

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4280 OF 2016

1. Indubai Wd/o. Dharma Rathod,
Age: 30 years, Occ: Household,
C/o Babasaheb Chavhan, Pitori
Sirasgaon Tanda, Tq. Ambad,
Dist. Jalna.
2. Umesh S/o. Dharma Rathod,
Age: 15 years, Occu: Education,
R/o. As above.
3. Rani d/o. Dharma Rathod,
Age: 12 years, Occu: Education,
R/o. As above.
4. Dinesh S/o. Dharma Rathod,
Age: 10 years, Occu: Education,
R/o. As above.

No.2 to 4 being minor U/G of real
mother Indubai Wd/o. Dharma Rathod ... Appellants

Vs.

1. The Divisional Manager,
Maharashtra State Road Transport
Corporation Limited,
Through its Divisional Manager,
Jalna.
2. Madan S/o. Revji Chavan,
Age: 43 years, Occ: S.T. Driver,
R/o. Ganesh Nagar, Mastgadh,
Jalna. ... Respondents

...
Advocate for Appellants : Deshmukh Mohit R.
Advocate for Respondents : Bagul D. S. For R/1
...

CORAM : P.R. BORA, J.
DATE : 08-12-2016.

ORAL JUDGMENT :

1. Considering the objections raised in the present appeal in exception to the impugned judgment and award it does not appear to me that the service of summons on respondent no.2 is must. As such, service on respondent no.2 is exempted.

2. With consent of the learned counsel appearing for the parties the appeal is taken up for final disposal at the admission stage. The present appellants had filed M.A.C.P. No. 103 of 2013 before the Motor Accident Claims Tribunal at Jalna (hereinafter referred to as 'Tribunal') claiming compensation on account of death of one Dharma Rathod in a vehicular accident happened on 28.03.2013 having involvement of S.T. Bus bearing registration no. MH-06-S-8771 owned by M.S.R.T.C. In the present appeal the only challenge is to the observations made by the learned tribunal in para 20 of the judgment, whereby, the tribunal has declined to award the compensation of Rs. 16,02,000/- on the ground that the claimants had restricted the claim to the tune of Rupees Ten Lakhs and had paid the court fees on the said amount.

3. I have gone through the observations made by the tribunal in para 20 of the judgment. The tribunal has recorded a clear finding that the applicants are entitled for total compensation of Rs. 16,02,000/-. In the earlier paragraphs of the impugned judgment, the tribunal has recorded the reasons for determining

the aforesaid amount of compensation. However, the tribunal has further observed that, though, the applicants are entitled for the total compensation of Rs. 16,02,000/- since the applicants/claimants did not amend their claim petition and have restricted their claim only to the tune of Rupees Ten Lakhs and have paid court fees only on the said amount, they deserve to be granted compensation only to that extent i.e. Rupees Ten Lakhs.

4. The view taken by the tribunal and, consequently, the order passed by the tribunal are apparently unsustainable. After having reached to the conclusion that, the claimants are entitled to the compensation of Rs. 16,02,000/- and after having made the further observation that, the same was just and fair compensation payable to the claimants, the tribunal should not have declined to award the compensation to the tune of Rs. 16,02,000/- on the ground that, the claimants had restricted their claim to Rs. 10,00,000/- and that they had paid the court fees only on the said amount.

5. As held by the Hon'ble Apex Court in the case of **A.P.S.R.T.C. V/s. M. Ramadevi** reported in **A.I.R. 2008 S.C. 1221**, there is no embargo imposed by the Legislature on the Tribunals to grant compensation over and above the amount claimed by the parties in an appropriate case. In fact, it is not the requirement of law under the Motor Vehicles Act for the claimants

to specify the amount of compensation in their claim petition. The duty enjoined on the Tribunal by Section 168 of the Motor Vehicles Act and the relevant provisions thereof is to assess the just amount of compensation payable to the claimants; and it, therefore, follows that the Tribunal is not powerless in making an award even in access of the amount of compensation claimed.

6. In view of the above the impugned judgment needs to be modified and is accordingly modified as below.

ORDER

- i) The appellants/claimants are held entitled for the total compensation of Rs. 16,02,000/- jointly and severally from respondent nos. 1 and 2 with interest thereon @ 7% per annum from the date of filing of the claim petition till its realisation.
- ii) On deposit of the amount, Rs. 4,00,000/- be paid to appellant/claimant no.1, namely Indubai widow of Dharma Rathod by an account payee cheque.
- ii) The balance amount be invested in F.D.R. in the names of appellants/claimants no. 2 to 4 in equal proportion for the period till the respective minor claimants attain the age of majority.
- iii) Modified award be drawn accordingly.
- iv) Before preparation of the modified award, the

deficit court fees be recovered from the
appellants/claimants.

- v) The appeal stands allowed in the aforesaid terms.

(P.R. BORA)
JUDGE