

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 385 OF 2008

1. Godavari Marathwada Irrigation
Development Corporation
Through its Executive Engineer
Latur Medium Project, Latur.
2. Executive Engineer
Latur Medium Project Division,
Behind Bandhkam Bhavan, Latur.

....Appellants.

Versus

1. Rukminibai w/o. Namdeo Kamble,
Age 45 years, Occu. Household,
R/o. Fule nagar, Ausa, Dist. Latur.
2. Ku. Shridevi d/o Namdeo Kamble,
Age 11 years, Occu. Education,
Minor u/g. of her mother
Rukminibai w/o. Namdeo Kamble
R/o. As above.
3. Raosaheb s/o. Rambhau Jadhav,
Age Major, Occu. Govt. Service,
R/o. Gangapur, Tq. Latur,
Driver of Govt. Vehicle bearing No.
MWP-6435 (Truck driver),
At present Tawarja Colony, Latur.
4. The State of Maharashtra,
Through its Collector, Latur.
5. Govind s/o. Namdeo Kamble,
Age 20 years, Occu. labourer,
All R/o. Fule nagar, Ausa,
Dist. Latur.

(1&2 - Ori. Claimants 1&2)

(3 to 5 - Ori. Resp. 1,2 & 4)

....Respondents.

Mr. S.G. Sangle, Advocate for appellants.
Mr. M.L. Dharashive, Advocate for respondent Nos. 1 and 2.
Mr. R.P. Bhumkar, Advocate for respondent No. 3.

CORAM : T.V. NALAWADE, J.
DATED : 11th February, 2016.

JUDGMENT :

1) The appeal is filed by the authority, for whom one motor vehicle was requisitioned by Collector, to challenge the decision given by the Claims Tribunal, Latur in Claim Petition No. 267/1999. The Claims Tribunal has held both the registered owner and the present appellants liable to pay the compensation. Both the sides are heard.

2) The claim was filed in respect of death of one Namdeo Kamble, who was aged about 50 years. Claimant No. 1 is widow of deceased and claimant No. 2 is minor daughter of deceased. The accident took place on 24.9.1997 within local jurisdiction of Ausa Police Station. It is contended that the deceased was working as a sweeper with Municipal Council, Ausa and his monthly salary was Rs. 3,001/-. It is contended that the claimants were depending for their livelihood on the income of the deceased.

3) It is the case of the claimants that the deceased was pedestrian and truck No. MWP-6435 gave dash to him and accident took place due to fault of truck driver. Namdeo died on

the spot in the accident. The compensation of Rs. 1.25 lakh was claimed under various heads.

4) Respondent No. 3, present appellant filed written statement and contested the matter. The fact of accident is not disputed. It is contended that the accident took place due to fault of deceased as he came under the back wheel of the truck.

5) Claimant No. 1 examined herself. She has no personal knowledge regarding the accident. The claimants relied on the copies of police papers. Copies of F.I.R., spot panchanama, P.M. report etc. are consistent with the case of the claimants. At Exh. 40, requisition letter is produced to show that the vehicle was requisitioned for the appellant and it was in the use of appellant. Police blamed the driver of the truck for accident. No evidence in rebuttal is given to rebut the circumstances mentioned in the police papers.

6) For proving the income, there is substantive evidence of claimant No. 1 and one Subash, employee of Municipal Council is examined to prove the salary of the deceased. The salary certificate is duly proved as Exh. 31 and the gross salary was Rs. 3,001/-.

7) The judgment of the Tribunal shows that the Tribunal presumed that the age of the deceased was 50 years and the monthly income was Rs. 2,400/-. The Tribunal made deductions which were not permissible from the monthly income. Then 1/3rd amount was deducted from this amount for personal expenses and the Tribunal calculated the compensation. This approach of the Tribunal was not correct and much less compensation is given than the compensation which could have been given on the basis of aforesaid material. Unfortunately, the original claimants have not challenged the decision. This Court sees no reason to interfere in the decision given by the Tribunal by which compensation of Rs. 2.12 lakh is only given and interest at the rate of 7.5% is given.

8) In the result, the appeal stands dismissed. The amount, if any, deposited is to be disbursed as per the award.

[T.V. NALAWADE, J.]

SSC/