IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1426 OF 2015

Rajendra Raghunath Bhavsar
and others .. Appellants

Versus

Satish Purushottam Deshmukh
and another .. Respondents

Shri Mohit R. Deshmukh, Advocate for Appellants.
Shri M. P. Kale, Advocate h/f Shri S. K. Naikwade, Advocate for the Respondent No. 1.
Shri V. N. Upadhye, Advocate for the Respondent No. 2.

CORAM : S. V. GANGAPURWALA, J.
DATE : 28TH OCTOBER, 2015.

PER COURT :

. The present appeal is filed by claimants for enhancement. Mr. Deshmukh, the learned counsel submits that, the appellants had filed application U/Sec. 166 of the Motor Vehicles Act seeking compensation on account of the death of their father who died in a vehicular accident. The learned counsel submits that, no amount has been awarded as compensation on account of pecuniary damages. On account of non pecuniary damages paltry sum is awarded. According to the learned counsel, the evidence is led to the effect that, the deceased was Karta of the joint family. He was residing with one of the claimant and use to contribute his own pension for the family. The learned counsel submits that, the claim petition was perfectly maintainable. Not only that, but the claimants are also entitled for the compensation. Only because they are major sons and married daughters compensation cannot be denied to them. The learned counsel relies on the following judgments.

i) General Manager Kerala State Road Transport Corporation Trivandrum Vs. Mrs. Susamma Thomas and others reported in AIR 1994 SC 1631 (1).

ii) U. P. State Road Transport Vs. Trilok Chandra and others reported dated 07th May, 1996.

iii) Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another reported in AIR 2009 SC 3104(1).

iv) National Insurance Company Ltd. Vs. Kusuma and another reported in 2012 AIR SCW 266.

v) M. Mansoor and another Vs. United India Insurance Co. Ltd. and another reported in AIR 2014 SC (Supp) 1004.

vi) Damayanti Dhavan and another Vs. New India Assurance Co. Ltd. AIR 1996 HP 106.

2. According to the learned counsel, the deceased was earning pension of Rs. 7,000/- per month and even if his personal deduction is considered half, the claimants would be entitled for the compensation by applying multiplier of five. Towards non

pecuniary damages also for love and affection Rs. 1,00,000/- each ought to have been awarded.

3. Mr. Upadhye, the learned counsel submits that, the claimants cannot be said to be dependents on the deceased. As such compensation has been rightly denied. The Tribunal has rightly considered said aspect and awarded non pecuniary damages.

4. I have considered the judgment. The legal representatives are entitled to file an application for compensation U/Sec. 166 of the M. V. Act. It is not debatable that the present appellants are the legal representatives of the deceased being sons and daughters. They are also major and in service. It is also not disputed that the deceased was getting pension of Rs. 7,163/- per month. The evidence has been led that, the deceased was contributing the full amount of pension received to the family. The cross examination does not appear on the said aspect of the matter. Considering the said aspects of the matter, it is proved that the deceased was contributing his pension.

5. Considering the fact, that is was pension amount and no concrete evidence is on record, I would hold that, the deceased was spending 75% amount on himself and contributing 25% amount to the family. If the said aspect is considered, the loss of

dependency would come to Rs. 1,05,000/-. Towards non pecuniary damages the claimants would be entitled on account of loss of love and affection. I would quantify it to the extent of Rs. 50,000/- each and for funeral expenses I would award Rs. 20,000/-. The Tribunal has awarded Rs. 3,36,220/- towards the medical expenses. As such, the claimants would be entitled for total compensation of Rs. 6,11,220/-. The present matter is decided upon the facts of present case and considering the evidence on record.

6. In the result, the order of the Tribunal is modified. The respondents shall jointly and severally pay Rs. 6,11,220/- to the claimants along with interest at the rate of Rs. 8% from the date of petition till the realization. The amount already paid shall be adjusted as on the date payment is made. The first appeal is partly allowed. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Oct. 15