Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 702 OF 2001

Smt. Ratnawati Vithal Shetty & Ors. ... Appellants
Vs.
Mrs. V. Angammal, w/o Virappan & Anr. ... Respondents

Mr. T.S. Ingale, Advocate for the appellants.
Smt. Urmila Sanil, Advocate for respondent no. 2.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: 8th **January, 2016.**

ORAL JUDGMENT:

This Appeal is directed against the judgment and award dated 29th July, 2000 passed by the learned Member, Motor Accident Claims Tribunal, Kolhapur in M.A.C.P. No. 354 of 1994, by which the compensation of Rs.1,50,000/- is awarded to the present appellants, who are the original claimants. The appellants have earlier filed the claim of Rs.4,00,000/-, however, they restricted their claim to Rs.3,00,000/-. This Appeal is filed for enhancement.

2. Appellant no. 1 is the wife of deceased Vithal Thimappa Shetty, appellant nos. 2 and 3 are daughters and applicant no. 4 is the mother of the deceased. Deceased Vithal was working as a driver in mini bus bearing no. MH-01-H-5200. He was proceeding from Mumbai to Mangalore and when he reached near village Ghunaki, a motor lorry coming from the

opposite direction gave dash to the bus. The accident took place due to rash and negligent driving of the motor lorry. Vithal died due to accident and so the application for claim was filed. After service, opponent no. 1/owner of the lorry did not appear. The matter proceeded against him ex-parte. Opponent no. 2/National Insurance Company filed written statement and denied the claim. They also raised the ground that theclaim petition is bad for non-joinder of necessary parties. Appellant no. 1/Ratnawati stepped in the witness box and gave evidence on the point of accident and earning of Vithal and their dependency. The learned Member of the Tribunal considered the pleading, heard the evidence and fixed the compensation for Rs.1,50,000/-. Being aggrieved by the award passed by the learned Member of the Tribunal, the appellants have filed this Appeal.

3. The point of determination is whether the appellants are entitled to enhance the compensation.

4. The learned counsel for the appellants has submitted that while deciding the appeal, the learned Member of the Tribunal did not appreciate the evidence of appellant no. 1 properly. While deciding compensation, the learned Member did not consider the heads under which the compensation is required to be granted. The amount granted is 50% of the amount

claimed and it is to be set aside. He submitted that the evidence of Ratnavati discloses that deceased was earning Rs.3,000/- p.m. and that evidence ought to have been believed by the learned Member of the Tribunal. In support of her evidence, a certificate (Exhibit 24) for Rs.3,000/- of Ashoka Travels is produced is ought to have been considered by the learned Member. She further submitted that no compensation is awarded for future prospects, for love and affection and consortium. No money for funeral expenses is also awarded. He submitted that on this count, the amount of compensation can be enhanced.

5. The learned counsel for the insurance company opposed the Appeal. She submitted that the insurance company has taken a very specific stand in the written statement that necessary parties are not joined in this Appeal when two vehicles were involved in the accident. She submitted that the learned Member of the Tribunal has rightly rejected the salary certificate showing salary of Rs.3,000/- p.m. She submitted that as the employer was not examined, the monthly income ought to have been fixed on the basis of Minimum Wages Act and in the year 1991 it was Rs.1,000/-. Thus, on that basis further calculation if made comes to Rs.1,80,000/- and for loss of love and affection and funeral charges even considered as Rs.25,000, the amount will not be more than Rs.2,05,000/-. She submitted that the

compensation awarded is just and adequate and no enhancement can be granted.

6. Read the evidence of Ratnawati and the judgment passed by the learned Member of the Tribunal. The reasoning given by the learned Member of the Tribunal is cryptic and has not fixed the compensation of other heads, which is required to be awarded. The learned Member of the Tribunal has stated that the amount of Rs.3,000/- p.m. income cannot be accepted because the accident has taken place on 6th November, 1991 and the certificate was issued on 15th March, 1993 and therefore has not believed that evidence. Though the view taken by the learned Member of the Tribunal that the amount of Rs.3,000/- cannot be accepted, it is necessary to fix some monthly amount for the purpose of calculation. The amount of compensation cannot be fixed as lumpsum but it is necessary to show a process of thinking and calculation and conclusion arrived thereafter by the learned Member while fixing the compensation. The salary certificate is issued by Ashoka Travels which is produced by appellant no. 1. Though the person who issued the certificate is not examined, the fact that deceased Vithal died when he was driving the vehicle owned by Ashoka Travels. Being a driver, it can be safely considered that he was drawing a salary of Rs.2,000/- p.m. In the evidence

of Ratnavati it was mentioned that Vithal was getting daily allowance and as per the certificate, it appears that he was getting daily allowance of Rs.100/-. It can be held that the fact of receipt of daily allowance can be accepted, however, overall allowance can be considered as Rs.500/- p.m. then the salary can be fixed at Rs.2,500/- p.m., which comes to Rs.30,000/-. Deceased Vithal was 40 years of old at the time of death, so multiplier 15 is to be adopted. Thus, Rs. 30000 X 15 comes to Rs.4,50,000/-. The Appeal is filed by Ratnawati, two children and mother, therefore, deduction on personal expenses can be 1/4th, which comes to Rs.1,12,500/- per person. Thus, total income comes to Rs.4,50,000 – 1,12,500 = Rs.3,37,500/-. He was a driver, therefore, I take it as 10% future prospects, which comes to Rs.33,750/-. Thus, loss of income is Rs.3,71,250/-. Towards loss of love and affection and consortium, amount of Rs.25,000/- can be awarded and Rs.4,000/- for funeral expenses, which comes to Rs.4,00,250/-. Interest @ 12% is already given on the enhanced amount. The insurance company shall pay interest @7.5%. Thus, the Appeal is allowed.

(MRIDULA BHATKAR, J.)