount which is awarded has to be increased by 20%.

4. In the light of that, I pass the following order.

5. The claimant/appellant is entitled for an amount of Rs. 2,35,000/- towards the compensation. The respondent Nos. 1 and 2 shall jointly and severally pay the said amount to the appellant along with interest at the rate of 8% per annum from the date of petition i. e. 05.07.2010 till its realization. The amount already paid shall be adjusted. The first appeal as such is disposed of. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Aug. 15