

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2497 OF 2014

SHARDA DHANANJAY SALVE AND OTHERS
VERSUS
BALU KACHARU SHINDE AND OTHERS

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Advocate for Appellants : Mr. Jayabhar Dattatraya R.

Advocate for Respondent No.2 : Mr. S.V. Kulkarni

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CORAM : V. K. JADHAV, J.
DATED : 14th JUNE, 2016

PER COURT:-

1. Being aggrieved by the judgment and award dated 4.4.2013 passed by the learned Chairman, M.A.C.T. Ahmednagar, in M.A.C.P. No. 262 of 2009, the appellants preferred this appeal to the extent of quantum.

2. Brief facts giving rise to the present appeal are as under:-

a) On 4.3.2009, deceased Dhananjay was riding motor cycle cautiously by the left side of road in a moderate speed on Supa-Parner road. Within the limits of Kanhur vasti, one six seater auto rickshaw bearing registration No. MH-16-B-6184 came from opposite direction and after overtaking another vehicle, which was ahead of said Rickshaw, gave a dash to the motor cycle driven by deceased Dhananjay, by coming on wrong side of the road. The driver of the

said rickshaw could not control the vehicle due to excessive speed and gave forceful dash to the motor cycle of deceased Dhananjay. In consequence of which deceased Dhananjay sustained head injuries and multiple injuries on other parts of his body. He was immediately taken to Rural Hospital at Parner. The Medical Officer declared him dead on arrival. The legal representatives of deceased Dhananjay preferred claim petition before the Motor Accidents Claims Tribunal, Ahmednagar for grant of compensation under various heads.

b) It is contended that deceased Dhananjay was 28 years old at the time of accident. He was serving as moulder in a private company on monthly salary of Rs.5000/-. He also used to get the excess income by doing overtime and also by way of bonus. The claimants were depending on his income entirely. Respondent No.1 owner of vehicle resisted the claim by filing written statement Exh.16 and denied the claim. It is contended that the auto rickshaw was driven in moderate speed by left side of the road. It is further contended that the deceased Dhananjay had consumed alcohol and therefore, he could not control the motor cycle. It is further contended that the accident had occurred on account of rash and negligent driving of motor cycle by deceased Dhananjay. In the alternate, it is submitted that the vehicle auto rickshaw involved in the accident is insured with respondent No.2 and respondent No.2 is

liable to pay the compensation.

c) Respondent No.2 insurer has also resisted the claim by filing written statement Exh.14 and denied the claim. It is contended that there has been breach of condition of policy and therefore, insurer is not liable to pay the compensation.

d) On going through the pleadings and evidence led by the parties in support of their rival contentions, learned Chairman of the Tribunal has allowed the claim petition and granted compensation for Rs.8,00,000/- to the claimants with interest. Hence, this appeal.

3. Learned counsel for the appellants submits that the Tribunal has not considered the future prospects of deceased Dhananjay. The Tribunal has not awarded compensation under non pecuniary heads, such as, loss of consortium, loss of love and affection, funeral expenses and loss of estate.

4. So far as the future prospects are concerned, the claimants have not examined the employer of deceased Dhananjay to prove the contents of salary certificate placed on record. However, the salary certificate placed on record is considered by the Tribunal and as per the said salary certificate Exh.3/11, the Tribunal has

considered income of deceased Dhananjay to the tune of Rs.5000/- p.m. The appellants-claimants have not bothered to examine the employer or his representative to prove before the Tribunal the salary certificate and future prospects of deceased Dhananjay. On the other hand, it appears from the impugned judgment and award that the appellants claimants have not at all raised this issue before the Tribunal. In absence of any evidence, as held by this court in the case of ***New India Assurance Company vs. Alpa Rajesh Shah and others, reported in 2014 (2) Mh.L.J. 17***, no future prospects can be considered. Deceased Dhananjay was serving in a private company and it is also not clear whether he was permanent employee in the said company and he was getting monthly salary with all available benefits as per service Rules and Regulations of the said company. It is also not clear that deceased Dhananjay was getting fixed salary. In view of the above, the addition of income by way of future prospects cannot be considered in the facts and circumstances of present case.

5. So far as the compensation under non pecuniary heads is concerned, in para 15 of the judgment the tribunal has considered the income of deceased Dhananjay and accordingly come to the conclusion that the appellants-claimants are entitled for amount of Rs.7,62,000/- as loss of future income. The Tribunal has correctly

applied multiplier 17 by considering the age of deceased Dhananjay at the time of accident. In the same para, the learned Chairman of the tribunal has considered that the claimant No.1 Sharda, became widow at the age of 22 years and she has to share the responsibility of minor daughter and son and she has to take care of her mother-in-law. The Tribunal has also considered that she must have spent some conveyance charges for bringing the dead body of her husband for funeral. The tribunal has considered all aspects and instead of awarding separate compensation under non pecuniary heads, such as loss of consortium, love and affection, loss of estate and funeral expenses etc. awarded the lump sum compensation to the tune of Rs.8,00,000/-. As stated above, the Tribunal has granted loss of future income to the extent of Rs.7,62,000/- and it appears that the remaining amount is awarded by the Tribunal as lump sum amount for compensation under non pecuniary heads. I do not find any substance in the appeal. Hence, the following order.

O R D E R

- I. The appeal is hereby dismissed.
- III. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)