

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 886 OF 2015

DEVENDRA DILIPRAO MARATHE
VERSUS
GAJANAN YADAV BHAT AND ANOTHER

...
Advocate for Appellant : Mr. Patil Shrikant S.
Advocate for Respondent No.2 : Mr. D.S. Bagul

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CORAM : V. K. JADHAV, J.
DATED : 31st JANUARY, 2017

PER COURT:-

1. By consent of parties, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 15.11.2014 passed by the learned Member, M.A.C.T. Dhule in M.A.C.P. No. 823 of 2013, the original claimant has preferred this appeal to the extent of quantum.
3. Brief facts giving rise to the present appeal are as follows:-

On 4.9.2013, deceased Diliprao was proceeding on his motor cycle with his wife as a pillion rider. On Dharangaon to Chopda road, near Kargil chowk, one S.T. Bus bearing registration No. MH-20-BL-0717, driven in rash and negligent manner and also was in high speed, gave dash to the motor cycle of deceased. In consequence

of which, deceased Diliprao had sustained injuries and died on the spot. He was serving as Assistant Teacher in Sant Gadge Maharaj Secondary School, at Thalner, on monthly salary of Rs.44,632/-. The parents of the appellant claimant died in the said accident. Thus, the appellant claimant has preferred M.A.C.P. No. 823 of 2013 for grant of compensation under various heads.

b) Respondent Nos. 1 and 2 resisted the claim petition by filing written statement. It has contended that deceased himself was responsible for the accident and driver of S.T. Bus was not at fault for the said accident.

c) The learned Member of the Tribunal, after considering the evidence adduced by the parties, recorded finding to issue No.1 in affirmative and held that death of deceased Diliprao occurred on account of rash and negligent driving of S.T. Bus, bearing registration No. MH-20-BL-0717, driven by respondent No.1.

d) Learned Member of the Tribunal has directed the respondent No.2 to pay compensation of Rs.8,29,786/- inclusive of no fault liability amount to the appellant claimant with interest @ 7.5% p.a. from the date of petition till realization of the amount. Being aggrieved by the said judgment and award, the appellant claimant

has preferred this appeal to the extent of quantum.

4. Learned counsel for the appellant claimant submits that deceased Diliprao was 56 years of age when he met with accidental death. He was drawing salary of Rs.44,632/- at the time of his death. It is not disputed that deceased Diliprao was serving as an Assistant Teacher and he was permanent employee. Considering the age of deceased Diliprao, learned Member of the Tribunal observed that only two years' service of deceased Diliprao was remained and therefore, erroneously held that proper multiplier would be 2 and accordingly assessed the compensation. Learned counsel submits that the parents of appellant claimant died in the same accident. The appellant claimant being a son would not be entitled for any pension. Thus, in view of ratio laid down by the Supreme Court in the case of ***Sarla Verma and others vs. Delhi Transport Corporation and another, reported in 2009 (6) SCC 121***, the Tribunal ought to have applied multiplier 9 instead of 2. The appellant claimant has examined P.W.2 Sudhakar Patil, who is serving as Head Master in the school where deceased was serving as an Assistant Teacher. Through this witness, the appellant claimant has proved the salary certificate at Exh. 30. P.W.2 Sudhakar Patil deposed that deceased was having opportunity of being promoted as Head Master of the School and in that event, he would have drawn the salary of

Rs.55,000/- p.m.. Learned Member of the Tribunal has not considered future prospectus of deceased Diliprao and consequently has not made any addition in the salaried income of deceased Diliprao. Learned counsel submits that the Tribunal has awarded meager amount under non pecuniary heads.

5. Learned counsel for respondent M.S.R.T.C. submits that after considering the age of retirement of deceased Diliprao, the learned Member of the Tribunal has applied multiplier 2 by relying upon the observations made in the case of ***Smt. Sushma Sudhakar Kadam ad others vs. Waman s/o Shrawan Zanke and others, reported in MANU/MH/0490/2010.*** Witness No.2 Sudhakar Patil though deposed about future prospectus of deceased Diliprao, has admitted in his cross examination that he has not brought on record the seniority list of the employees. Learned Member of the Tribunal has therefore, rightly observed that his evidence about future prospectus is based upon mere speculation. The Tribunal has awarded compensation of Rs.1,00,000/- for loss of care and guidance. Learned counsel submits that no such compensation can be awarded under the said head. The Tribunal has awarded just and reasonable compensation under non pecuniary heads. There is no merit in the appeal. No interference is required.

