

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 231 OF 2004

1. Nirmalabai w/o Ramesh Khandarkar,
Age 35 years, Occ. Household,
R/o. N-5, K-28, CIDCO,
New Aurangabad.
2. Kiran s/o Ramesh Khandarkar
Age 14 years, Occ. Education,
- 3, Ku. Ashwini d/o Ramesh Khandarkar
Age 9 years, Occ. Education,

(Appellant Nos. 2 and 3 are minors
U/g of appellant No.1 real mother)
4. Sau. Kausalyabai w/o Sonaji Khandarkar
(deceased through L.Rs.)
- 4-A Vaijnath s/o Sonaji Khandarkar
Age major, Occ. Nil,
R/o. Deolgaon Mahi/ Tq. Deolgaon Raja
District Buldhana.
- 4-B Badrinath s/o Sonaji Khandarkar
Age major, Occ. Nil,
R/o. Mayur Park, Hudco,
Aurangabad, Dist. Aurangabad.
5. Sonaji s/o Keshav Khandarkar
(Died) ...Appellants.

Versus

1. M/s. Mediators and Ajintha
Securities Pvt. Ltd. Aurangabad
MIDC, G-39, Chikalthana,
Aurangabad.
2. Jivan Hilalsingh Shishode,
Age major, Occ. Driver,
R/o. Pimpalgaon Kolathi,
Tq. Jamner, District Jalgaon.

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3. The United India Insurance Company, Aurangabad.
 4. The Divisional Controller, M.S.R.T.C. Division, Aurangabad.
 5. Aziz Khan s/o Abdul Khan, Age major, Occ. Driver, R/o. Aurangabad.
- ...Respondents

WITH
FIRST APPEAL NO. 232 OF 2004

1. Smt. Rohini w/o Chandrakant Kulkarni, Age 34 years, Occ. Household, R/o. N-7, G-1, Room No. 211, CIDCO, Aurangabad.
 2. Ku. Janvi d/o Chandrakant Kulkarni, Age 14 years,
 3. Ku. Kalyani d/o Chandrakant Kulkarni, Age 7 years,
 4. Digambar s/o Chandrakant Kulkarni Age 12 years,
- All Occ. Education and all under guardianship of mother Rohini w/o Chandrakant Kulkarni i.e. appellant No.1
- ...Appellants

Versus

1. M/s. Mediator and Ajintha Securities pvt. Ltd. Aurangabad MIDC. G-39, Chikalthana, Aurangabad
2. Jivan Hilalsingh Shishode Age major, Occ. Driver R/o. Pimpalgaon Kolathi, Tq. Jamner, District Jalgaon.
3. The United India Insurance Company, Aurangabad.

4. The Divisional Controller,
M.S.R.T.C. Division, Aurangabad.

5. Aziz Khan s/o Abdul Khan,
Age major, Occ. Driver,
R/o. Aurangabad.

...Respondents

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Advocate for Appellants : Mr. Anil A Joshi
Advocate for Respondent No.3 : Mr. S.V. Kulkarni
Advocate for respondent No. 4: Smt. Ranjana Reddy
.....

CORAM : V. K. JADHAV, J.
DATED : 3rd MAY, 2016

ORAL JUDGMENT:-

1. Both the appeals arise out of the awards in respect of same accident, and therefore, the same are being decided by this common judgment.

2. Being aggrieved by the judgment and awards dated 29.9.2000 passed by learned Member, M.A.C.T. Aurangabad in M.A.C. No. 426 of 1996 and 6 of 1997, respectively, original claimants in both the claim petitions have preferred these two separate appeals.

3. Brief facts, giving rise to these appeals, are as under:-

a) On 15.6.1996, deceased Chandrakant and deceased Ramesh were travelling in a jeep bearing registration No. MH-20-E-9466 towards hill station Mhaismal. On way, near Daultabad fort, one S.T.

