

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

FIRST APPEAL NO.3302 OF 2015

1. Prashant s/o Uttam Chavan,
Age 40 years, Occu. Nil,
R/o Dhule, Taluka and District
Dhule
 2. Mrs Asha Prashant Chavan,
Age 32 years, Occu. Household
work, R/o Dhule, Taluka and
District Dhule
- .. Appellants

Versus

1. Magan s/o Ravji Ahire,
Age 52 years, Occu. Driver,
R/o Juner, Taluka and
District Dhule
 2. Sanjay s/o Piran Sonawane,
Age 52 years, Occu. Tractor
owner, R/o Soundane,
Taluka and District Dhule
 3. Manager,
Oriental Insurance Company
Limited, Dhule
- .. Respondents

Mr C.R. Deshpande, Advocate for appellants
Mr U.S. Malte, Advocate for respondent No.3
Respondents No.1 and 2 served

CORAM : V.K. JADHAV, J.

DATE : 7th June 2016

PER COURT

Heard.

2. Being aggrieved by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Dhule dated 9th October 2014 in Motor Accident Claim Petition No.771 of 2012, the original claimants preferred this appeal to the extent of quantum.

3. Facts giving rise to the present appeal are as follows :

4. On 21st February 2012, the original claimant No.1 was proceeding towards Sakri from Dhule by motorcycle bearing registration No.MH-18-U-180. At about 9.00 p.m. in front of Bhamre Hospital, the tourist Omni van bearing registration No.MH-18-N-5517 driven by respondent No.1 and owned by respondent No.2 given dash to his motorcycle. Deceased Rishikesh, four years child was a pillion rider. In consequence of which, deceased Rishikesh had sustained injuries and succumbed to the same. The appellants - claimants preferred a claim petition before the Motor Accident Claims Tribunal, Dhule for grant of compensation under the various heads. The learned Member of the Tribunal, by impugned judgment and award dated 9th October 2014 partly allowed the petition and directed the respondents No.1 to 3 jointly and severally to pay compensation of Rs.1,50,000/- inclusive of no fault liability to the original claimants.

5. The learned Counsel for the appellants submits that deceased Rishikesh was the only son of the appellants - claimants and in view of the observations made in the judgment of Apex Court in the matter of **Lata Wadhwa and others Vs. State of Bihar and others**, reported in **AIR 2001 SC 3218**, the Tribunal ought to have awarded the conventional charges of Rs.50,000/- in addition to the compensation awarded.

6. The learned Counsel for respondent No.3 – insurer submits that in the case of Lata Wadhwa (cited supra), the Apex Court has considered the environment from which the children were brought, their parents being reasonably placed officials of the Tata Iron and Steel Company and directed that the compensation amount for the children between the age group of 5 to 10 years should be three times i.e. Rs.1.5 lakhs and further added the conventional figure of Rs.50,000/-. Learned Counsel for the insurer submits that the Tribunal has rightly awarded the compensation. There is no substance in the present first appeal and the same is liable to be dismissed.

7. It appears that in the judgment and award the Tribunal has not considered that deceased Rishikesh was the only son of the appellants – original claimants. Furthermore, the Tribunal has also not considered that deceased Rishikesh was taking education in English medium though in lower K.G. It is true that the existence of the expectation by the parents is an inference of fact and there must be a basis of fact from which the inference can reasonably be drawn. In the case in hand deceased Rishikesh since was the only child, the appellants – original claimants would have taken better care and would have provided him better education. Thus, considering these special circumstances, an amount of Rs.50,000/- is required to be added in the present case. Hence, I proceed to pass the following order :

ORDER

- (I) The appeal is hereby partly allowed with proportionate costs.
- (II) The judgment and award dated 9th October 2014 passed by the Member, Motor Accident Claims Tribunal, Dhule in Motor Accident Claim Petition No.771 of 2012 is hereby modified in the following manner:
- (III) The respondents No.1 to 3 jointly and severally do pay to the appellants - original claimants Rs.2,00,000/- (Rs. Two lakhs) inclusive of no fault liability with interest at the rate of 9% per annum from the date of petition till its realisation.
- (IV) Rest of the judgment and award stands confirmed.
- (V) Award be drawn in tune with the modification.
- (VI) Appeal is accordingly disposed of.

(V.K. JADHAV, J.)

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