

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 502 OF 2007

1. Reshma Begum w/o Shaikh Feroz,
Age 28 years, Occ. Household
2. Shaikh Afroz s/o Shaikh Feroz,
Age 7 years, Occ. Student
3. Kum. Ashma d/o Shaikh Feroz
Age 6 years, Occ. Student,
4. Shaikh Arman s/o Shaikh Feroz
Age 4 years, Occ. Nil,

Applicant Nos. 2 to 4 being minor
u/g applicant No.1 as a natural
mother

5. Begumbee w/o Shaikh Mahaboob,
Age 55 years, Occ. Household

All R/o. Mastan Shah Nagar,
Tq. and district Hingoli

...Appellants
(Ori. Claimants)

versus

1. National Insurance Company
Limited, through its Branch
Manager, Branch at Nagina Ghat
Road, Nanded
2. Jagjitsingh s/o Brijlal Khurana,
Age 43 years, Occ. Business,
R/o. Shastrinagar, Hingoli,

...Respondents

...

Advocate for Appellants : Mr. S S Londhe
Advocate for Respondent No.1 : Mr. S.V. Kulkarni
Advocate for Respondent No.2 : Mr. H.V.Patil

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CORAM : V. K. JADHAV, J.
DATED : 25th JANUARY, 2017

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and award dated 20.12.2006, passed by the learned Member, Motor Accident Claims Tribunal, Hingoli, in Motor Accident Claim Petition No. 192 of 2004, the original claimants preferred this appeal to the extent of quantum.

2. It is proved that the accident had occurred on 03.01.2004 at about 10.15 p.m. on Hingoli Aundha road, near village Walvi, in which deceased Shaikh Feroz sustained injuries and died on the spot. It is also proved by the claimants that the accident had taken place on account of rash and negligent driving on the part of driver of vehicle-luxury bus, bearing registration No. MH-22-3245. The respondent insurer and owner have not preferred any appeal against these findings. Being aggrieved by the judgment and award of the Tribunal, the original claimants have preferred this appeal to the extent of quantum.

3. Learned counsel for the appellants original claimants submits that the Tribunal has considered the notional income of deceased at Rs.1500/-. Even considering the daily wages at the time when the accident had taken place, the notional income of deceased was

required to be considered at Rs.3000/- p.m. and not less than that. Even though there are in all five dependents on the earning of deceased, the Tribunal has erroneously deducted one third amount from the income of deceased towards his personal and living expenses instead of one fourth. The Tribunal has awarded very meager amount of Rs.8000/- for cremation expenses, loss of love and affection and mental torture, agony etc. The Tribunal has not awarded any compensation for loss of consortium though the appellant claimant No.1 was 25 years of age when her husband met with an accidental death. The Tribunal has not awarded any separate amount towards loss of love and affection to the minor children. The Tribunal has awarded interest @ 6% p.a. instead of 9% p.a.

Learned counsel for the appellants, in order to substantiate his contentions, placed reliance on the judgment of Supreme Court in the case of ***Asha Verman and others vs. Maharaj Singh and others, reported in 2015 AIR (SCW) 3577.***

4. Learned counsel for the respondent insurer submits that the accident had taken place in the year 2004 and the Tribunal has therefore, rightly considered the notional income of deceased at Rs.1500/- p.m. So far as the quantum of compensation under non

pecuniary head is concerned, learned counsel for the appellants-claimants relied upon the judgment of Supreme Court in the case of ***Asha Verman and others vs. Maharaj Singh and others, (supra)*** wherein the accident had taken place in the year 2006 and the appeal is decided in the year 2015. Furthermore, in the case cited above, no ratio is laid down as such and in the facts of that case, the Supreme Court has awarded compensation under non pecuniary heads. Learned counsel submits that no interference is required. There is no merit in the appeal and the appeal is liable to be dismissed.

5. I have also heard learned counsel for the respondent owner.

6. On perusal of pleadings, evidence and the impugned judgment and award, it appears that the Tribunal, without observing about prevailing wages of labour in that year, considered the notional income of deceased at Rs.1500/-p.m. as a labour. Learned Member of the Tribunal should have considered the notional income of deceased at Rs.3000/- p.m. and not less than that. Furthermore, as held by the Supreme Court in the case of ***Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. reported in AIR 2009 SC 3104***, the deduction towards personal and living expenses of deceased should be one-fourth, where the number of dependents

of the family members are 4 to 6. In the instant case, there are in all five dependents-claimants and in view of that, the Tribunal ought to have deducted one-fourth of amount from the income of deceased towards his personal and living expenses instead of one-third.

7. In view of above discussion, considering one-fourth amount towards personal and living expanses of deceased, loss of future income/dependency comes to Rs.2250/- p.m., corresponds to Rs.27000/- per year. The deceased was between 30 to 35 years of age at the time of his accidental death and thus, relevant multiplier would be 16. Thus, the appellants-claimants are entitled for amount of Rs.4,32,000/- (Rs.27,000x16) towards loss of income/dependency.

8. The appellant claimant No.1 is widow, who was 25 years of age at the time when her husband met with an accidental death. Thus, appellant No.1-claimant is entitled for amount of Rs.50,000/- towards loss of consortium. The appellant claimant Nos. 2 to 4 were minor and therefore, they are entitled to Rs.10,000/- each towards loss of love and affection. The claimants are entitled for amount of Rs.25,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

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

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

a)	Loss of future income/dependency	Rs. 4,32,000.00
b)	Loss of consortium	Rs. 50,000.00
c)	Loss of love and affection to appellant Nos. 2 to 4 (Rs.10000/- each)	Rs. 30,000.00
d)	Funeral expenses	Rs. 25,000.00
e)	Loss of estate	Rs. 15,000.00

		Total Rs. 5,52,000.00
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10. Thus, the appellants-claimants are entitled for Rs.5,52,000.00 (Rupees Five lacs fifty two thousand only) and respondent Nos. 1 and 2 are liable to pay the same jointly and severally. The impugned judgment and award is thus required to be modified. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed.

- II. The judgment and award passed by the Member, M.A.C.T. Hingoli, dated 20.12.2006 in M.A.C.P. No. 192 of 2004 is hereby modified in the following manner:-

“Respondent Nos. 1 and 2 shall pay, jointly and severally, a compensation of Rs.5,52,000.00 (Rupees Five lacs fifty two

thousand only) to the appellants-claimants, inclusive of 'no fault liability' amount of Rs.50,000/- with interest @ 7.5% p.a., from the date of petition till realization of entire amount.”

- III. Rest of the judgment and award stands confirmed.
- IV. The award be drawn up as per the above modification.
- V. The appeal is accordingly disposed of.
- VI. The appellants to pay deficit court fees within four weeks from today.
- VII. Needless to state that if any amount is paid to the claimants, as per the earlier award, the same shall be adjusted in the amount as per the modified award.

(V. K. JADHAV, J.)

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