IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1255 OF 2015

PARVATI KARIRAM YADAV AND OTHERS
VERSUS
WALMIK SHIVRAO DATE AND ANOTHER
...
Advocate for Appellants : Mr. Rajebhosale Sandeep B.
Advocate for Respondent No.1 : Mr. R.R. Sancheti
Advocate for Respondent N.2 : Smt. R.D. Reddy
.....

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

PER COURT:-

1. Heard finally with consent of the parties at admission stage.

2. Being aggrieved by the judgment and award dated 31.3.2015 passed by the learned Chairman, M.A.C.T. Aurangabad in M.A.C.P. No. 224 of 2014, the appellants original claimants preferred this appeal to the extent of quantum.

3. It is not disputed in this appeal that death of Binesh Yadav occurred in the accident on 10.2.2014 on Aurangabad - Nashik Road involving a S.T. Bus, bearing registration No. MH-06-S-8389 and the said accident was caused on account of rash and negligent driving of the driver of aforesaid S.T. Bus. Deceased Binesh was 19 years of age at the time of his accidental death. He was a student of 3rd year

engineering, at Aurangabad. The appellants claimants were entirely depending on deceased Binesh. The appellants claimants have therefore, preferred the claim petition for grant of compensation under various heads. Though the appellants claimants have assessed the compensation under various heads, however, restricted their claim to the extent of Rs.7,00,000/- on all counts. Learned Chairman of the Tribunal by its impugned judgment and award dated 31.3.2015 directed to pay Rs.6,50,000/- excluding the NFL amount alongwith interest @ 9% p.a.. Being aggrieved by the same, the original claimants preferred this appeal to the extent of quantum.

4. Learned counsel for the appellants-claimants submits that deceased Binesh died at a very young age. He was studying in 3rd year of engineering, at Aurangabad. The appellant claimant No.1 is widowed mother and appellant Nos. 2 and 3 are minor brother and sister of deceased Binesh. The Tribunal has considered the notional income of deceased Binesh at Rs.6000/- only, which is at a very lower side. The Tribunal should have considered monthly income of Rs.10,000/- inclusive of prospective increases considering the fact that deceased Binesh was studying in 3rd year engineering. The Tribunal has deducted ½ of the amount from notional income towards personal expenses of deceased Binesh. The appellants

claimants were entirely depending upon deceased Binesh, as they have no source of income at all. The appellants No. 2 and 3 are non earning brother and sister respectively and they had hopes that deceased Binesh would maintain the family in future by securing job on his engineering qualification. The Tribunal should have considered deduction 1/3rd of the amount from the income towards personal expenses instead of half of the amount. Learned counsel has fairly admitted that the Tribunal has erroneously awarded the amount of Rs.50,000/- towards loss of consortium, however, vehemently submitted that the Tribunal has awarded very less amount under the heads of funeral expenses and has not awarded any compensation for love and affection. Learned counsel has also fairly admitted that the average age of the appellants is required to be considered for applying the relevant multiplier in case of death of unmarried son and therefore, proper multiplier in the instant case would be 14 instead of 18.

In order to substantiate his submissions, learned counsel for the appellants placed reliance on the following judgments;-

I) Branch Manager, United India Insurance Co. Ltd. vs. Shivbodhansingh s/o Keshav Singh and others, reported in 2015 (6) ALL MR 139.

II) Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. reported in AIR 2009 SC 3104

5. Learned counsel for respondent M.S.R.T.C. submits that the Tribunal has rightly considered the notional income of deceased Binesh at Rs.6000/- p.m. In the case of ***Sarla Verma, (supra)*** the Supreme Court has observed that normally 50% amount is deducted towards personal and living expenses with regard to the bachelors. However, where family of the bachelor is large and dependent on the income of the deceased, personal and living expenses of the deceased may be restricted to one-third and contribution of the family will be taken as two-third. In the instant case, there is no large family as such and therefore, the Tribunal has rightly deducted 50% of the amount of income towards personal and living expenses of deceased Binesh. The Tribunal has rightly awarded the compensation under various heads. No interference is required. There is no merit in the appeal.

6. Learned counsel for respondent No.1 driver submits that the appellants claimants have restricted their claim to Rs.7,00,000/- and Tribunal has awarded entire amount as claimed. In view of the same, the claim is fully satisfied and there is no reason to prefer appeal against the judgment and award passed by the Tribunal.

