

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...
FIRST APPEAL NO. 971 OF 2014

ALMAS BEGUM FEROKHAN PATHAN AND OTHERS

VERSUS

HAKIM NAZIR PATHAN AND OTHERS

...

Advocate for Appellants : Mr. Gore Ravindra Vitthal

Advocate for Respondents 1 and 2 : Mr. Chandrakant R.
Thorat

Advocate for Respondent No.3 : Mr. S.G. Chapalgaonkar

CORAM : S. V. GANGAPURWALA, J.

DATE : 9th September, 2015

PER COURT :

1. The present appellant had filed application under section 166 of the Motor Vehicles Act seeking compensation on account of death of deceased Pheroze Khan. The Tribunal partly allowed the said claim petition. The present appeal is filed for enhancement of compensation.

2. Mr. Gore, the learned counsel submits that the deceased was working as driver and was earning Rs.5,000/- per month. The job of driver is a skilled work and as such Rs.5,000/- per month ought to have been considered in absence of specific proof of income. The learned counsel relied on the judgment of the Apex Court in the case of **Sanobanu Nazirbhai Mirza and**

others Vs. Ahmedabad Municipal Transport Service,
reported in 2013 (16) SCC 719. The learned counsel further submits that towards non pecuniary damages paltry sum of Rs.10,000/- is awarded. No amount is awarded to each of the claimants under the head, loss of love and affection, loss of consortium, loss of estate and no independent amount is awarded towards funeral expenses.

3. Mr. Chapalgaonkar, the learned counsel for the insurance company supports the judgment and submits that in absence of proof income, Rs.3000/- has been rightly considered. Towards non pecuniary damages considering the date of accident, the amount is rightly awarded.

4. I have considered the submissions.

5. There is no proof that the deceased was working as driver and was earning Rs.5,000/- per month as salary. The Court has considered notional income of Rs.3,000/- per month in absence of proof of income. I do not see any illegality in the same. However, towards personal expenses, 1/3 amount is deducted. Considering the above, towards personal expenses, 1/4 amount only

could have been deducted. Considering the same, the loss of dependency would be Rs.27,000/-. Multiplier 17 is applied by the tribunal which is legal and proper. Considering the same, towards loss of dependency, the amount would come to Rs.4,59,000/-. As such, towards loss of dependency, the amount Rs.4,89,600/- is awarded which is legal and proper.

6. For hospital charges and medical expenses also there is evidence in that regard. The amount awarded Rs.1,07,216/- is legal and proper. However, on account of non pecuniary damages, a paltry sum has been awarded by the Tribunal. As per judgment of the Apex Court in case of **Asha Verman Vs. Maharaj Singh reported in (2015) 42 SCD 537**, towards loss of love and affection, the widow and children would get Rs.1 lakh each, the parents are entitled to Rs.50,000/- each, and for funeral expenses also, amount of Rs.25,000/- is permissible. For loss of consortium Rs. 1 lakh to the widow is awarded. As such, towards the non pecuniary damages, the claimants are entitled to Rs.4,25,0000/-

7. Considering the above, the claimant would be entitled for total compensation of Rs.10,21,816/-. The

claimants have claimed total compensation of Rs.10 lakhs. As such to make it round figure, the claimants would be entitled to Rs.10 lakhs.

8. In the light of the above, the award passed by the Tribunal is modified.

9. The respondents 2 and 3 are jointly and severally liable to pay an amount Rs.10 lakhs to the claimants along with interest @ 9% per annum from the date of filing of the claim petition till realization of the amount.

10. The amount already deposited shall be adjusted as on the date the same is deposited.

11. Claimant No.1 widow will be entitled for Rs.4 lakhs, Claimant No.5 is entitled for Rs.3 lakhs, Claimants 2 and 3 are entitled for Rs.1,25,000/- each and claimant no.4 is entitled for Rs.50,000/-.

12. The amount awarded to claimant No.5 be kept in fix deposit of any nationalized bank till he attains age of majority.

13. The First appeal as such is accordingly disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC