

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1008 OF 2014

Smt.Bebbee Vilas Mire & Ors

... Appellants

Vs.

Dattatraya Balasaheb Deshmukh & anr

... Respondents

Mr.V.A. Shastry for the Appellants

Mr.A.A. Joshi for Respondent

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 11th SEPTEMBER, 2015

P.C.:

1. Admit. By consent, the appeal is called out and heard finally.
2. This appeal for enhancement is directed against the judgment and award dated 12.4.2013 passed by the Member, Motor Accident Claims Tribunal, Pune. It is the case of the original applicant that the she is a widow of the deceased. Applicant Nos.2 and 3 are the minor children of 16 and 14 years of age. On 25.9.2009, the accident took place when Vilas More, the deceased husband of applicant No.1, was walking on the road and pushing his tea handcart. The motor cycle which is involved in the offence came from opposite direction, dashed Vilas. He sustained injuries and was shifted to hospital. He was treated there for multiple injuries. He

succumbed to the injuries on 2.10.2009. Thereafter, the original applicants filed a claim application for Rs.10 lacs u/s 166 of the Motor Vehicles Act. The insurance company appeared to defend the claim and filed its written statement. The original applicant tendered her evidence alongwith two witnesses i.e., the employer of the deceased and the Doctor who treated him. The Tribunal thereafter considering the oral as well as documentary evidence awarded compensation of Rs.4,35,000/- including NFL compensation with interest @ 7.5% p.a. Being aggrieved by the said judgment and award, this appeal is filed.

3. The appeal is contested on the ground of quantum. The learned Counsel for the appellant has submitted that the Tribunal ought to have accepted the evidence of AW Ramesh Gunjal and also the evidence of Dr.Santosh Pathare. Although he stated that he was drawing Rs.300/- per day, it granted Rs.100/- per day. The learned Counsel submitted that the Tribunal ought to have considered future prospect @ 30% and so also the amount for the loss of life and affection. Funeral amount is less and loss of consortium is not considered at all. He claimed that the amount is to be increased. In support of his submissions, he relied on the judgment of the Supreme court in the case of **Rajesh & Ors. vs. Rajbir Singh & Ors.**¹.

1 2013 ACJ 1403

4. The learned Counsel for the insurance company opposed this appeal and has submitted that the age of the deceased was 40 years and, therefore, as per the judgment in the case of **Sarla Verma vs. Delhi Transport Corporation**², if the age group is between 40 to 50, then, 30% increase is to be considered as a loss of future prospects. While opposing the appeal, he further submitted that it should not be 50%. He submitted that the award of the Tribunal is just and appropriate and therefore, the appeal be dismissed.

5. Perused the judgment and award; evidence of witnesses i.e., the AW2 Ramesh Gunjal and Dr.Pathare. The evidence of Gunjal who had deposed that he was paying the deceased Rs.300/- for doing masonry work is rightly discarded by the Member, Tribunal. Mr.Gunjal was earning only Rs.10,000/- per month and he claimed that he was having 15 labourers in his factory. Therefore his evidence that he used to pay Rs.9,000/- per month to the deceased cannot be believed. Dr.Santosh has stated that the patient paid him Rs.57,000/- for treatment and hospitalisation charges. The said evidence is accepted so also the amount towards the medical expenditure of Rs.60,000/- is accepted. However, this amount needs to be enhanced by Rs.10,000/- towards expenses incurred for transportation by the relatives of the patient and towards diet of the patient.

2 2009 ACJ 1298(SC)

6. In the case of **Rajesh (supra)**, the Supreme Court has relied on **Sarla Verma's case (supra)**, on the point of loss of future prospects and has given age-wise categories of the deceased. If a person is self employed, salaried or having fixed wages, then, the same amount towards future prospects is to be given based on **Sarla Verma's case (supra)**. For the age group of 40 to 50, 30% amount of the salary is to be counted for loss of future prospects. Thus, on considering the wages of the deceased at Rs.3,000 per month with multiplier 15, it comes to Rs.5,40,000/-. By deducting $\frac{1}{3}$ rd amount, the amount is Rs.3,60,000/-. 30% yearly increase would be Rs.10,000/-. Thus, with multiplier 15, it comes to Rs.1,62,000/-. After deducting $\frac{1}{3}$ rd, it comes to Rs.1,08,000/-. Thus, the total amount of loss of dependent is Rs.4,68,000/- (Rs.3,60,000 – Rs.1,08,000). Consortium is not counted at all, hence, it is to be added in the amount of award. Consortium is taken as Rs.1 lakh and Rs.45,000/- and extra amount towards loss of love and affection is to be added. For this purpose, I rely on the case of **Rajesh (supra)**, wherein paragraph 21, how the breakup of the compensation is to be granted is indicated. Accordingly, loss of care and guidance for minor children is considered as loss of love and affection. Therefore, Rs.5,000/-, which is fixed by the Tribunal in the present case, is increased by Rs.45,000/-. The funeral expenses which was granted as

Rs.5,000/-, is increased by Rs.20,000/- totalling to Rs.25,000/-.
Rs.10,000/- is granted in addition to the awarded medical expenses of Rs.60,000/-, totalling to Rs.70,000/-. Therefore, the total increased amount comes to Rs.1,75,000/- plus Rs.1,08,000/-, totalling to Rs.2,83,000/-. This amount of Rs.2,83,000/- shall be paid to the applicants with interest @ 7.5% from the date of the application.

7. First Appeal stands disposed of accordingly.

(MRIDULA BHATKAR, J.)

CERTIFICATE

Certified that this Judgment/Order uploaded is a true and correct copy of original signed Judgment / Order.