Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 537 OF 2013

Smt. Nimisha Govind Parab & Anr. ... Appellants
Vs.
Smt. Sushilsingh Lalchandra Singh & Ors. ... Respondents

Mrs. S.V. Sonawane, Advocate for the appellants.
Mrs. Shalini Shankar, Advocate for respondent no. 2.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **20th January, 2016.**

P.C.:

Admit. By consent, the Appeal is heard finally and disposed of at the stage of admission.

2. This Appeal is filed by the original claimants for enhancement against the judgment and award dated 26th October, 2005. The original claimant/widow, son and parents of the deceased filed the claim application, as the deceased Govind Kashiram Parab died in road accident on 1st March, 1992 when he was driving motorcycle on Eastern Express Highway. Near Vikhroli Police Station he was dashed by a dumper No. MH04-C-5038 from the rear side of the motorcycle. Govind died on the spot. He was working as a Sub-Engineer in Mumbai Municipal Corporation and at the relevant time, he was getting salary of Rs.4966.50 paise. The claimants demanded compensation of Rs.10,00,000/-. The notices were

served on both the parties. The insurance company defended the claim. After considering the evidence tendered by both the parties, the learned Member of the Tribunal granted an award of Rs.7,05,000/- with interest @8% p.a. Being aggrieved by the said judgment and award, this Appeal for enhancement of the amount of compensation is filed.

3. The point of determination is whether the amount of compensation is not adequate and can be enhanced.

4. The learned counsel for the appellants has submitted that the learned Member of the Tribunal has not properly appreciated the evidence tendered by the appellants on the point of future prospects of the deceased. She submitted that he was working as Sub-Engineer in B.M.C. He has passed the examination of supervisor. He was drawing net salary of Rs.4966/-. To that effect, the appellants produced salary certificate. She further submitted that appellants examined witness no. 3 Uday Ghanshyam Prabhu, Sr. Clerk in B.M.C, who deposed on the point of future prospects. The learned counsel produced salary certificate dated 8th December, 1999 bearing signature of Deputy Chief Engineer of B.M.C stating that the deceased would have got the salary of Rs.13,874/- in the month of October, 1999. In January, 2000 the deceased would have got the basic salary of

Rs.8,820/-. The deceased was having a bright career and at the time of retirement, he would have got the salary of Rs.21,173/- p.m. The learned counsel further submitted that considering the dependency, the learned Member of the Tribunal has committed error in deducting 1/3rd of the amount for personal expenditure but it should have been 1/4th. She further submitted that the rate of interest awarded is 8%, which is less, but now 9% interest, which is accepted as standard rate of interest, should have been given.

5. The learned counsel for the insurance company opposed this Appeal. She supported the judgment and award passed by the learned Member of the Tribunal. She further submitted that the wife of the deceased has been given job on compassionate ground and that should have been deducted. She further submitted that 1/3rd deduction is correct, as the father of the deceased had retired from Godrej Company and he cannot be called as dependent.

6. A short issue is involved in this matter. Perused the evidence of witnesses and the judgment passed by the learned Member of the Tribunal. The deceased was getting net salary of Rs.4966.50 p.m. Though there are other statutory deductions, the Tribunal in fact has fixed the salary for the

purpose of computation on higher side, i.e., Rs.5000/- p.m. Therefore, increase in salary in future need not to be considered. This is an Appeal for enhancement filed by the claimants, therefore, I consider 50% of the said salary for the purpose of computation of future prospects on the basis of decision in the case of **Sarla Verma and Ors. vs. Delhi Transport Corporation & Anr., reported in (2009) 6 SCC 121.**

7. I cannot appreciate the submissions of learned counsel for the insurance company on the point of deducting the amount of salary which the wife of deceased is getting from the job she secured on compassionate ground. It is a well settled position of law that the person who is appointed on compassionate ground gets salary towards the services rendered and it is not a matter of compassionate.

8. Similarly, the submissions of learned counsel for the appellant that considering the number of dependency, deduction should have been $1/4^{th}$ is not accepted, as $1/3^{rd}$ deduction is rightly applied. I rely on the decision of the Hon'ble Supreme Court in the case of **Rajesh and Ors. vs. Rajbir Singh & Ors., reported in 2013 ACJ 1403**. In the said case, there is a widow and three minor children, so deduction was $1/4^{th}$. In the present case, there is a widow, minor son and mother of deceased, so deduction is

1/3rd. So, the compensation under different heads will be as follows:

1	Salary	Rs.5,000/- p.m.
2	50% of salary to be added as future prospects	Rs.5,000+ 2,500 =Rs.7,500/- p.m.
3	1/3rd deduction as personal expenses	Rs.7,500 – 2,500 = Rs.5,000 p.m.
4	Multiplier of 17 is applied	Rs.5000 X 12 X 17 = Rs.10,20,000
5	Loss of consortium	Rs.1,00,000
6	Loss of care and guidance for minor son	Rs.50,000
7	Funeral expenses	Rs.25,000
	Total compensation	**Rs.11,95,000/-**

9. The rate of interest is also enhanced from 8% to 9% p.a.

10. Appeal is partly allowed.

(MRIDULA BHATKAR, J.)