

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2 OF 2017

RANJANA NARAYAN ASWALE AND ANOTHER
VERSUS
DIVISIONAL CONTROLLER, MAHARASHTRA STATE ROAD
TRANSPORT CORPORATION

...
Advocate for Appellants : Mr. Shaikh Mazhar A. Jahagirdar
Advocate for Respondents : Mr. M.K. Goyanka
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CORAM : V. K. JADHAV, J.
DATED : 21st FEBRUARY, 2017

PER COURT:-

1. By consent, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 6.2.2014 passed by the learned Member, M.A.C.T. Shrirampur, in M.A.C.P. No. 257 of 2007, the original claimants preferred this appeal to the extent of quantum.
3. Brief facts giving rise to the present appeal are as follows:-
 - a) On 23.10.2001, at about 6.00 to 6.15 p.m. deceased Narayan was proceeding towards his house on foot by Sangamner road from correct left side of the road. At that time, one S.T. Bus, styled as Aurangabad - Shirdi, came from the backside and gave dash to

deceased Narayan. In consequence of which, deceased Narayan had sustained injuries. The driver of the bus fled away from the spot alongwith the S.T. Bus. Deceased Narayan was immediately shifted to one Hospital at Shrirampur, where his statement was recorded by the police. Accordingly, crime was registered against the driver of S.T. Bus. Deceased Narayan, however, succumbed to the injuries in the said hospital while under treatment.

b) The legal representatives of deceased Narayan approached the Tribunal by filing M.A.C.P. No. 257 of 2007 for grant of compensation under various heads. It has contended in the claim petition that the accident had taken place on account of rash and negligent driving of the driver of S.T. Bus. Deceased Narayan was 45 years old. He was working as motor cycle fitter and earning Rs.4500/- p.m. He was the only earning member in the family and the entire family was depending on his income.

c) The respondent M.S.R.T.C. has strongly resisted the said claim petition by filing written statement. It has contended that the accident had not taken place on account of rash and negligent driving of the driver of S.T. Bus. The respondent M.S.R.T.C. has denied the averments made in claim petition in toto.

d) On the basis of evidence led by the claimants and the documents placed before the Tribunal, learned Member of the Tribunal has recorded findings in affirmative and held that the accident had taken place on account of rash and negligent driving of the driver of S.T. Bus involved in the accident. Learned Member of Tribunal has directed the respondent M.S.R.T.C. to pay compensation of Rs.2,50,000/- to the claimants, inclusive of compensation under 'no fault liability' alongwith interest @ 6% p.a. from the date of application till realization of entire amount. Hence, this appeal by the original claimants to the extent of quantum.

4. Learned counsel for the appellants claimants submits that the Tribunal has considered notional income of deceased Narayan at Rs.3000/- p.m. but not considered the future prospectus of deceased Narayan. Learned Member of the Tribunal has not awarded compensation by applying the multiplier method and awarded the compensation of Rs.2,50,000/- only on the basis that the appellants claimants have restricted their claim at Rs.2,50,000/-. Learned counsel submits that the Tribunal ought to have awarded just and reasonable compensation. Even the Tribunal has not awarded any amount of compensation under non pecuniary heads.

5. Learned counsel for the respondent M.S.R.T.C. submits that in

absence of income proof, the Tribunal has rightly considered notional income of deceased Narayan at Rs.3000/- p.m. Deceased Narayan was 45 years of age at the time of his accidental death. In absence of any evidence about his future prospectus, the Tribunal has rightly awarded the compensation. The appellants claimants have restricted their claim at Rs.2,50,000/- and therefore, the Tribunal has awarded entire amount alongwith interest as claimed by the appellants-claimants. No interference is required.

6. On perusal of pleadings, oral as well as documentary evidence led by the claimants and the impugned judgment award, it appears that in para 14B of the claim petition, the appellants-claimants have restricted their claim petition to Rs.2,50,000/- with specific averments that if the Tribunal comes to the conclusion of granting more amount of compensation, then the appellants claimants would pay the deficit court fees.

7. It further appears from the impugned judgment and award that the Tribunal has considered notional income of deceased Narayan at Rs.3000/- p.m. According to the appellants claimants, deceased Narayan was working as motor cycle fitter, however, the appellants claimants have failed to substantiate the same. The Tribunal has therefore, rightly considered the notional income of deceased

Narayan at Rs.3000/- p.m. however, failed to make addition in the income of deceased Narayan towards his future prospectus by considering his age at the time of accidental death. The Tribunal ought to have considered 30% of his income as an addition towards future prospectus. The learned Member of the Tribunal has not awarded compensation by applying the multiplier method. Thus, considering 30% rise by way of addition in income towards future prospectus, the monthly income of deceased Narayan comes to Rs.3900/- p.m. corresponds to Rs.46,800/- per annum. Deceased Narayan met with an accidental death at the age of 45 years and thus multiplier 14 would be just and proper in the case.

8. In view of above, the appellants claimants are entitled for compensation of Rs.6,55,200/- and after deducting $\frac{1}{3}^{\text{rd}}$ amount towards personal and living expenses of deceased Narayan, the total amount of compensation under the head of loss of future income/dependency comes to Rs.4,36,800/- and the appellants claimants are entitled for the same. In addition to this, the claimants are entitled for amount of Rs.1,00,000/- towards loss of consortium, Rs.50,000/- towards loss of love and affection and Rs.25,000/- for funeral expenses.

9. In view of above discussion, the break up of compensation

under different heads, which can be broadly categorized, is as under:-

i)	Loss of future income/dependency (as against Rs.2,50,000 awarded by Tribunal)	Rs, 4,36,800.00
ii)	Loss of consortium	Rs. 1,00,000.00
iii)	Loss of love and affection	Rs. 50,000.00
iv)	For funeral expenses	Rs. 25,000.00

	Total	Rs. 6,11,800.00
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(Rupees Six lacs eleven thousand eight hundred only)

10. Learned counsel for the respondent M.S.R.T.C. submits that though the accident had taken place in the year 2001, the appellants claimants preferred claim petition before the Tribunal in the year 2007 and also there is inordinate delay in preferring the appeal before this court. In view of above submission, the appellants claimants are entitled for the said compensation with interest @ 6% p.a. from the date of application till realization of entire amount. Hence, I proceed to pass the following order;-

O R D E R

- I. The first appeal is hereby allowed with costs.
- II. The judgment and award dated 6.2.2014, passed by the

learned Member, M.A.C.T. Shrirampur in M.A.C.P. No. 257 of 2007 is hereby modified in the following manner:-

“a) The respondent M.S.R.T.C. shall pay Rs.6,11,800/- as compensation to the appellants claimants, inclusive of compensation paid under 'no fault liability' with interest @ 6% p.a. from the date of application till realization of entire amount.

b) The appellant-claimant No.1 shall be paid 80% of the amount and the appellant claimant No.3 shall be paid remaining amount, alongwith interest in proportionate thereto.”

III. Rest of the judgment and award stands confirmed.

IV. The award be drawn up as per the above modification.

V. Needless to say that if the amount is paid as per the award passed by the Tribunal, the same shall be adjusted in the modified award.

VI. The appellants-claimants shall pay deficit court fees within a period of four weeks from today.

VII. First appeal is disposed of.

(V. K. JADHAV, J.)