6. So far as salaried income of deceased Diliprao is concerned, the appellant claimant has duly proved the salary certificate Exh.30 through the Head Master, witness No.2-Sudhakar Patil. Last drawn salary of deceased was Rs.44,632/-. It has also not disputed that deceased Diliprao was 56 years of age at the time of his accidental death.

7. The Supreme Court in the case of ***Sarla Verma and others vs. Delhi Transport Corporation and another (supra)***, relied upon by learned counsel for the appellant claimant, in para 19 of the judgment has considered the normal retiring age and by referring the judgments in the cases of ***New India Assurance Co. Ltd. vs. Charlie (2005 (10) SCC 720 and TN State Road Transport Corporation Ltd. vs. Rajapriya (2005 (6) SCC 236 and UP State Transport Corporation vs. Krishna Bala, (2006 (6) SCC 249)***, observed that the highest multiplier applicable to the age group 21 to 25 years (commencement of normal productive years) and the lowest multiplier would be in respect of persons in the age group of 60 to 70 years (normal retiring age).

8. In the case of ***Smt. Sushama Sudhakar Kadam vs. Waman s/o Shrawan Zanke and others (supra)*** relied upon by learned Member of the Tribunal, this Court has considered the multiplier after

taking into account the year of retirement of deceased. However, in this case, the said multiplier was applied having regard to the tenure of valid service of the deceased only for the reason that the widow would be getting pension amount after retirement of deceased. In the instant case, the appellant claimant being the son, would not be getting any pension.

9. The learned Member of the Tribunal has observed that the appellant claimant lost his parents in the unfortunate accident, though he is major son but he is jobless. He has no economical and mental support of his parents. He would have maintained by his deceased father till getting good placement of job.

10. In a case of ***K.R.Mdhusudan and others Vs. Administrative Officer and another reported in 2011 AIR SCW 1390*** in the facts of the said case, deceased was working as Senior Assistant. He was aged about 52 years. Deceased would have retired by 58 years. The High Court of Karnataka has observed that after superannuation deceased would have get pensionary income. Split multiplier would apply. After superannuation multiplier '6' would apply. The Supreme Court in paragraph No.14 of the judgment set aside the order of Karnataka High Court by observing in paragraph No.14 of the Judgment that, the High Court introduced concept of split

multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefor. Paragraph no.14 of the Judgment reads as follows :-

“14. In view of this evidence the Tribunal should have considered the prospect of future income while computing compensation but the Tribunal has not done that. In the appeal, which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation, granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefor. The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years the multiplier is 11, which is specified in the II Column in the II Schedule in the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6.”

11. In the instant case, the Tribunal has considered only two years of remaining service of the deceased and accordingly awarded the compensation. The Supreme Court in the above cited case has even disapproved the concept of split multiplier. In view of the ratio laid down in the aforesaid cases i.e. Sarla Warma and K.R.Madhusudhan (supra), the relevant multiplier would be '9' instead of '2' as considered by the learned Member of the Tribunal.

12. So far as future prospectus are concerned, witness No.2 Sudhakar Patil has not brought before the Tribunal the list of seniority of the employees working in said Gagde Maharaj Secondary School, Thalner, Tq. Shirpur, District Dhule. He has made a statement that deceased was having an opportunity of being promoted to the post of Head Master and he would have drawn the salary of Rs.55,000/- p.m. Learned Member of the Tribunal has therefore, rightly observed that his speculation about the chances of promotion of deceased Diliprao cannot be considered for addition in the salaried income of deceased by considering the future prospectus.

13. In para 16 of the judgment, learned Member of the Tribunal has discussed about compensation to be awarded under non pecuniary heads. I do not find any fault in it. Learned Member of the Tribunal has awarded just and reasonable compensation under non pecuniary heads. No interference is required.

14. In view of above, by applying the multiplier 9, the appellant claimant would be entitled for compensation under the head of loss of future income/dependency to the tune of Rs.31,26,537.00 (Rs.3,47,393 x 9= Rs. 31,26,537.00).

15. In view of above, the impugned judgment and award is required to be modified. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed with proportionate costs.
- II. The judgment and award dated 15.11.2014, passed by the learned Member, M.A.C.T. Dhule in M.A.C.P. No. 823 of 2014 is hereby modified in the following manner:-

“The respondent No.2 shall pay an amount of Rs.31,26,537.00 (Rupees Thirty one lacs twenty six thousand five hundred thirty seven only) to the appellant-claimant, inclusive of 'no fault liability' with interest at the rate of 7.5% p.a. from the date of petition till realization of amount.”

- III. Rest of the judgment and award stands confirmed.
- IV. The award be drawn up as per the above modification.
- V. First appeal is disposed of accordingly.

(V. K. JADHAV, J.)