

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.992 OF 2001

Saraswati Lalchand Gupta & anr. ... Appellants

Vs.

M/s.Elbee Services Ltd. & anr. ... Respondents

Mr.T.J. Mendon for the Appellant
None for Respondents

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **14th JANUARY, 2016**

ORAL JUDGMENT:

1. This is an appeal for enhancement of the compensation against the judgment and order dated 29.6.2000 passed by the learned Chairman, Motor Accident Claims Tribunal, Mumbai.

2. It is a death claim filed by the appellant widow and the then minor son for death of one Lalchand Gupta who died in the accident on 31.12.1994 at Santacruz. He was pillion rider on the motor cycle. A Maruti van bearing No.MH-04-E-1216 gave dash to the motor cycle and he died on the spot. Compensation was claimed upto Rs.3,50,000/- and the Tribunal has awarded the compensation of Rs.1,32,000/-. Hence, the claim for enhancement.

3. Learned Counsel for the applicants submitted that the Tribunal has fixed the income on a lesser side. He was a Chana – Peanut vendor and he used to earn Rs.100 per day and his income was Rs.3,000/-. He further submitted that it is wrongly considered that he was 55 years at the time of death. He relied on the post mortem notes which disclose that the deceased was 42 years of age when he died. He submitted that there is no other evidence to prove the age of the deceased. He relied on the judgment of the Orissa High Court in the **Divisional Manager, New India Assurance Company Ltd. vs. Jasoda Singh Bhadoria & Ors.**¹ and also the judgment of a learned Single Judge in the case of **New India Assurance Co. Ltd. vs. Himmatrao & Ors.**² He further submitted that no compensation is granted towards loss of estate and the amount granted towards consortium is only Rs.5,000/-. He prays for enhancement.

4. None appear for the respondents.

5. I have perused the notes of evidence; the judgment and award so also the cases cited by the learned Counsel for appellant. In respect of the monthly income of the deceased, I am of the view that the learned Tribunal has rightly fixed the earning as Rs.1,500/- per month and has

1 1995 LAB. L.C. 2739

2 2015 ACJ 2836

rightly deducted 1/3rd amount for his personal expenses as there were two dependents. So his dependents' monthly income is rightly fixed at Rs.1,000/-. However, in respect of the age of the deceased, it is mentioned as 55 years as it appeared in the ration card. However, the ratio laid down in the two cases ie., in **Divisional Manager, New India Assurance Company Ltd. vs. Jasoda Singh Bhadoria & Ors.**³ (supra) and of the Bombay High Court (Nagpur Bench) in **New India Assurance Co. Ltd. vs. Himmatrao & Ors.**⁴ (supra), that the age indicated in the post mortem report should prevail unless contrary material is produced to show that it is erroneous in the post mortem, the age of the deceased is considered as 42 years and therefore, that should have been accepted. In view of this, the multiplier as per the judgment of the Supreme Court in the case of **Sarla Verma v. Delhi Transport Corporation**⁵ will be 14.

6. Thus, the total income would be Rs.1000 X 12 X 14 = Rs.168,000. The amount granted towards funeral expenses is maintained at Rs.2,000/-. The amount of consortium is increased from Rs.5,000/- to Rs.25,000/-. Loss of estate is taken as Rs.5,000/- and amount towards loss of love and affection is maintained at Rs.5,000/-. Accordingly, the total compensation payable to the appellants would be Rs.2,05,000/-. As regards the rate of interest @ 10% granted by the Tribunal, it is hereby

3 1995 LAB. L.C. 2739

4 2015 ACJ 2836

5 2009 ACJ 1298 (SC)

confirmed. Thus, the appellants are entitled to a total compensation of Rs.2,05,000/- with interest @ 10% p.a.

7. Appeal is thus partly allowed and disposed of accordingly.

(MRIDULA BHATKAR, J.)