

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 2823 OF 2009

Vijay Bhagwanta Varpe,
Age-27 years, Occu-Labour,
R/o. Maygaon (Devi), Tq.Kopergaon,
Dist. Ahmednagar.

...APPELLANT

VERSUS

1. Shantabai Mohan Mhaske,
Age-49 years, Occu-Household,
R/o. Jehur, Tq. Kannad,
Dist.Aurangabad.
2. Bhaskar Mohan Mhaske,
Age-23 years, Occu-Student,
R/o. Jehur, Tq. Kannad,
Dist. Aurangabad.
3. The National Insurance Co. Ltd.
Through its Branch Manager,
having its office at Adalat Road,
Aurangabad.
4. Daga Tulshiram Shewale,
Age-45 years, Occu- Business,
R/o. Karanjgavan, Tq. Malegaon,
Dist. Nashik.

...RESPONDENTS

Mr.P.F.Patni, Advocate for the appellant.
Mr.A.J.Mete, Advocate h/f Mr.S.T.Veer, Advocate for respdt. No.4.
Mr.A.P. Gaikwad, Advocate h/f Mr.S.S.Kazi, Advocate for respondent
Nos. 1 & 2.

CORAM : A.V. NIRGUDE, J.

DATED : 04.08.2015

ORAL JUDGMENT [PER: A.V.NIRGUDE, J.] :-

1. This is claimant's appeal in Motor Accident Claim Petition. The appellant/ claimant was husband of deceased who died in motor accident on 22.11.2004. The appellant filed his petition for compensation separately; whereas the mother and brother of the deceased filed their petition separately. Both these claim petitions were decided by a common judgment. The learned Tribunal awarded compensation to the appellant as well as mother of the deceased in equal shares. This appeal is filed for challenging the decision of the learned Tribunal awarding compensation to the mother of the deceased.

2. The facts leading to this litigation are as under:-

On 22.11.2004 at 01.00 p.m. victim Vaishali was proceeding on motor cycle with her brother, sitting on

pillion seat. There occurred collision between a white car and the motor cycle. Both riders fell down and got injured. Both were taken to hospital. Vaishali died before getting admitted in the hospital. Her brother survived. As said above, two petitions were filed one by appellant Vijay-husband of Vaishali and other was filed by Shantabai and her son Bhaskar. Shantabai and her son Bhaskar who happened to be mother and brother of deceased Vaishali.

3. The insurance company opposed the claim mainly on the ground that, due to negligence of both the drivers, the accident had taken place. It was also contended that the owner and insurer of the motor cycle which was involved in the accident were necessary party.

4. The learned Member of the Tribunal held that the accident had taken place due to rash driving of the driver of the car. Brushing aside the objection about non-joinder, the learned Member rightly placed reliance on judgment of Supreme Court in case of A.P.S.R.T.C. And others V/s. K. Hemlata 2008 A.I.R. S.C. Weekly 4712. In this judgment the Supreme Court held that in case of motor accident the injured should not be asked to prove the extent of responsibility of each wrongdoer separately. The learned Judge then held that the brother

of Vaishali was not her legal representative and was not entitled to compensation. On the other hand, he held that Vaishali earning per month was Rs.1500/-. The learned Member then determined the amount of compensation of Rs. 2,55,000/-. The learned Member held that at the time of accident the appellant husband was only 23 years old. After his wife's death, he could marry and settle down in his life. He also held that the appellant did not suffer monetary loss due to his wife's death.

5. On the other hand it was held that Shantabai the mother had lost her daughter forever. In view of this he ordered equal distribution of amount amongst the appellant and Shantabai.

6. The learned counsel for the appellant contended mainly that the mother Shantabai was not entitled to compensation because she could not be held to be legal representative of the deceased. The question as to whether the mother can be held to be legal representative was referred to the learned Member of the Tribunal for recording his findings. The learned Member before recording findings tried to record the evidence of the parties. The mother Shantabai did not adduce any evidence.

7. Despite this the learned Member held that the mother Shantabai would be entitled to compensation because Vaishali was under obligation to maintain her mother. The question is whether the mother Shantabai in the facts and circumstances of the case was entitled to compensation?. In order to answer this, one must refer to the personal law of the parties to find out whether the mother of a Hindu female is her legal heir? As per the Sections of 15 & 16 of the Hindu Succession Act, the mother is not a legal heir. In view of this the mother would not be entitled to succeed to the property of her daughter.

8. The question still remains as to whether the mother is entitled to compensation for her daughter's death? In such situation the mother will have to prove that either she depended on her daughter's earning for survival. No evidence came on record about such dependency. Deceased Vaishali was about 18-20 years old when she died. She was unskilled labour and her earning was meager.

9. On the other hand, mother Shantabai did not enter into witness box to explain her financial position. She did not even show that there was possibility in future that she would depend on her daughter for

maintenance.

10. On the other hand the appellant entered witness box and narrated about the financial position of mother Shantabai. In such factual matrix the learned Member could not have depended on provisions of law which enjoin grown up children for maintaining their old and infirm parents. The situation is different in this case. Shantabai was under obligation to prove pecuniary and non-pecuniary loss caused to her due to untimely death of her daughter. By keeping herself away from the witness box, she did not prove her case of dependency.

11. Even for the purpose of claim in respect of non-pecuniary loss, it was necessary for Shantabai to come before the Court and depose that due to untimely accidental death of her daughter she suffered mental agony /shock, etc. She could have further mentioned in her deposition that she lost company of her daughter forever. In absence of such evidence the learned Member was not at all justified in awarding the compensation to Shantabai. The part of the judgment holding that Shantabai was entitled to compensation was thus patently erroneous and deserves to be set aside. The appeal is therefore allowed in terms of following order.

ORDER

The Entire compensation amount shall be paid to the appellant with interest as ordered by the lower Court with cost of this appeal. The cost of the appeal shall be recovered from Shantabai.

[A.V. NIRGUDE,J.]