

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 856 OF 2004

1. Sanjay s/o Narhar Songire
Age 37 years, Occ. Labour
R/o. Vishnunagar, Deopur Dhule
Taluka and District Dhule
 2. Sou. Lalita w/o Sanjay Songire
Age 31 years, Occ. Household,
R/o. As above
- ...Appellants

Versus

1. Baban s/o Kashinath Ingole
(deleted as per order dated
9.12.2015)
 2. The Maharashtra State Road
Transport Corporation Ltd.
- ...Respondents

.....
Mr. S.A. Nagarsoge, Advocate for the appellants
Mr. D.S. Bagul, advocate for the respondent No.2
.....

CORAM : V. K. JADHAV, J.
DATED : 25th APRIL, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the Judgment and Award dated 1.3.2004 passed by learned Member, Motor Accident Claims Tribunal, Dhule in M.A.C.P. No.663 of 2001, the original claimants have preferred this appeal to the extent of quantum.

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

a] Deceased Bhuri @ Nilima aged about 3 years was the daughter of claimants. On 1.11.2001 at about 1.45 p.m. she was passing in front of S.T. Bus No. MH-12-UA-8634 at S.T. Stand, Bhadgaon alongwith one Shantabai Narhar Songire and at that time, respondent No.1, who was the driver of said S.T. Bus, knocked her down. In consequence of which, deceased Bhuri @ Nilima had sustained grievous multiple injuries and died on the spot. The claimants being the legal representatives, preferred Claim Petition before the Motor Accident Claims Tribunal, Dhule, for grant of compensation under various heads. Respondent No.1-driver and respondent No.2-M.S.R.T.C. had strongly resisted the claim petition by filing their written statement. They have denied the claim in toto. It is contended that the accident occurred due to negligence on the part of deceased Bhuri who tried to cross the road in front of moving bus. Learned Member, Motor Accident Claims Tribunal, Dhule, by its impugned Judgment and award dated 1.3.2004, partly allowed the claim petition and thereby awarded compensation of Rs.60,000/- alongwith interest. The appellants-original claimants preferred this appeal to the extent of quantum.

3. Learned counsel for the appellants submits that, the Tribunal has not applied Second Schedule and the multiplier specified therein to grant compensation. Learned counsel submits that, by applying

Second schedule and relevant multiplier, the claimants are entitled for compensation of Rs.1,50,000/-.

4. Learned counsel for the appellant in order to substantiate his submissions placed his reliance on the decision in the case of **R.K.Malik and another Vs. Kiran Pal and others**, reported in **AIR 2009 SC 2506**.

5. Learned counsel for Respondent No.2 submits that, in cases of death of young children of tender age, in view of uncertainties abound, financial loss suffered by the parents is incapable of mathematical calculation. Learned counsel submits that, by considering the same, the Tribunal has rightly awarded compensation.

6. In order to substantiate his submissions, learned counsel has placed his reliance on the judgment in the case of **Oriental Insurance Co. Ltd., Vs. Syed Ibrahim and others** reported in **AIR 2008 Supreme Court 103 (1)**.

7. The learned counsel submits that, the Supreme Court, by considering the view expressed in **Lata Wadhwa's** case, awarded reasonable compensation by considering death of a child, and second schedule and multiplier mentioned therein are not taken into

consideration. Learned counsel for the Respondent No.2 submits that, if this Court comes to the conclusion to award enhanced compensation of Rs.1,50,000/-, interest on the same may be awarded from the date of this order.

8. In the case in hand, the accident had taken place on 1.11.2001. In **R.K.Malik's** case (supra) relied upon by learned counsel for the appellants, the date of accident is 18.11.1997. Considering the date of accident in the present case, the notional income mentioned in Second Schedule and multiplier method can form the basis for pecuniary compensation. The Hon'ble Supreme Court in the aforesaid **R.K.Malik's** case in paragraph No.17 and 18 of the Judgment made following observations:-

"17. Reverting back to the factual position of the present case, the date of accident is 18.11.1997. Prior to this, the Second Schedule of the Act was already introduced w.e.f. 14.11.1994. Thus, the notional income mentioned in the Second Schedule and the multiplier specified therein can form the basis for the pecuniary compensation for the loss of dependency in the present cases. No fact and reason was highlighted during the arguments why the Second Schedule should not apply in the present cases. The Second Schedule also provides for deduction of 1/3rd consideration towards expenses; which the victim would have incurred on himself if he had

lived. As compensation for loss of dependency is to be calculated on the basis of notional income because the deceased was a child. It by necessary implication takes into account future prospects, inflation, price rise etc.

18. Therefore keeping in view of Second Schedule of the Act, this Court do not see any reason to differ with the view taken by the Tribunal as well as the High Court in so far as award of pecuniary compensation to the dependents/claimants is concerned. We must point out here that the learned counsel for the appellants had argued that the notional sum of Rs. 15,000/- should be enhanced and increased as the legislature has not amended the Second Schedule and the same continues to be in existence since it was enacted on 14.11.1994. We are not examining and going into this aspect as the accident had taken place in the present case nearly three years after the enactment of the Second Schedule. The time difference between the date of the enactment and the date of accident is not substantial.”

9. In **R.K.Malik's** case, the Hon'ble Supreme Court has also referred Lata Wadhawa's case. In the case of ***Oriental Insurance Co. Ltd., Vs. Syed Ibrahim and ors*** (supra), relied upon by learned counsel for respondent No.2, though the Supreme Court relied upon Lata Wadhawa's case, has not dealt with the Second Schedule and multiplier mentioned therein.

10. In **R K Malik's** case, the Supreme Court has referred almost all the cases dealt with the issue of grant of compensation in respect of death of young child.

11. In view of the observations of the Supreme Court in **R.K. Malik's** Case and considering the facts and circumstances of the present case, notional income as mentioned in the Second Schedule and multiplier specified therein can form the basis for grant of compensation. Thus, the appellants/claimants are entitled for compensation of Rs.1,50,000/- (Rs. One Lac Fifty Thousand). Learned counsel for the appellants have not pressed grant of compensation under non pecuniary heads. I do not find any reason to grant interest from the date of this order. Hence, following order.

ORDER

- I. First Appeal is partly allowed with proportionate costs.
- II. The Judgment and Award dated 1.3.2004 passed by the Member, Motor Accident Claims Tribunal, Dhule in M.A.C.P. No.663 of 2001 is hereby modified in the following manner.

“The claimants are entitled to an amount of Rs.1,50,000/- (Rs. One Lac Fifty Thousand only) from the respondent-MSRTC towards compensation. Claimants are entitled to interest at the rate of 9%

p.a. from the date of application till realization, as per the modified award.”

III. Rest of the Judgment and award passed by the Member, Motor Accident Claims Tribunal, Dhule dated 1.3.2004 in M.A.C.P. No.663 of 2001 stands confirmed.

IV. Award be drawn up accordingly.

V. The claimants to pay deficit court fees within a period of six weeks from the date of this order.

VI. Appeal is accordingly disposed of.

(V. K. JADHAV, J.)

rlj/