

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

904 FIRST APPEAL NO.2067 OF 2015
WITH CA/9842/2015 IN FA/2067/2015

PADMABAI LAXMANRAO KULKARNI
VERSUS
SUPRIYA SURESH KULKARNI AND OTEHRS

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Advocate for Appellant : Mr. Godhamgaonkar P.G.
Mr. Deshpande Avinash S., Adv. For Resp 1;
Mr. Dahat Rohit H Adv. For Resp 2.

CORAM : P.R.BORA, J.

DATE : 2nd August, 2016.

PER COURT :

1) Heard. The present appeal is filed taking exception to order dated 16th July, 2015 passed by the learned Member of Motor Accident Claims Tribunal, Majalgaon (for short, the Tribunal), in MACP No.22/2011.

. The aforesaid Claim Petition was filed by Respondent No.1 claiming compensation on account of accidental death of one Suresh Kulkarni. The present appellant is mother of deceased Suresh; whereas Respondent No.1 is widow of deceased Suresh.

2) In the present appeal an objection is raised as regards to the apportionment of compensation amongst the present appellant and Respondent No.1. The learned Tribunal has awarded 80% of the total amount of compensation to Respondent No.1; whereas 20% amount of the compensation is awarded to the present appellant.

3) Shri Godhamgaonkar, learned Counsel appearing for the appellant, submitted that the apportionment so made is apparently illegal and unsustainable. The learned Counsel submitted that since the mother and the widow were only two legal heirs of deceased Suresh, the learned Tribunal ought to have apportioned the amount of compensation in equal shares. The learned Counsel submitted that even having regard to the other evidence, which was brought on record, the apportionment ought to have been made in equal share. The learned Counsel submitted that the widow of deceased Suresh is receiving family

pension as well as is also receiving rental income from the properties which were in fact the ancestral properties, but were in the name of deceased Suresh.

4) The submission so made on behalf of the appellant is opposed by the learned Counsel appearing for Respondent No.1. The learned Counsel submitted that the apportionment so made by the Tribunal is just and reasonable and the same does not warrant any interference. The learned Counsel further submitted that even the present appellant is also receiving family pension and she is also having house property wherein she is residing. The learned Counsel, therefore, prayed for dismissal of the appeal.

5) After having considered the submissions advanced by the learned Counsel appearing for the respective parties and on perusal of the material on record and further having gone through the discussion made by the learned

Tribunal while making apportionment of the amount of compensation interse the present appellant and Respondent No.1, it appears to me that some modification is required in the apportionment so made. Though the learned Counsel for the appellant was persuasive in submitting that the apportionment may be in equal shares, the contention raised cannot be accepted in view of the fact that the appellant is aged about 72 years old as mentioned in the present appeal and the age of Respondent No.1 is stated to be 40 years. However, considering the requirements of the appellant and Respondent No.1, it appears to me that if the apportionment is made in proportion of 65:35, that will meet the ends of justice. The widow/Respondent No.1 has to lead her entire life without any support. Though she may be receiving family pension for all othoer purpose monetary assistance will be required. Same will be in respect of the appellant also. However, considering the life span of the appellant and Respondent No.1, according to me,

if the Award is modified, awarding 35% of the total compensation to the appellant and 65% to Respondent No.1, that will meet the ends of justice. In the result, following order, -

ORDER

i) The impugned Award is modified to the extent of apportionment of compensation amongst appellant and Respondent No.1;

ii) The appellant be awarded 35% of the total amount of compensation, out of which 50% amount shall be invested in Fixed Deposit Receipt in her name in any nationalized Bank for a period of two years and balance 50% be paid to her by way of Account Payee cheque;

iii) 65% of the total amount of compensation shall be paid to Respondent No.1, out of which 60% of the amount shall be invested in any nationalized bank in her name for a period of five years and 40% be paid to her by way of Account payee cheque;

- iv) The Award be accordingly modified;
- v) The appeal stands partly allowed and disposed of in aforesaid terms;
- vi) Pending civil application, if any, stands disposed of.

sd/-
(P.R.BORA)
JUDGE

bdv/