

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.825 OF 2002

1. Smt.Minakshi w/o. Prabhakar Joshi,
Age:45 years, Occu.: Household,
2. Miss Yogita D/o. Prabhakar Joshi,
Age:21 years, Occu.: Student,
3. Ravindra S/o. Prabhakar Joshi,
Age:19 years, Occu.: Student,
4. Narendra S/o. Prabhakar Joshi,
Age:17 years, Occu.: Student,
under guardian - mother i.e.
Appellant No.1

All residents of Matruchhaya Niwas
Maliwada, Begumpura, Aurangabad.

...APPELLANTS
(Orig. Petitioners)

VERSUS

1. Executive Engineer,
Road Project, P.W.D. Jalna,
2. Deputy Engineer,
Road Project Division,
Public Works Department,
Padampura, Aurangabad,
3. Sub Divisional Engineer,
Road Project Sub-Division
Aurangabad,
4. Raju S/o. Narayan Ghati,
Age: 30 years, Occu.: Driver,
Public Works Dept. Jalna.

...RESPONDENTS
(Ori. Respondents)

...

Mr. D.V. Soman, Advocate for Applicants.

Mr. G.O. Wattamwar, AGP for Resp.Nos.1 to 3.

Respondent No. 4 served.

CORAM : P.R.BORA, J.

DATE : 20th September, 2016.

ORAL JUDGMENT:

1) Heard. The claimants in M.A.C.P.No.427/1997 decided by the Motor Accident Claims Tribunal, at Aurangabad (for short, the Tribunal) on 31st January, 2001, have preferred the present appeal seeking enhancement in the amount of compensation awarded by the Tribunal.

2) The appellants – claimants had filed the aforesaid claim petition seeking compensation on account of death of one Prabhakar Joshi in a vehicular accident happened on 7.11.1997, having involvement of a jeep bearing registration No. MH-21-A-9005, owned by present Respondent No.1.

3) Appellant No.1 is widow of deceased

Prabhakar Joshi, whereas appellant No.2 to 4 are children of deceased Prabhakar.

4) In the claim petition, it was the contention of the claimants that the alleged accident had happened because of negligence on part of the driver of the offending jeep. As further averred in the petition, when deceased Prabhakar was proceeding on his bicycle, he was dashed by the offending jeep from his behind and in the accident so happened, Prabhakar received severe injuries and though he was immediately hospitalized, ultimately succumbed to the accidental injuries on 16.11.1997 while undergoing the treatment in the hospital.

. As averred in the claim petition, age of deceased Prabhakar was 47 years at the time of the alleged accident and he was drawing monthly salary to the tune of Rs.3,503/-. It was further averred that beyond the office hours, deceased Prabhakar used to do some private work and out of the said work, used to earn around Rs.1200/- per

month. The claimants had, therefore, claimed the compensation of Rs.7,00,000/- from the respondents.

5) In order to substantiate the claim so made, appellant No.1 – Meenakshi had deposed before the Tribunal and the relevant police papers pertaining to the accident in question were also filed on record. The salary certificate of deceased Prabhakar was also filed.

. The claimants had also examined one Anil Pandurang Thatte in order to prove that deceased Prabhakar was working as part-time worker with him in his workshop and was earning around Rs.1200 to 1300 per month by way of remuneration. No evidence was adduced by the respondents.

6) The learned Tribunal, after having assessed the oral and documentary evidence brought on record by the claimants, awarded the compensation of Rs.3,36,384/- inclusive of NFL compensation. Aggrieved by the judgment

delivered by the Tribunal, the claimants have preferred the present appeal seeking enhancement in the amount of compensation.

7) Shri Soman, The learned Counsel for appellants has assailed the impugned judgment on various grounds. The learned Counsel submitted that the Tribunal has grossly erred in not considering the income being earned by deceased Prabhakar by way of part-time work, which he was doing in the welding workshop. The learned Counsel further submitted that the claimants had adduced convincing evidence to establish that deceased Prabhakar was doing part time work beyond the office hours and was earning around Rs.1200 to 1300 per month.

. The learned Counsel further submitted that there was no reason for the Tribunal to disbelieve and discard the evidence of PW 2 – Anil Pandurang Thatte since in the cross-examination of the said witness also, no such material has come on record so as to disbelieve

his testimony. The learned Counsel further submitted that the Tribunal has failed in not considering the future prospects of deceased Prabhakar while determining the amount of compensation.

