

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 884 OF 2005
WITH CA/7205/2005 IN FA/884/2005

1. Shantabai w/o Balchand Chavan,
Age 40 years, Occupation Nil,
R/o. Verul Tanda, Taluka Khultabad,
District Aurangabad.
2. Ramesh s/o Balchand Chavan,
Age 22 years, Occupation Student,
R/o. as above.
3. Vikram s/o Balchand Chavan,
Age 18 years, Occupation Student,
R/o. as above.
4. Baby d/o Balchand Chavan,
Age 20 years, Occupation Student,
R/o. as above.
5. Bakaji s/o Raosaheb Chavan,
Age 68 years, Occupation Nil,
R/o. as above.
6. Godibai w/o Bakaji Chavan,
Age 66 years, Occupation Nil,
R/o. as above.

... Appellants
(orig. Claimants)

Versus

1. Taherkhan s/o Tejkhan (deleted)
2. Sunita Panditrao Sonawane,
Age 40 years, Occupation Business,
R/o. 86, Police Lane,
Kranti Chowk, Aurangabad.
3. Devchand s/o Bakaji Chavan,
Age 66 years, Occupation Agriculture,
R/o. Verul, Taluka Khultabad,
District. Aurangabad.
4. The Manager,
United India Insurance Co. Ltd.,
Kohli Motor Buildings,
Seven Hills, Aurangabad.

... Respondents
(orig. Respondents)

.....
Advocate for the Appellants : Mr. Anil A. Joshi
Advocate for Respondent No.2: Mr. R.T. Nagargoje
Advocate for respondent No.4: Mr. S.V. Kulkarni
.....

CORAM : V. K. JADHAV, J.
DATED : 17th MARCH, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and award passed by learned Member of M.A.C.T. Aurangabad, dated 13.12.2004 in M.A.C.P. No. 372 of 2000, the original claimants have preferred this appeal to the extent of quantum of compensation.

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

On 13.1.2000 at about 3.00/4.00 p.m. on Kannad - Aurangabad road, the accident took place. Deceased Balchand was driving a tractor bearing Registration No. MH-20-C-1310 with its trailer. The trolley was loaded with sugarcane. On the way, one truck bearing registration No. MH-20-W-5501 driven by respondent No.1, owned by respondent No.2 and insured with respondent No.4 came in high speed and gave dash to the tractor being driven by deceased Balchand. In consequence of which, deceased Balchand had sustained injuries and while under treatment, succumbed to those injuries. The appellants-original claimants filed M.A.C.P. No.

372 of 2000 before learned Member, M.A.C.T. Aurangabad claiming compensation on account of accidental death of deceased Balchand, who was 40 years old at the time of his death. Learned Member, M.A.C.T. Aurangabad, by impugned judgment and award, partly allowed the claim petition and thereby directed respondent Nos. 2 and 4 jointly and severally to pay compensation of Rs.1,84,500/- to the claimants. Thus, original claimants have preferred this appeal for enhancement of compensation amount.

3. Learned counsel for the appellants submits that deceased Balchand, besides cultivating agricultural land, used to drive tractor and his monthly income from both sources was Rs.25,000/-. Even though the 7x12 extract of landed property Exh.41 was produced before the Tribunal, the same was not considered. The Tribunal has considered the notional income of deceased Balchand as Rs.15,000/- p.a. treating him as non earning member of the family and accordingly, awarded meager amount of compensation to the claimants, who were entirely dependent on the earnings of deceased Balchand. Learned counsel submits that the Tribunal has also erroneously applied multiplier 16 instead of 17. Learned counsel submits that in the postmortem report, age of deceased Balchand was shown as 35 years and the Tribunal ought to have applied the multiplier as 17 in this case. Learned counsel further submits that

the Tribunal has awarded meager amount under the head of non pecuniary loss and also awarded interest at the rate of 6% instead of 9%.

