IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1527 OF 2016

1) Ushaben w/o Jagdish Waghela
Age: 52 Yrs., occu. Household

2) Jagdish Anand Waghela
Age: 59 Yrs., occu. Business.

Both R/o At post Dondaicha,
Tq.Shindkheda, Dist. Dhule. **= APPELLANTS**

VERSUS

1) Ramkrishna Bhivshan Patil
(deleted)

2) Maharashtra State Road
Transport Corporation, Dhule.
Through Divisional Controller
MSRTC, Dhule Division office
Dhule. **= RESPONDENTS**

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Mr. Santosh B.Bhosale, Adv.h/for Mr. Brahme Shailesh P., Advocate for Appellants;

Mr. DS Bagul, Advocate For RESPONDENT NO.2.

CORAM : P.R.BORA, J.

DATE : 27th June,2017.

ORAL JUDGMENT :

1) Heard learned Counsel appearing for the appellants and learned Counsel appearing for Respondent No.2 - Corporation.

2) Original claimants in MACP No.1254/2004 have preferred the present appeal seeking enhancement in the amount of compensation, as has been awarded by Motor Accident Claims Tribunal, Dhule (for short, the Tribunal), which has decided the aforesaid claim petition on 25th January, 2008.

3) The appellants had filed the aforesaid claim petition seeking compensation on account of death of their son, viz. Kawal, who died in a vehicular accident happened on 30th May, 2005 while travelling by an ST bus bearing registration No. MH-20-D-6873. It was the case of the appellants that at the time of his death,

deceased Kawal was aged about 20 years and was running a shop and was earning around Rs. 70,000/- per annum. It was the further contention of the appellants that they were depending upon income of their son. They had, therefore, claimed the compensation of Rs. 11,50,000/-.

4) The claim petition was resisted by the ST corporation. The learned Tribunal, after having assessed the oral and the documentary evidence brought on record, has partly allowed the petition. The Tribunal has awarded the compensation of Rs.2,25,000/- inclusive of NFL compensation with interest thereon @ seven and half percent per annum from the date of petition till realization.

5) It is the further grievance of the appellants that the Tribunal has failed in awarding just and fair amount of compensation. The first objection raised by the appellants is

in respect of application of multiplier. The Tribunal while determining the amount of dependency compensation, has applied the multiplier of 14 having regard to the age of the claimants, i.e. present appellants. Relying upon the judgment in the Case of **Sarla Verma (Smt.) and Ors. Vs. Delhi Transport Corporation and Ors. - (2009) 6 SCC 121**, learned counsel for the appellants submitted that the multiplier ought to have been applied depending upon the age of the deceased and not on the basis of age of the claimants. The learned Counsel submitted that having regard to the age of the deceased, the appropriate multiplier to be applied in the present matter was of 18 instead of 14, as has been applied by the Tribunal.

6) The learned Counsel further submitted that the Tribunal has also failed in appreciating that the shop was in the name of deceased Kawal, and as such, the Tribunal shall not have assessed the income of the deceased on the basis of the

notional income. The learned Counsel further submitted that the Tribunal has also not taken into account the future prospects while determining the amount of compensation. The learned Counsel further submitted that the Tribunal has also failed in not awarding the adequate amount towards non pecuniary damages. The learned Counsel further submitted that on all above counts, the amount of compensation needs to be enhanced and the appeal filed by the claimants deserves to be allowed.

7) Shri Bagul, learned Counsel appearing for the ST Corporation, supported the impugned judgment and award. The learned Counsel, inviting my attention to para 10 of the impugned judgment, submitted that the shop was registered on 16.1.1995 in the name of deceased Kawal, who at the relevant time, was aged about 10 years. The learned Counsel submitted that the Tribunal has, therefore, rightly declined to accept the contention of the appellants that deceased Kawal

was running the said shop and was earning around Rs.70,000 to Rs.80,000/- per annum.

8) The learned Counsel further submitted that in absence of any cogent evidence, as about the future prospects of deceased Kawal, the Tribunal has correctly rejected the request of the appellants to assess the amount of compensation by enhancing the income of the deceased by taking into account the future prospects. The learned Counsel further submitted that no fault can be found with the observations made and the conclusions recorded by the Tribunal.

9) The learned counsel, however, conceded that the appropriate multiplier in the present case would have been 18 having regard to the age of the deceased and not 14, as has been applied by the Tribunal and fairly submitted that to that extent the amount of compensation may be enhanced.

10) In so far as the award of non-pecuniary damages is concerned, the learned Counsel submitted that the same have been rightly awarded by the Tribunal and no enhancement is needed in the amount so awarded.

11) After having considered the submissions advanced by learned Counsel appearing for the respective parties and on perusal of the impugned judgment and the evidence on record, apparently, it is revealed that the amount of compensation under some heads has to be enhanced.

12) First I will deal with the amount of compensation, as has been determined by the Tribunal towards the dependency compensation holding the income of the deceased to the tune of Rs. 15,000/- as a notional income. The accident had occurred in the year 2005. On the date of accident, the deceased was aged about 20 years. Having regard to the facts, as aforesaid, it appears to me that the Tribunal has committed an

error in assessing the dependency compensation holding the income of the deceased only to the extent of Rs. 15,000/- per annum. Even though the evidence as about running of the shop by the deceased is discarded for the reasons recorded by the Tribunal in para 10 of the impugned judgment and criterion of minimum average income of a businessman is applied, even then the Tribunal ought to have held the income of the deceased on bit higher side.

13) From the undisputed evidence on record, I see no difficulty in holding the income of the deceased to the tune of Rs.40,000/- per annum. Deceased was admittedly a bachelor and his parents, i.e. present appellants, are the only dependents on his income. As such, ½ of the income of the deceased i.e. Rs.20,000/- has to be taken as multiplicand to determine the amount of dependency compensation. It is now well settled that the selection of multiplier would depend upon the age of the deceased and not of the

claimants. The Tribunal has erred in applying the multiplier of 14 which is applicable for the age-group of40 to 45 years. Age of the deceased in the present matter was 20 years. Multiplier of 18 was thus the appropriate multiplier in the matter. Applying the said multiplier the amount of dependency compensation payable to the appellant comes to Rs.3,60,000/- (Rs.20,000 x 18 =, Rs.3,60,000/-).

14) Another objection is in regard to grant of inadequate compensation towards non-pecuniary damages. Learned Tribunal has awarded to the appellants a gross sum of Rs.15,000/- towards funeral expenses, loss of love and affection, loss of estate etc. The amount so awarded is wholly unjust and inadequate and needs to be substantially enhanced. Having regard to the facts involved in the present matter, I deem it appropriate to enhance the same to Rs.90,000/-.

15) The appellants are, thus held entitled

to the total compensation of Rs.4,50,000/-. According to me, it would be just and fair compensation payable to the appellants. Hence, the following order, -

ORDER

i) The amount of compensation payable to the Appellants by Respondent No.2-Corporation is enhanced to Rs.4,50,000/- from Rs.2,25,000/- as awarded by the Motor Accident Claims Tribunal, Dhule.

ii) Respondent No.2 Corporation shall pay to the Appellants the enhanced amount of compensation with interest thereon at the rate of Rs.7½ per cent per annum from the date of filling of the petition till it's realization.

iii) The respondent No.2 Corporation shall pay to the appellants proportionate cost on the enhanced amount of compensation.

. Award be drawn accordingly.

(P.R.BORA,J.)

bdv/