IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2515 OF 2015

1] Fundabai w/o. Vijaysingh Kakarwal
Age 28 years, Occ. Household.

2] Gitabai D/o. Vijaysingh Kakarwal,
Age 14 years, Occ. Student.

3] Nikita D/o. Vijaysingh Kakarwal
Age 12 years, Occ. Student.

Since Respondent Nos. 2 and 3 are minor
under Guardianship of Mother i.e.
Respondent No.1 Fundabai.

4] Bihrabai w/o. Narsingh Kakarwal
Age 57 years, Occ. Nil.

5] Narsingh S/o. Suratram Kakarwal,
Age 62 years, Occ. Nil.

All R/o. Lalwan, Tq. Phulambri,
Dist. Aurangabad. APPELLANTS.
(ORIGINAL CLAIMANTS)

VERSUS

1] Kishor S/o. Namdeo Sadashive,
Age major, Occ. Driver.
R/o. Bilda, Tq. Phulambri,
Dist. Aurangabad.

2] Bhausaheb S/o. Fakirrao Kshirsagar,
Age Major, Occ. Business,
R/o. Relgaon Tq. Phulambri,
Dist. Aurangabad.

3] The New India Assurance Company
through its Divisional Manager,
Adalat Road, Aurangabad.

RESPONDENTS.
(ORIGINAL RESPONDETNS)

Mr. A.S. Gandhi, Advocate for the appellants
Mr. P.S. Pawar, Advocate for respondent No.2.
Mr. S.R. Bodade, Advocate for the respondent No.3.

CORAM : A.M. BADAR, J.
DATE : 1ST DECEMBER,2015.

PER COURT:

1] This is an appeal under Section 173 of the Motor Vehicle Act, 1988 filed by the original claimants challenging the judgment and award passed by the learned Member, Motor Accidents Claim Tribunal, Aurangabad, on 23.7.2014 in MACP No. 891 of 2012 so far it relates to the quantum of compensation awarded to them. While issuing notice to respondents on 14.1.2015, this Court had made it clear that notice to indicate that appeal itself would be taken up for final hearing at the stage of admission. Hence, the appeal is taken up for final hearing at the stage of admission itself. Admit. Heard with consent of parties in appeal.

2] The appellants were claimants before the learned MACT, Aurangabad. Respondent Nos. 1,2 and 3 before the Tribunal were respectively Driver, Owner and Insurer of the offending vehicle i.e. Motor Cycle bearing No. MH-20/BJ-2429. For the sake of convenience parties would be referred to in their original capacity.

2] Brief facts leading to the institution of the present appeal can be summarized thus :-

[a] It is the case of claimants they are legal representatives

of the deceased Vijaysingh Kakarwal. On 17.11.2012 he was proceeding to village Lalwan from MIDC Waluj by riding on motorcycle bearing No. MH-20/CF-6620, alongwith his son Shivraj and wife Fundabai (claimant No.1). According to claimants, at Bildha Phata, another motorcycle bearing number MH-20/BJ-2429 owned by respondent No.2 and insured with respondent No.3 came from the opposite direction in wrong side at high speed and in a rash and negligent manner. Respondent No.1 was riding that motorcycle. It gave dash to the motorcycle on which Vijay Singh Kakarwal (since deceased) was traveling. According to claimants, Vijay Singh Kakarwal died instantaneously on the spot itself because of this incident.

[b] It is case of claimants that this incident resulted in registration of Crime No. I-180/2012 under section 304A, 279, and 338 of IPC against respondent No.1. As the accident arising out of use of motor vehicle was caused because of rash and negligent act on the part of respondent No.1, the claimants prayed for awarding compensation of Rs. 25 Lakhs from respondents.

[c] Respondent No.1 who was riding the offending motorcycle opposed the claim by filing written statement at Exh.23, interalia contending that accident had happened because of rash and negligent act on the part of deceased Vijay Singh Kakarwal in riding the motorcycle. Respondent No.2 owner of the offending motorcycle opposed the claim by filing written statement at Exh.35 contending that the accident did not happen because of rash and negligent driving by respondent No.1.

According to respondent No.2, his motorcycle was insured with respondent No.3 insurance company and respondent No.1 was having a valid driving licence at the time of accident. Respondent No.3 opposed the claim by filing written statement at Exhibit 12, by contending that it is not liable indemnify the owner as the vehicle was given in custody of respondent No.1 who was not holding valid and effective driving licence. Respondent No.3 Insurance Company further contended that the deceased Vijay Singh Kakarwal was negligent in driving the motor-cycle and the accident in question had occurred because of his sole negligence as he was carrying 2 pillion riders with him.

[d] On the basis of the rival pleadings, issues were framed by the Tribunal. After hearing parties, the learned Tribunal came to the conclusion that the accident in question happened because of rash and negligent driving of motorcycle bearing No. MH-20/BJ-2429 owned by respondent No.2, driven by respondent No.1 and insured with respondent No.3. The Tribunal concluded that Vijay Singh Kakarwal died because of injuries sustained by him in the accident and thereupon awarded compensation of Rs. 10.71 Lakhs to claimants. All respondents were made jointly and severally liable to pay the compensation as per the impugned judgment and award dated 23.7.2014.

3] Heard Shri Gandhi learned counsel for claimants. He submitted that claimants should have been awarded total compensation of 18,78,276/- by considering the salary of deceased at Rs.6650/- by granting 50% addition towards loss of future prospects in life and by applying multiplier of 17. He submitted that the learned Tribunal erred in not considering the loss of future prospects in life while awarding compensation. He further submitted that non-pecuniary damages were inadequately granted by the Tribunal. In his submission, the learned Tribunal ought to have granted Rs. 2 Lakhs for loss of love and affection so far as two children are concerned, Rs. 50,000/- each to claimant's parents, Rs. 1 Lakh towards consortium to the widow and Rs.25,000/- towards funeral expenses.

4] As against this, Shri Bodade, learned counsel for respondent No.3 submitted that the accident happened because of sole negligence on the part of the deceased in riding motorcycle with two pillion riders. He submitted that as there was no permanent post with the employer of the deceased, no enhancement can be granted towards loss of future prospects in life. He submitted that the salary certificate of the deceased is doubtful as it was shown that he was in employment of some other employer. According to him, the award of compensation by the learned Tribunal is perfectly correct.

5] At the outset, it needs to be mentioned here that this is an appeal by the original claimants only to the extent of quantum of compensation assessed by the learned Tribunal. Other findings of the Tribunal relating to rash and negligent act on the part of the driver of the offending motorcycle bearing number MH-20/BJ-2429 and consequential death of Vijay Singh Kakarwal have attained finality. As such, this Court need not traverse the facts and evidence from which conclusions regarding rash and negligent act of offending motorcycle were drawn by the learned Tribunal. As such, no merit can be found with the contention of the learned counsel for the Insurance company to the effect that accident happened because of contributory negligence on the part of the deceased.

6] Now, let us turn to the quantum of compensation assessed by the learned Tribunal on account of death of Vijay Singh Kakarwal. It is not in dispute that claimants are his legal representatives. Learned Tribunal considering the evidence of PW-2 Sanjay Jogalekar – employer of the deceased Vijay Singh Kakarwal, came to the conclusion that the deceased was earning salary of Rs. 6550.75 per month and considering his age to be 30 years, and applying multiplier of 18, assessed the loss of dependency of Claimants @ Rs. 10,61,208/- after deducting 1/4th amount towards personal and living expenses of the deceased.