4. Learned counsel for respondent No.4-Insurer submits that in absence of income proof, the Tribunal has rightly considered the income of deceased Balchand as Rs.15,000/- p.a. Learned counsel submits that claimant No.1 has shown her age as 40 years in the claim petition and she has also deposed about the age of her deceased Husband Balchand as more than 40 years. Learned counsel submits that the Tribunal has therefore, rightly applied multiplier 16. Learned counsel submits that the Tribunal has correctly awarded compensation for non pecuniary loss. Learned counsel submits that no interference is called for. The appeal is liable to be dismissed.

5. I have also heard learned counsel for respondent No.2-truck owner.

6. Following points arise for my determination and I have recorded my findings thereon for the reasons given below:-

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the Tribunal has assessed the compensation and awarded just and reasonable compensation?	In the negative.
2. Whether the impugned judgment and award calls of any interference?	In the Affirmative.
3. What order?	As per final order?

REASONS

7. It is not disputed that deceased Balchand while driving tractor met with an accident and truck driver is mainly responsible for causing his accidental death.

8. So far as the quantum of compensation is concerned, 7x12 extract of the landed property at Exh.41 shows that deceased Balchand owned and possessed land admeasuring 4 H 4 R and the crops grown up therein are cotton, Jawar etc. Thus, it is not the case that deceased Balchand was a non-earning member of the family. Learned Member of M.A.C.T. has erroneously considered his notional income as Rs.15,000/- p.a. by treating him as non-earning member of the family. So far as the landed property is concerned, the corpus remain as it is even after death of the person who was

cultivating it. It also appears that claimant Nos. 2 and 3 are major sons of deceased Balchand. Thus, the notional income of the deceased could be considered as Rs.3000/- p.m. and by addition of Rs.1000/- as the loss on account of lack of supervision by an experienced person because of untimely death of deceased Balchand, total income is considered as Rs.4000/- p.m.. The original claimant Nos. 2 and 3 are major sons, claimant No.4 is unmarried daughter and claimant Nos. 5 and 6 are the old aged parents. The Tribunal should have considered the same and deduction on account of personal expenses should have been made as $\frac{1}{4}^{\text{th}}$ instead of $\frac{1}{3}^{\text{rd}}$. It also appears that the Tribunal has awarded very meager amount for loss of consortium, for love and affection, loss of estate and towards funeral expenses. It also appears that the learned Tribunal has awarded interest @ 6% p.a. instead of 9% p.a. Deceased Balchand was admitted in hospital for three days after the accident and he succumbed to the injuries. Thereafter, the dead body was brought to his residence and accordingly, funeral was performed. Considering the same, the Tribunal has awarded very meager amount for funeral expenses.

9. In view of the above discussion, the break of compensation as per the modification, can be broadly categorized as under:-

i)	Loss of dependency/income (Rs.3000X12X16)	- Rs.5,76,000.00
ii)	Loss of consortium	- Rs. 15,000.00
iii)	Loss on account of love and affection	- Rs. 20,000.00
iv)	Loss of estate	- Rs. 10,000.00
v)	Funeral expenses	- Rs. 15,000.00

	Total	- Rs.6,36,000.00
		=====

(Rupees Six lacs thirty six thousand only)

Thus, the claimants are entitled for Rs.6,36,000.00 with interest @ 9% p.a. from the date of application till realization of entire amount.

10. With this modification, the appeal is required to be allowed partly. Hence, the following order.

O R D E R

- I. The appeal is hereby partly allowed.
- II. The judgment and award dated 13.12.2004 passed by the Member, M.A.C.T. Aurangabad in M.A.C.P. No. 372 of 2000 is hereby modified to the following effect.

The claimants are entitled for an amount of Rs.6,36,000/- inclusive of 'No Fault Liability' from respondent Nos. 2 and 4. Respondent Nos. 2 and 4 jointly and severally do pay an amount of Rs.6,36,000/- to the claimants with proportionate costs with interest @ 9% p.a. from the date of application till realization of the amount.

III. The rest of the judgment and award stands confirmed.

IV. Award be drawn up accordingly.

V. Appeal is disposed of in the above terms. No costs.

VI. Civil application No. 7205 of 2005 stands disposed of accordingly.

(V. K. JADHAV, J.)

rlj/