

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.630 OF 2004

1. Md. Farhat s/o. Abdul Raheman Deshmukh,
Age: 55 years, Occu. Agri & Business,
(Deceased his L.Rs.)
- 1.1 Md. Rafat s/o. Mohd. Farhat Deshmukh,
Age: 35 years, Occu. Agri.,
- 1.2 Md. Firasat s/o. Md. Farhat Deshmukh,
Age: 26 years, Occu. Agri.,
- 1.3 Md. Azmat s/o. Md. Farhat Deshmukh,
Age: 20 years, Occu. Agri,
2. Mehrunissa W/o. Md. Farhat Deshmukh,
Age: 47 years, Occu. H.H.

All r/o Khorli Galli, Latur.
Ta. And Dist. Latur.

**= APPELLANTS
CLAIMANTS**

VERSUS

1. Hazrat Dastagir Kazi,
Age: 35 years, Occu. Truck Driver,
R/o. Akluj, Tq. Malshiras Dist. Solapur
2. The Managing Director Sakhar Maharshi
Shankarrao Mohite Patil Sahakari Sakhar
Karkhana Ltd. Shankar Nagar, Akluj,
Tq. Malshiras.
3. The United India Insurance Co. Ltd.
Through it's Branch Manager,
Main Road, Latur,
4. Jiya Ahmed Khan s/o. Gulamali Khan
Age: 35 years, Occu. Business,
R/o. Paithan Road, Aurangabad
R/o. Silk Mills Compound.
5. The New India Assurance Co. Ltd.

Chandra Nagar, Latur

...RESPONDENTS

Mr. R.B. Deshmukh, Advocate for the Appellants;
Mr. D.H. Jadhavar & Mr. R.K. Jadhavar, Advocate
for Respondent Nos. 1 & 2
Mr. A.D. Soman Adv. h/f. Damodar Soman, Advocate
for Respondent No.3
Adv. S.Y. Mahajan for Respondent No.4.
Mr. Dhananjay Deshpande, Advocate for Respondent
No.5.

CORAM : P.R.BORA, J.

DATE : 27th July, 2017.

ORAL JUDGMENT:

1) Heard. Present appeal is filed challenging the judgment and award passed by the Motor Accident Claims Tribunal, Latur (hereinafter referred to as the Tribunal) in MACP No.214/2001 decided on 13th October, 2003.

2) The appellants had filed the aforesaid claim petition claiming compensation on account of death of their daughter, viz. Shamshad Begum, alleging to have been caused in a vehicular accident happened on 12th April, 1999 having involvement of a tanker bearing Registrar No. MH-

13-G-178 and Tata Seirra bearing registration No. MH-01-R-4847. The alleged accident had happened when deceased Shamshad and the appellants were travelling in a Tata Sierra on Pune - Solapur road and was dashed by the aforesaid tanker. In the accident so happened, Shamshad Begum died on the spot, whereas the appellants were injured.

. It was the contention of the appellants that the accident in question happened because of the rash and negligent driving of driver of the aforesaid tanker. The appellants had, therefore, filed the claim petition against driver, owner and insurer of the said tanker as well as owner and insurer of the Tata Sierra claiming compensation of Rs.2,00,000/-.

3) As was stated in the claim petition, deceased Shamshad was 24 years old and at the time of her death she was taking education. It was further contention of the appellants that deceased Shamshad was on the verge of completing her education and after completing her education

would have certainly got promising job and could have become support for the appellants in their old age.

4) The claim petition was resisted by the respondents therein on several grounds. The learned Tribunal, after having assessed the oral and documentary evidence brought before it, awarded compensation of Rs.1,00,000/- to the appellants jointly and severally from the owner and insurer of the tanker involved in the accident. The claim petition was dismissed as against the owner and insurer of the Tata Sierra. Dissatisfied with the amount of compensation so offered, the appellants have filed the present appeal claiming enhancement in the amount of compensation so awarded by the Tribunal.

5) The learned Counsel appearing for the appellants submitted that the Tribunal has erred in not awarding just and fair compensation to the claimants. The learned Counsel submitted that

the Tribunal has not considered that after the education, deceased Shamshad must have got a good job and would have become earning hand of family of the appellants and as such, at least holding her income by applying the criterion of notional income, the Tribunal must have awarded due compensation in that regard. The learned Counsel submitted that even the compensation, as has been awarded by the Tribunal, towards loss of estate is inadequate. The learned Counsel, therefore, prayed for adequate enhancement in the amount of compensation.

6) Learned Counsel appearing for the insurance company opposed the submissions made on behalf of the appellants. The learned Counsel submitted that the Tribunal, after having considered the entire evidence on record and considering the issues raised in the matter, has awarded a fair and just compensation to the tune of Rs. 1,00,000/- and no more compensation needs to be awarded in the present matter.

7) I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have perused the impugned judgment and award as well as the evidence placed on record. So far as the facts are concerned, since there is no dispute, I need not to repeat the said facts. The point, which requires to be considered in the present matter is, whether any more compensation could have been awarded by the Tribunal by holding the income of the deceased on notional basis?

. Admittedly, at the relevant time, deceased Shamshad was not serving, but she was taking education. In absence of any evidence as about the prospects of her getting any job or service or any whisper in that regard, it does not appear to me that the Tribunal has committed any error in not considering the arguments in that regard. Moreover, it appears to me that since age of the deceased was 24 years, even otherwise, the appellants could not have claimed

dependency on the prospective income of the deceased, since that was her marriageable age. The only compensation, which was liable to be granted was towards loss of love and affection and the Tribunal has rightly assessed the said amount to the tune of Rs.1,00,000/-. It does not appear to me that the amount of compensation, as has been awarded by the Tribunal, is any way unjust or unfair. No case is made out by the appellants for enhancement in the amount of compensation. The appeal being devoid of any substances deserves to be dismissed and is accordingly dismissed. Pending civil application, if any, stands disposed of.

(P . R . BORA)
JUDGE

bdv/