

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 2654 OF 2015

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| 1 | Pramilabai W/o Murlidhar @ Bhaskar Sadbhave, Aged 44 Years, Occupation Household, Resident of Shivaji Chauk, At Post Village Pal, Taluka Phulambri, District Aurangabad | APPELLANTS |
| 2 | Murlidhar @ Bhaskar S/o Shridhar Sadbhave, Aged 57 Years, Occupation Nil, Resident of as above | |
| 3 | Sandeep S/o Murlidhar @ Bhaskar Sadbhave, Aged 30 Years, Occupation Driver, resident of as above | |

V E R S U S

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| 1 | Shaikh Aslam S/o Shaikh Shabbir, Aged Major, Occupation Driver, Resident of Mategaon village, Post Kasabkheda, Taluka Kannad, District Aurangabad
AND
ABR Transport Company, Mondha, Post, Taluka and District Aurangabad | RESPONDENTS |
| 2 | Mustakbhai S/o Najirbhai Shaikh, Aged Major, Occupation Business, Resident of Plot No. 12, Near Krishna Park Society, Santosh Nagar, Channi Road, At Post Taluka and District Baroda, State Gujrat | |

- 3 Shriram General Insurance Company Ltd.,
Through its Branch Manager, Branch Office,
Near R.C. Bafna Jewelers, Shriram Chits
Maharashtra Ltd. Bagla Chambers, II Floor,
Opp. S.F.S. High School, C.T.S. No. 12484,
At Post Taluka and District Aurangabad

Mr. Saneep B. Rajebhosale, Advocate for the Appellants
Mr. Patel Sameer F., Advocate for Respondent Nos.1 & 2 absent
Mr. V.N. Upadhye, Advocate for Respondent No. 3

CORAM : A.V. NIRGUDE, J.

DATE : 26th August, 2016

ORAL JUDGMENT :

1. Heard.

2. Admit.

3. By consent of the learned counsel for the Appellants and learned counsel for Respondent No.3, this appeal is taken up for final hearing. Heard finally.

4. This is a Claimants' Appeal seeking enhancement of compensation awarded on account of death of their son in a motor accident.

5. The appellants are challenging the correctness of Judgment and Award in M.A.C.P. No. 402 of 2011 dated 18th January, 2014, passed by the learned Member, Motor Accident Claims Tribunal, Aurangabad.

6. The case reflected in the pleadings of the appellants is that their son Manoj died on 23rd February, 2011, in a motor accident, on a public road. He was one of the passengers of a Motor-Car, which suffered collision with a truck resulting into Manoj's death and other casualties. The appellants contended that Manoj was in a private service and was getting salary of Rs.4,000/- per month. In the petition, they did not mention as to with whom Manoj was working. At the time of recording evidence, appellant no. 1 entered the witness-box and stated on oath that Manoj was working with one Subhash as Driver-cum-Assistant for Rs.4,000/- per month. The learned Member however discarded this part of the evidence. He held that the depositions of the above referred witnesses are not reliable mainly because Subhash did not give particulars of the amount which he paid as salary. Besides in the pleadings, name of the employer was not mentioned though it was a statutory requirement. The learned Member came to a conclusion that Manoj's notional income was Rs.3,000/- per month and then on the basis of such figure, calculation was made.

7. The first question that arose for my consideration is, whether appellants would prove that Manoj was a salary earner and was getting salary of Rs.4,000/- per month? Having gone through the evidence and other documents that are annexed to the record and proceedings, I have no doubt in my mind that the witnesses referred above are not lying about status of Manoj as Driver-cum-Assistant of witness Subhash. It is not a case as asserted by the learned counsel for respondent no.3 that the appellants tried to fill-up a gap at the time of 11th year at the time of recording of evidence. Since beginning they came with a plea that Manoj

was a salary earner and was working. Even, though they did not provide the name of the employer, it cannot be said that their case that Manoj was a salary earner is false. More particulars about Manoj's employment were supplied at the time of recording of evidence. In a case of this nature, the evidence is required to be appreciated in the circumstances of the case. Assuming there is no documentary proof that Manoj was working as Driver-cum-Assistant of witness Subhash, one must look at other circumstances.

8. Admittedly, Manoj had a driving licence. Manoj admittedly was not related to Subhash in whose Car he was traveling at the time of incident. Manoj was only 23 years old and would certainly not sit at home without a job. There was thus possibility that Manoj would work and with the help of his driving skills, he would work as a driver on a private vehicle. Such a young man would eventually hope to get proper job as driver either with Government or in a Company where he would have security for the job. I am therefore inclined to believe the evidence of the witnesses, referred to above. I hold that Manoj was earning Rs.4,000/- per month as salary.

9. As regards the future prospect, the learned counsel for respondent no. 3-Insurance Company tried to suggest that the Supreme Court has referred the issue of the future prospect of Larger Bench and therefore I should not award any compensation under the head of future prospect. He also pointed out that there is no pleading about future prospect etc. But, I do not agree with these submissions. There is settled law that the compensation on account of future prospect is payable in

certain cases and this appears to be such case.

10. Learned counsel for the appellants also asserted that the compensation on account of future prospect of Manoj is also required to be awarded to the appellants. If the Court comes to the conclusion that Manoj was earning salary, then there was always possibility that Manoj was trying to make progress in his career as driver and had a better future. In other words, even as a Driver-cum-Assistant, Manoj had future prospect to rise in his life and to secure a better employment. In this case, Manoj was only 23 years old, therefore, the appellants are entitled to 50% as addition to actual salary. In view of this, I am inclined to calculate the compensation as under and proceed to pass the following order :-

ORDER

- (1) The First Appeal stands allowed.
- (2) The claimants are entitled to get Rs.3,000 X 12 X 18 = Rs.6,48,000/-. In addition to this amount, whatever is awarded by the learned Member would remain intact.
- (3) The Award be amended accordingly.

(A.V. NIRGUDE, J.)

