IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 563 OF 2017

SUBHASH UKHA PATIL AND ANR
VERSUS
DATTATRAYA TULSHIRAM PATIL AND ORS
...
Advocate for Appellants : Mr. Kulkarni Mukul S.
Advocate for Respondent No.2 : Mrs. Chaitali Chaudhari-Kutti
Advocate for Respondent No.3 : Mr. Abhijit G. Choudhari
.....

CORAM : V. K. JADHAV, J.
DATED : 12th JULY, 2017

PER COURT:-

1. By consent of parties, heard finally at admission stage.

2. Being aggrieved by the judgment and award dated 10.3.2015, passed by the learned Member, M.A.C.T. Jalgaon in M.A.C.P. No. 432 of 2009, the original claimants have preferred this appeal to the extent of quantum of compensation, as awarded by the Tribunal.

3. Learned counsel for the appellants-original claimants submits that though the appellants have examined the employer Uttam Daulat Choudhary to prove the contents of salary certificate and though the salary certificate Exh.41 is duly proved, the Tribunal has not considered the said income from private service. The Tribunal has also not considered the income of deceased Kiran from his

business source. Deceased Kiran used to give a pair of bullocks and bullock-cart on hire to the needy persons in the village. Even though the appellants have examined three witnesses on this point, the Tribunal has not considered the said income. On the other hand, the Tribunal has considered notional income of deceased Kiran at Rs.4000/- p.m. Even though deceased Kiran was 27 years of age at the time of his accidental death, the Tribunal has not made any addition in the income of deceased Kiran towards future prospects. The Tribunal ought to have considered the income of deceased Kiran from his private service as well as his business of giving bullocks and and bullock cart on hire to the villagers. The rate of interest awarded by the Tribunal is also not proper, as instead of granting interest @ 9% the Tribunal has awarded the same @ 7.5%.

4. Learned counsel for respondent No.3 insurer submits that the said witness employer Uttam Daulat Choudhary has not produced before the Tribunal the necessary documents, such as registration certificate of his establishment and other relevant documents, indicating that deceased Kiran was in his employment. The Tribunal has rightly ignored his income from private employment. Further, though the appellants-claimants have examined three witnesses on the point of income of deceased Kiran from his business source, however, the agreement was produced on record, does not bear

signature of deceased Kiran and as such, the Tribunal has rightly ignored said so called agreement. Learned counsel submits that as such, the Tribunal has considered the notional income of deceased Kiran at Rs.4000/- p.m. and awarded just and reasonable compensation. No interference is required. The appeal is liable to be dismissed.

5. I have also heard learned counsel appearing for respondent No.2-owner.

6. On careful perusal of pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the appellants claimants have examined witness Uttam Daulat Choudhary, who is owner of Choudhary Transport Company and the appellants claimants have duly proved salary certificate Exh.41, through this witness. Deceased Kiran was in his employment, working as Munim. As per the contents of salary certificate Exh.41, deceased Kiran was working in the said establishment since April, 2008 till his death, on monthly salary of Rs.4500/-. He used to take entries of incoming and outgoing vehicles in the Transport company. He was also maintaining the accounts. The said salary certificate Exh.41 has been issued on letter pad of Choudhary Transport Company, Jalgaon. The Tribunal has not considered the said certificate for the

reason that witness Uttam Daulat Choudhary has not produced extract of account and as such, refused to believe on his oral testimony. The Tribunal ought to have considered the certificate Exh.41. Witness Uttam Choudhary, in his cross examination, has denied that deceased Kiran was not working in his company as Munim and that he has issued false certificate Exh.41. There is no reason to disbelieve the testimony of this witness only on the count that he has not produced the account extract before the Tribunal.

7. So far as the income of deceased from his business source is concerned, the appellants have examined near about three witnesses on this point. The appellants have also stated on oath that deceased Kiran used to give a pair of bullocks and bullock-cart on hire to the villagers and as such, he was getting income of Rs.4000/- to Rs.5000/- p.m. out of said business. In order to substantiate the same, the appellants have examined P.W.3 Harish Ramrao Jadhav, P.W.4 Subhash Keshav Jadhav and P.W.5 Ramrao Keshav Jadhav. All these witnesses are from the same village and and on one or the other occasion, they took the bullocks and bullock-cart on hire from deceased Kiran. In the said transaction, the agreement in writing is hardly expected and the Tribunal should have considered the oral evidence on this point. However, there is no fixed income as such from this business and in absence of any positive evidence, about

the fixed income from the said source, it would be just and reasonable, if the income of deceased Kiran from all sources is considered at Rs.8000/- p.m. including addition in his income towards future prospects.

8. It is not disputed that the average age of the appellants is required to be considered for applying relevant multiplier. Further Rs.4000/- i.e. half of the amount from the income of deceased is required to be deducted towards his personal and living expenses, as deceased Kiran was unmarried son. Thus, the amount of dependency comes to Rs.48,000/- per year. After considering the average age of the appellants, the relevant multiplier would be 13. In view of the same, the claimants are entitled for compensation towards loss of future income/dependency to the tune of Rs.6,24,000/- as against Rs.3,12,000/-, as awarded by the Tribunal. I also find substance in the submission of learned counsel for the appellants that the rate of interest be awarded @ 9% p.a. instead of 7.5% p.a. Thus, I am inclined to grant interest @ 9% p.a.. In view of the same, the impugned judgment and award requires modification. So far as the compensation awarded by the Tribunal under other heads are concerned, same requires no re-determination. 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 10.3.2015, passed by the learned Member, M.A.C.T. Jalgaon, in M.A.C.P. No. 432 of 2009 is hereby modified in the following manner:-

“The respondent Nos. 2 and 3, jointly and severally pay Rs.6,59,000/- (Rupees Six lacs fifty nine thousand only) (inclusive of the amount of Rs.50,000/- granted under the principle of no fault liability), to the appellants, alongwith interest at the rate of 9% 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. If any amount is paid as per the judgment and award passed by the Tribunal, the same shall be the part of award after modification.

VI. The appeal is accordingly disposed of.

(V. K. JADHAV, J.)

rlj/