7] I have carefully perused the evidence of PW-2 Sanjay Jogalekar. It is seen from the evidence of this witness that deceased was working as Security Guard at Mediators and Ajanta Private Limited. His gross salary was Rs. 6725.75 p.m. The Tribunal has rightly assessed his salary at Rs. 6550.75 p.m. after excluding the statutory deductions from his gross salary. Now, let us examine, whether 50% amount can be added to the monthly salary of the deceased towards loss of future prospects. On this count, according to learned counsel appearing for the Insurance Company, no such addition can be made as there was no permanent post with the employer. However, in this regard, observations of the Honourable Supreme Court in the matter of ***Santosh Devi Vs. National Insurance Company Limited 2012 (5) MH.L.J. 527*** and in ***Rajesh Vs.Rajbir Singh and others 2013 ACJ 1403***, are required to be kept in mind. It is held therein that even in respect of self employed or persons with fixed salary, addition towards advancement of life and future prospects of career in employment are to be granted and total income of the deceased needs to be increased as per the law laid down in the matter of ***Sarla Verma Vs. Dehli Transport Corporation 2009(5) Mh.L.J. 775.***

8] As deceased Vijay Singh Kakarwar was 30 years old at the time of his accidental death, 50% of his actual salary needs to be added to his actual salary income for assessing loss of dependency of the claimants. As such, by adding an amount of Rs. 3275/-, in the net monthly salary of deceased which was Rs. 6550.75/-, the monthly loss of dependency of claimants can be estimated at Rs. 9825/-. As there were 5 dependents of the deceased Vijay Singh Kakarwar, it would be appropriate to deduct 1/4th of that amount towards personal and living expenses of the deceased. As such, after deducting Rs. 2456/- from Rs. 9825/-, the monthly loss of dependency of claimants is estimated at Rs. 7,369/- and that of yearly loss of dependency is estimated at Rs. 88,438/-. The deceased was 30 years of age as seen from the evidence on record. As such, appropriate multiplier which needs to be used for calculation of loss of dependency would be 17 in terms of the judgment of the Honorable Supreme Court in ***Sarla Vora (Supra)*** In this view of the matter, the claimants are entitled for total compensation of Rs. 15,03,276/- towards loss of dependency.

9] Perusal of the award of learned Tribunal shows that the Tribunal had awarded Rs. 5,000/- towards loss of consortium and Rs. 2,000/- towards funeral expenses of the deceased. In the matter of ***Rajesh Vs. Rajbirsingh (Supra)*** Honourable Supreme Court has observed that because of changed socio economic views, consortium should not be less Rs.1 Lakh and funeral expenses should not be less than Rs. 25,000/-. Facts of the present case warrant award of this much amount on these heads. The deceased was a young married person and his widow will be required to lead a long life without his care and support. As such, claimant No.1 widow of the deceased is found to be entitled for Rs. 1 Lakh towards loss of consortium. Claimants are further entitled for Rs. 25,000/- towards funeral expenses of deceased Vijay Singh Kakarwal.

10] On account of loss of love and affection, claimants are rightly awarded compensation of Rs.25,000/- by the Tribunal. Considering the facts of the present case, though on behalf of appellants reliance was placed on Asha Verman & others Vs. Maharaj Singh and others, 2015 AIR SCW 3577, it is seen that claimants are adequately compensated on this count. Accordingly, claimants are found to be entitled for total compensation of Rs. 18,78,276/- and the same is awarded to them.

11] For the aforesaid reasoning, the appeal is partly allowed with proportionate costs. Impugned judgment and award of the Member, MACT, Aurangabad, in MACP No. 891 of 2012 between the parties is modified to the extent of quantum of compensation and respondent Nos. 1 to 3 are jointly as well as severally directed to pay an amount of Rs. 18,78,276/-, to claimants inclusive of the compensation under section 140 of the Motor Vehicles Act. Rest of the award including rate of interest and apportionment as well as disbursement of compensation is confirmed. It is clarified that the claimant No.1- widow shall be entitled only for withdrawal of Rs. 3,00,000/- (rupees three lakhs) from the amount of compensation so assessed. The appeal is accordingly disposed of. Needless to mention that appellants shall pay necessary deficit court fees.

[A.M. BADAR, J]

grt/-