7. On careful perusal of pleadings, evidence adduced by the parties and the impugned judgment and award passed by the Tribunal, it appears that deceased Binesh was the student of 3rd year engineering and entire family was depending on him. He was Karta of the family. The appellant claimant No.1 is widowed mother, who is doing household work and appellant Nos. 2 and 3 were minor brother and sister of deceased Binesh, taking education at the time of death of their elder brother Binesh.

8. In the case of ***Branch Manager, United India Insurance Company Ltd. vs. Shivbodhansingh s/o Keshav Singh and others (supra),*** this Court considering the facts and circumstances of the case, observed that since the victim was bright engineering final year student and at the young age, the appellants lost their only son, the monthly income of Rs.10,000/- p.m. could have been considered as basis for calculation of just compensation. In the instant case, deceased Binesh was 19 years of age at the time of his accidental death and he was an engineering student studying in 3rd year. It is not important as to in which year of engineering course he was taking education, however, the important aspect is that he was engineering student and after completion of engineering course, he would have secured a good job. The appellant claimant No.1 is widowed mother and appellant Nos. 2 and 3 minor brother and sister

respectively. In view of this, in the instant case, I am also inclined to consider the notional monthly income inclusive of prospective increases to the tune of Rs.10,000/- p.m.

9. In the case of ***Sarla Verma and others vs. Delhi Transport Corporation and Anr (supra)*** relied upon by learned counsel for the appellants claimants as well as respondent M.S.R.T.C. in para 15 of the judgment, the Supreme court has made following observations:-

> *"15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be*

restricted to one-third and contribution to the family will be taken as two-third."

10. It is true that in the instant case, there is no large family as such, however, there are two members in the family i.e. minor brother and sister, alongwith the widowed mother, who is doing household work only. In view of the above, I am inclined to consider the personal and living expenses of deceased to the extent of one-third and contribution to the family as two-third. The same is also justified for the reason that the appellants claimant Nos. 2 and 3 are taking education and it would take long time to complete their education and to stand on their own legs.

11. Learned Chairman of the Tribunal has erroneously considered the loss of consortium. However, the Tribunal has failed to award the compensation under the head of love and affection. The appellants are thus entitled for the same amount as awarded under the head of loss of consortium, for love and affection. The Tribunal has awarded meager amount for funeral expenses. The appellants claimants are entitled for amount of Rs.25,000/- for funeral expenses including the transpiration charges etc. So far as the application of relevant multiplier is concerned, learned counsel for the appellants claimants has fairly admitted the age of appellant No.1, which would be relevant for applying the correct multiplier. In the instant case,

considering the age of appellant-claimant No.1, relevant multiplier would be 14 instead of 18.

12. In view of above discussion, the break up of compensation under different heads, which can be broadly categorized is as under:-

a)	Loss of dependency		Rs.11,08,800.00
b)	Loss of love and affection		Rs. 50,000.00
c)	Funeral expenses		Rs. 25,000.00
		Total	Rs.11,83,800.00

Thus, the appellants are entitled for compensation as worked out herein above.

13. Though the appellants claimants have restricted their claim to the extent of Rs.7,00,000/-, they are entitled for just and reasonable compensation, as admissible. The appellants claimants are directed to pay deficit court fees.

14. In view of the above discussion, the impugned judgment and award passed by the learned Chairman, M.A.C.T. Aurangabad 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 31.3.2015 passed by the learned Chairman, M.A.C.T. Aurangabad in M.A.C.P. 224 of 2014 is hereby modified in the following manner:-

"The respondent Nos. 1 and 2 shall jointly and severally pay total compensation amount of Rs.11,83,800/- (Rupees Eleven lacs eighty three thousand eight hundred only) inclusive of N.F.L. amount to the appellants-claimants alongwith interest @ 9% p.a. from the date of petition till realization of entire amount"

III. Rest of the judgment and award stands confirmed.

IV. Award be drawn up as per the modification.

V. The claimants shall pay deficit court fees within four weeks from today.

VI. Needless to say that if the respondent M.S.R.T.C. has deposited any amount as per earlier award, the same shall be adjusted in the amount as per the modified award.

VII. The appeal is disposed of accordingly.

(V. K. JADHAV, J.)

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