

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1055 OF 2001

The State of Maharashtra & Anr.	... Appellants
Vs.	
Smt. Shantabai Mallappa Chougule & Ors.	... Respondents

Mr. A.R. Patil, AGP for the appellants.
Mr. P.D. Pise, Advocate for respondent nos. 1 to 4.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: 7th January, 2016.

ORAL JUDGMENT:

This Appeal is filed by the State against the judgment and award dated 21st October, 2000 passed by the learned Member, Motor Accident Claims Tribunal, Sangli in M.A.C.P No. 442 of 1990. The respondent no.1 is a widow of deceased Mallappa, respondent nos. 2 and 3 are minor children and respondent no. 4 is the mother of deceased. Deceased Mallappa was riding a bicycle on 8th May, 1990 on Miraj-Pandharpur road and at 6 p.m. a Government vehicle/jeep bearing no. MZG-9246 dashed the bicycle and Mallappa was injured. He was taken to the hospital for treatment but succumbed to injuries on 19th May, 1990. Hence, the claim application was filed for Rs.1,00,000/-. Upon service of notice, opponent nos. 1 to 3 filed written statement and denied the claim on all counts. The appellants/opponent nos. 2 and 3 have tendered evidence of eye witness which is at Exhibit 47 on the point of accident. On the point of earning,

dependency, Shantabai, i.e., wife of deceased, gave evidence at Exhibit 32. Considering the evidence, the learned Member of the Tribunal has fixed the amount of compensation at Rs.1,70,000/- with interest @12% p.a. Being aggrieved by the said judgment and award, the State has filed this Appeal.

2. The point of determination is whether the amount of compensation granted is excessive and the judgment and award passed by the learned Member of the Tribunal is to be set aside.

3. Learned AGP has submitted that the claim was for Rs.1,00,000/- and the learned Member of the Tribunal has erred in coming to the conclusion that the driver was rash and negligent in driving the jeep and the amount is excessive and needs reduction. He submitted that there is no proper appreciation of evidence and so the judgment and award passed by the learned Member of the Tribunal is to be set aside.

4. The learned counsel for the respondents/original claimants is present and supported the judgment and finding passed by the learned Member, Motor Accident Claims Tribunal, Sangli.

5. Perused the judgment and the notes of evidence which are annexed

herewith. The evidence of Annappa Sattyappa Gaste is important on the point of accident as he claims to be an eye witness. He has deposed that he saw the jeep coming in high and excessive speed and it gave dash to the bicycle of the deceased. He saw the accident at the distance of 150 ft. away from the spot. His statement is also recorded by the police. Thus, his presence cannot be doubted. Witness Ashok Krishna Nikam is examined on the point of panchnama. The claimants have proved about the accident and the rash and negligent driving of the jeep. On the point of earning, evidence of Shantabai is important. She said that her husband was 30 years old and he, being a mansion, used to earn Rs.50 to 60/- per day, therefore, she claimed Rs.1,00,000/-. The learned Member of the Tribunal has discussed the entire evidence and has rightly held that the deceased was earning Rs.50/- to Rs.60/- per day, so his income can be considered as Rs.15,000/- per year. $\frac{1}{3}$ rd amount was also rightly deducted towards personal expenses and so his contribution to the family is fixed at Rs.10,000/- per year. The Court has held that it is to be presumed that deceased was 45 years old, which is taken on higher side, even though the claim of his age was 32 years. Thus, the multiplier 15 was adopted for the purpose of calculation and thus, the earning was rightly fixed at Rs.150,000/-. The compensation granted on other counts is found reasonable. Hence, it is just and adequate compensation. No interference

is called for in the judgment and award passed by the learned Member of the Tribunal. Hence the First Appeal is dismissed.

6. If the whole or partial amount is not withdrawn and if it is invested in the nationalized bank, the M.A.C.T., Sangli to verify the compensation and if such application for withdrawal is made by the original claimants, then that is to be entertained and the amount if due to be given immediately.

(MRIDULA BHATKAR, J.)