Bus was coming from opposite direction. The drivers of both the vehicles did not take care and because of their rash and negligent driving, the accident had taken place. In consequence of which, Ramesh and Chandraknat both were died on the spot. The legal representatives had filed two separate claims petitions, as aforesaid, before the tribunal for grant of compensation under various heads.

b) Respondent Nos. 1 and 2 remained absent though duly served. Respondent No.3-insurer resisted the claim petitions by filing written statement. According to respondent No.3-insurer, the driver of S.T. bus alone was responsible for the accident. It is further contended that driver of the jeep was not having valid and effective driving licence and therefore, owner of the jeep has committed breach of conditions of policy. Respondent No.4 and 5 jointly resisted the claim petitions by filing written statement in both the claim petitions. According to them, driver of the jeep was responsible for the accident alone and S.T. bus driver was not at fault. Learned Member of the Tribunal, Aurangabad, by its impugned orders dated 29.9.2000, held that both the drivers are equally responsible for the accident, and accordingly directed respondent Nos. 1 to 3 jointly and severally to pay 50% of compensation amount as worked out by the Tribunal and further directed respondent Nos. 4 and 5 jointly and severally to pay remaining 50% amount to the claimants in both the

claim petitions.

c) Being aggrieved to the extent of quantum, the original claimants have filed these two separate appeals as aforesaid. The respondents have not preferred any appeal to the extent of their contributory negligence as held by the Tribunal, nor have they preferred any cross objection to the first appeals. It is, thus, not disputed now that the accident took place due to rash and negligent driving by respondent Nos. 2 and 5 i.e. driver of the jeep as well as the driver of S. T. bus.

4. Learned counsel for the appellants in first appeal No. 231 of 2004 submits that the tribunal has not considered the addition of income of deceased by way of future prospects. Deceased Ramesh was serving in CIDCO office and he was getting salaried income. He was having permanent job and he was 39 years of old at the time of his accidental death. Deceased Ramesh was drawing salary for Rs.5445/- p.m. In view of this, the Tribunal ought to have considered the addition in his income to the extent of 50% by considering future prospects. The tribunal has erroneously applied multiplier 12 instead of 15. In the case in hand, considering the age of deceased, the appropriate multiplier would be 15 and not 12. Furthermore, in view of the total number of dependents i.e. claimant No.1-the widow,

claimant Nos. 2 and 3-the minor children and claimant Nos. 4 and 5-the parents, though may not be alive and died during pendency of the appeal, the tribunal should have considered deduction of $\frac{1}{4}^{\text{th}}$ amount from the income of deceased towards personal expenses instead of $\frac{1}{3}^{\text{rd}}$. The Tribunal has also not awarded compensation under non pecuniary heads and only awarded meager amount for loss of consortium.

5. Learned counsel for the appellants in first appeal No. 232 of 2004 submits that deceased Chandrakant was serving as a Security guard on monthly income of Rs.4000/- by way of salary. The tribunal has not considered the addition of income by way of future prospects. Deceased Chandrakant was 35 years old at the time of his accidental death. The tribunal should have considered 50% addition in income by way of future prospects. Further, the tribunal has deducted $\frac{1}{3}$ amount towards personal expenses of deceased by ignoring the number of claimants. Claimant No.1 is the widow and claimant Nos. 2 to 4 are the minor children. In view of this, the tribunal ought to have deducted $\frac{1}{4}^{\text{th}}$ amount towards personal expenses instead of $\frac{1}{3}^{\text{rd}}$. The tribunal has also not awarded compensation under non pecuniary heads and awarded meager amount for loss of consortium.

6. The learned counsel for respondent-insurer and the learned counsel for respondent - M.S.R.T.C. submit that the tribunal has awarded just and reasonable compensation by considering the income and age of the deceased and dependency of the claimants. The tribunal has also awarded compensation under non pecuniary heads. There is no substance in the appeals and both the appeals are liable to be dismissed.

7. So far as deceased Ramesh is concerned, he was serving as Assistant in CIDCO office on permanent basis. He was 40 years old at the time of his accidental death. In view of this, the Tribunal should have considered 30% of addition in his salaried income by way of future prospects. Furthermore, the widow, the minor children and the old aged parents had preferred claim petition. In view of the same, the tribunal should have deducted 1/4th amount from the income of deceased towards his personal expenses instead of 1/3rd. Furthermore, considering the age of deceased Ramesh the Tribunal should have applied multiplier 15 instead of 12. Deceased Ramesh was drawing monthly salary for Rs.5445/-. By addition 30% towards future prospects and thereafter by deducting 1/4th amount towards his personal expenses, the monthly comes to Rs.5309/-. Consequently, recalculation of compensation is required to be done.

