

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1576 OF 2011

Smt. Sajida Riaz Shaikh

.. Appellant

Versus

The Divisional Manager and others

.. Respondents

Mr.S.S.Kazi, Advocate for the appellant

Mr.A.B.Kadethankar, Advocate for respondent No.2

Mr.N.B.Narwade, Advocate for respondent No.4

CORAM : A.V.NIRGUDE, J.

DATED : 27.09.2016

P.C. :-

1. The original claimant is challenging the judgment and award dated 04.08.2016 in M.A.C.P. No.301/2003 delivered by learned Member, of M.A.C.T., Ahmednagar.

2. The appellant is the original claimant No.1 she sought compensation of Rs.5,00,000/- on account of accidental death of one Riyaz Babulal Shaikh who happened to be husband of appellant and son of respondent No. 4, and brother of respondent Nos. 5 and 6.

3. Facts leading to this claim, in short, can be stated as under:-

4. Riyaz was a Auto-rikshaw driver working on the public roads of Ahmednagar City. On 16.02.2003 while

Riyaz was taking turn on a road a tempo trax came from opposite side and collided on his Auto-rikshaw causing Riyaz's death in Civil Hospital on next date.

5. The police registered an offence against the driver of tempo trax and prosecuted him. This claim was filed on 24.06.2003. The present appeal deals only to the extent of the amount of compensation. According to the appellant the award amount is erroneously calculated. The appellant/original claimants were entitled to more amount. Even the learned counsel for respondent-Insurance Company admitted that the appeal can be heard only on the question of quantum of compensation. He suggested that the amount of compensation awarded by the learned Member was just and fair and there is no need for interference.

6. For the purpose of calculating compensation there are few factors that are required to be taken into consideration. first is average income of deceased; second is his age at the time of accident. At the time of accident Riyaz was about 28 years old.

7. The question before me is what could be his income? The learned Member rightly held that the evidence that came on record did not prove that Riyaz was owner of

his Auto-rikshaw. He was using someone else's vehicle. But the learned Member, almost without taking into account the deposition of appellant on the question of income, came to abrupt conclusion that Riyaz was most probably earning Rs.70/- per day. On perusal of the evidence I found that this conclusion is erroneous because there is no basis for such conclusion. The appellant deposed that Riyaz was earning about Rs. 150/- to 200/- per day. She has also stated his monthly income was about Rs.6,000/- to Rs.7,000/- per month. The learned Member ought to have appreciated this evidence. The question before him and also before me is to what extent I should believe the appellant's deposition. Such appreciation is guided by the material that come in cross-examination and other relevant factors of which judicial notice is required to be taken. It is also an admitted fact that Riyaz was the only earning member of his family and his family consisted of his wife, his two younger brothers and his old mother. Riyaz was taking care of a big family. In cross-examination nothing came on record to indicate that the appellant was not reliable witness for the purpose of deciding the monthly income of the deceased. In such situation I am rather inclined to accept the deposition of the appellant that Riyaz's daily income was Rs.150/-. An Auto-rikshaw driver in a city like Ahmednagar would certainly get work and would get

renumeration which would be certainly above the average income of Rs.3,000/- per month.

8. Now the question is of multiplier. The learned Member used multiplier of 13 solely on the basis of age of mother of the deceased. The law has changed on this subject. The settled law which is stated by the Supreme Court of India in the Judgment of Sarla Verma (SMT) and others Vs Delhi Transport Corporation and Another (2009). 6 Supreme Court Cases 121 makes it clear that it is the age of the deceased that should be taken into account for deciding the multiplier. As per the judgment of Sarma Verma (Supra), multiplier for deceased aged about 28 would be 17.

9. In my view monthly income of the deceased could be approximately Rs.4500/-. $1/3^{\text{rd}}$ amount of Rs.1500/- would deducted as personal expenses. The rest of amount i.e. Rs.3000/- per month deserves to the multiplicand. The multiplier of 17 is suitable in this case. The amount of compensation for pecuniary loss would be $[3000 \times 12] = 36,000/-$ and same is multiplied by 17 = Rs.6,12,000/-.

10. In addition to this the appellant is entitled to certain amount towards loss of consortium as she lost her husband at young age. In my view such loss can be

compensated with a sum of Rs.50,000/-. In addition to this the other family members are entitled to compensation for loss of love and affection of son and brother and I would award them a sum of Rs.25,000/- together. In addition to this the learned Member of the Tribunal rightly awarded Rs.5,000/- towards funeral. In view of this the total sum payable to the appellant and other claimants/respondent Nos. 4, 5 and 6 would Rs.6,92,000/-.

11. The next question comes before me is how to distribute this amount amongst the original claimants. The loss of the widow is more. The loss of the other family members is little less than her. I am, therefore, inclined to direct the parties to divide this amount in following proportion. Rs.5,00,000/- should be handed over to the appellant-widow. Remaining amount shall be handed over to mother of deceased who should further hand over Rs.25,000/- each to her two sons.

12. The amount shall be paid with interest at the rate of 6% per annum from the date of registration of appeal. As regards the interest following explanation is required. Interest awarded by Tribunal shall be paid on the amount awarded by the Tribunal at the rate of 6% per annum till the amount is realized. The interest awarded

by this Court shall be paid from the date of registration of appeal at the rate of 6% per annum on the enhanced amount till the amount is paid. The enhanced amount shall be paid within two weeks from today.

13. In view of above the appeal is accordingly allowed and disposed of.

[A.V.NIRGUDE, J.]