. Placing reliance on the two judgments of the Hon'ble Apex Court, first in the case of Smt. Sarla Verma and Ors. Vs. Delhi Trnsport corporation and Anr. - AIR 2009 SC 3104 and other in the case of Rajesh & Ors. vs Rajbir Singh and Ors. - (2013) 9 SCC 54, the learned Counsel submitted that deceased Prabhakar was in the permanent government employment and was entitled for regular increments and as such, the Tribunal must have considered the said aspect and have determined the amount of compensation accordingly.

8) The learned Counsel further submitted that the Tribunal has also erred in applying the multiplier of 12 when in view of the judgment delivered by the Hon'ble Apex Court in the case

of Sarla Verma (cited supra), the appropriate multiplier would have been of 13 considering the age of deceased Prabhakar. The learned Counsel further submitted that the Tribunal has also erred in deducting 1/3 of the income of the deceased towards personal expenses. The learned Counsel, therefore, prayed for enhancement in the amount of compensation on the aforesaid grounds and to modify the impugned award to the said extent.

9) Though the respondents are duly served, have not entered their appearance in the matter.

10) In the light of the submissions made by learned Counsel appearing for the appellants, I read the impugned judgment. It is apparently revealed that the amount of compensation needs to be enhanced in the present matter on some counts. Admittedly, deceased Prabhakar was in the Government employment as a Welder and on the date of death, he was earning the monthly salary of

Rs.3,503/-. It is further not in dispute that at the time of his death, age of deceased Prabhakar was of 47 years.

. Considering the aforesaid facts, in view of the law laid down in the case of Sarla Verma, as well as Rajesh Vs. Rajbir Singh (cited supra), while computing the amount of dependency compensation, the actual income of deceased Prabhakar will have to be enhanced by 30%. Admittedly, deceased Prabhakar was drawing salary to the tune of Rs.3,503/- at the time of his death. Thus, 30% of the same comes to Rs.1051/-, which amount will have to be added in his monthly salary and thus the income of deceased comes to Rs.4554/- and the compensation will have to be assessed on the said amount.

11) In view of the law laid down by the Hon'ble Apex Court in the case of Sarla Verma, only 1/4th of total income of the deceased was liable to be deducted towards his personal expenses. The Tribunal has deducted 1/3rd of such

amount while determining the amount of compensation. Considering the monthly income of the deceased to the tune of Rs.4554/-, as determined herein above by adding the prospective income in the monthly income, if $1/4^{\text{th}}$ amount is deducted, the amount of Rs.3,415=50 ps, which annually comes to Rs.40,986/- can be said to be available to be spent by the deceased on the maintenance and welfare of his dependants.

12) Having regard to age of deceased Prabhakar, the appropriate multiplier will be of 13. By applying the said multiplier, the amount of dependency compensation comes to Rs. 5,32,818/-.

13) The Tribunal has awarded a sum of Rs.10,000/- towards non-pecuniary damages, i.e. loss of consortium, loss of estate, funeral expenses etc. The amount so awarded is quite inadequate. I deem it appropriate to enhance it to the tune of Rs.50,000/-. Thus, the appellants are entitled for the total

compensation to the tune of Rs.5,82,818/-. In the facts and circumstances of the case, it appears to me that this will be just and fair compensation payable to the appellants.

14) Though it was canvassed by learned Counsel for the appellants that the Tribunal has not considered the income, which deceased Prabhakar was earning by doing extra work, I do not see any substance in the submission so made since the said fact has not been duly proved by the appellants.

15) In the result, the following order, -

ORDER

- i) The appellants are held entitled to the total compensation of Rs.5,82,818/-, inclusive the amount of no fault liability compensation;
- ii) Respondent Nos. 1 to 4 shall jointly and severally pay the aforesaid amount of compensation, deducting there from the

amount of compensation already paid under NFL, together with interest thereon @ 7 $\frac{1}{2}$ % per annum from the date of application till its realization;

iii) The Award be modified accordingly;

iv) The appeal stands partly allowed in the aforesaid terms. Pending Civil application, if any, stands disposed of.

(P . R . BORA)
JUDGE

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