8. In first appeal No. 232 of 2004, deceased Chandrakant was serving as security guard in CIDCO office. Except his salary certificate, no other document is produced on record, nor the claimants have examined any other employee from CIDCO office to substantiate their contention that deceased Chandrakant had future prospects while serving as a security guard. Though claimant No.1 has stated in her cross examination that at the time of accidental death of deceased Chandrakant, he was serving as supervisor, however, the same is contrary to the salary certificate produced on record. It is clear from the salary certificate of deceased Chandrakant that he was serving as security guard on monthly salary. In absence of any positive evidence, I am not inclined to consider the addition of income by way of future prospects in this case. However, the Tribunal ought to have considered $\frac{1}{4}^{\text{th}}$ deduction towards personal expenses from the income of deceased instead of $\frac{1}{3}^{\text{rd}}$. Furthermore, the tribunal has committed an error in applying multiplier 14 instead of 16. Deceased Chandrakant was drawing monthly salary for Rs.2909/-. By deducting $\frac{1}{4}^{\text{th}}$ amount towards his personal expenses, the monthly income comes to Rs.2182/-. Consequently, recalculation of compensation is required to be done in this appeal also.

9. In both the appeals, the claimants are entitled for

compensation under non pecuniary heads, such as loss of estate, loss of love and affection for the minor claimants, some more amount for loss of consortium and funeral expenses. Claimant No. 1 in both the appeals are entitled for an amount of Rs.25,000/- for loss of consortium, the minor children Rs.10,000/- each for loss of love and affection, Rs.10,000/- for funeral expenses. Learned counsel for the respondents submit that so far as the enhanced compensation by way of recalculation is concerned, interest should be granted at the rate of 9% p.a. Learned counsel for the appellants has no objection for the same.

10. In view of the above discussion, the break up of compensation, which can be broadly categorized as under:-

A) In first appeal No. 231 of 2004 (Smt. Nirmalabai Ramesh Khandarkar and others vs. M/s. Mediators and Ajintha Securities Pvt. Ltd. and others)

I)	Loss of future income/ Dependency (Rs.5309X12X15)	: Rs. 9,55,620.00
II)	Loss of consortium	: Rs. 25,000.00
III)	For love and affection for 2 Minor children (Rs.10000x2= 20,000)	: Rs. 20,000.00
IV)	For funeral expenses	: Rs. 10,000.00

		Rs.10,10,620.00
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(Rupees Ten lacs ten thousand six hundred and twenty only).

B) In first appeal No. 232 of 2004 (Smt. Rohini Chandrakant Kulkarni and others vs. M/s. Mediators and Ajintha Securities Pvt. Ltd. and others).

I)	Loss of future income/ Dependency (Rs.2182X12X16)	: Rs. 4,18,944.00
II)	Loss of consortium	: Rs. 25,000.00
III)	For love and affection for 3 Minor children (Rs.10000x3= 30,000)	: Rs. 30,000.00
IV)	For funeral expenses	: Rs. 10,000.00

		Rs. 4,83,944.00
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(Rupees Four lacs eighty three thousand nine hundred and forty four only).

11. In the light of above, I proceed to pass the following order:-

O R D E R

- I. The first appeal No. 231 of 2004 (Smt. Nirmalabai Ramesh Khandarkar and others vs. M/s. Mediators and Ajintha Securities Pvt. Ltd. and others) and first appeal No. 232 of 2004 (Smt. Rohini Chandrakant Kulkarni and others vs. M/s. Mediators and Ajintha Securities Pvt. Ltd. and others) are hereby partly allowed with proportionate costs.

- II. The judgment and award dated 29.9.2000 passed by the learned member, M.A.C.. Tribunal, Aurangabad in M.A.C. No. 426 of 1996 is modified in the following manner:

“The respondent Nos. 1 to 3 do pay jointly and severally 50% of the amount i.e. Rs.505310/- to the claimants in first appeal No. 231 of 2004 and Rs.241972/- to the claimants in first appeal No. 232 of 2004.

Respondent Nos. 4 and 5 do pay jointly and severally 50% of the amount i.e. Rs.505310/- to the claimants in first appeal No. 231 of 2004 and Rs.241972/- to the claimants in first appeal No. 232 of 2004.

The enhanced amount as per the modified award shall carry interest at the rate of 9% p.a. from the date of filing of the appeals till realization of the entire amount.”

- III. Award be drawn up in tune with the modification, as aforesaid.
- IV. Both the first appeals are accordingly disposed of.

(V. K. JADHAV, J.)

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