IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 488 OF 2016

BHANUDAS GANPATRAO GHADGE AND ANOTHER
VERSUS
RAGHU MARUTI KALE AND ANOTHER
...
Advocate for Appellants : Mr Deshpande Ram B.
Advocate for Respondent 2 : Mr S.R Bodade
Respondent no.1 served – absent.
...
CORAM : V.K. JADHAV, J.
Dated: February 14, 2017
...

PER COURT :-

1. Heard finally with consent at admission stage.

2. Being aggrieved by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Ambajogai dated 24.12.2009 in MACP No.69/2009, the original claimants preferred this appeal to the extent of quantum alone.

3. The learned counsel for the appellants-original claimants submits that, deceased Ganpat was serving as Munim with one Ashwini Traders on monthly salary of Rs.7,000/-. The appellant claimants have examined the sole proprietor of the said Ashwini Traders witness

Ashok Surajmal Zawar at exh.38 and duly proved the certificate dated 7.5.2009 exh.41 through him. Witness Ashok Zawar has deposed that he was paying Rs.7,000/- p.m. salary to deceased Ganpat. Said witness Ashok Zawar also placed on record computerized ledger print of the account of the salary. Same is marked at Exh.42. Further he has also produced on record tax audit report exh.43. Learned counsel submits that, the learned Member of the Tribunal has not considered this evidence and considered monthly salaried income of deceased Ganpat at Rs.4,000/-. Learned counsel submits that, even the Tribunal has not considered the future prospects of deceased Ganpat, who met with an accidental death at the age of 20 years. Learned counsel submits that, the Tribunal has also committed mistake in applying the multiplier '8' instead of multiplier '11'. Learned counsel submits that, it is now well settled that average age of the parents is required to be considered for applying multiplier in case of accidental death of unmarried son. Learned counsel submits that, the Tribunal has also awarded meager amount under the non-pecuniary heads, under the head of funeral expenses and has not awarded any amount under the head of loss of estate. Learned counsel submits that, the Tribunal has awarded interest @ 7.5% instead of 9%. Learned counsel also submits that the Tribunal has only considered a loss of Rs.1,000/- towards agricultural income.

4. Learned counsel for respondent no.2-insurer submits that, claimants have not produced on record the appointment letter issued by said Ashwini Traders. Further, witness Ashok Zawar has also not brought before the Tribunal the appointment letter, salary slip etc. Learned counsel submits that, in the tax audit report exh.43, a reference has been given to the lump sum amount of salary being paid to the employees. Therefore, in absence of any appointment letter appointing deceased Ganpat as a supervisor in the said Trader, his salaried income as deposed by witness Ashok cannot be accepted. Thus, the learned Member of the Tribunal has considered monthly salaried income of deceased Ganpat at Rs.4,000/-. Learned Member of

the Tribunal after having noticed that deceased Ganpat was passed only 7th standard examination, rightly ignored future prospects in the given set of facts. Learned counsel submits that Tribunal has awarded just and reasonable compensation by applying the correct multiplier alongwith interest @ 7.5% p.a. Learned counsel for respondent-insurer submits that, there is no evidence at all about the agricultural income and even the claimants have failed to produce the 7/12 extract on record.

5. On perusal of the pleadings, evidence adduced by the parties and judgment and award passed by the Tribunal, it appears that, the learned Member of the Tribunal has committed mistake in not accepting the salary certificate exh.41, which is duly proved by the claimant through witness Ashok Zawar. Witness Ashok is the sole proprietor of firm Ashwini Traders. He has deposed that, he is dealing in the business of selling sugar on wholesale basis and during the period of 1.4.2008 to 31.3.2009, the turnover of his business was near about rupees 5,56,67,203.65. He has further

deposed that, deceased Ganpat was serving as a supervisor (Munim). He has further explained that deceased Ganpat was a very clever, honest employee and having goodwill in the market. Deceased Ganpat used to fill up tenders of sugar factories, deposits amount with the sugar factory and also doing banking transactions very skillfully. Witness Ashok further deposed that he himself has taken entries in the ledger account by using application Tally on his personal computer. He brought alongwith him before the Tribunal computerized print out of the ledger account of the year 1.4.2008 to 31.3.2009. Further he has also produced before the Court Tax Audit Report of the said period. On careful perusal of the salary certificate exh.41 supported by the computerized extract of the ledger account exh.42, I am convinced that deceased Ganpat was getting monthly salary of Rs.7,000/- by working as a Munim in the said Ashwini Traders. Same is also reflected from the Tax Audit Report exh.43. Learned Member of the Tribunal calculated and compared said entry in the document audit report with the salaried income of deceased Ganpat and other employees. The learned Member of the Tribunal has come to the conclusion that if Rs.7,000/- p.m. corresponds to Rs.84,000/- p.m., being paid to deceased Ganpat then, remaining two employees in the said Ashwini Traders were getting Rs.72,000/- p.a. corresponds to Rs.3,000/- each. Learned Member of the Tribunal has, therefore, ignored said evidence on the ground that deceased Ganpat is not likely to get such a salary of Rs.7,000/- when his educational qualification is only 7th passed. I do not think that everything depends upon educational qualification. Deceased Ganpat was doing banking transaction skillfully and collecting honestly an amount from the other traders and further filling up the tenders in the various sugar factories. Witness Ashok has deposed that deceased Ganpat was very honest and clever. In such type of business, *honesty counts more than the qualification*. Deceased Ganpat was collecting amount from various traders and also depositing the amount with the sugar factories his integrity was undoubted and therefore witness Ashok was paying him Rs.7,000/-. Thus, approach of the learned Member of the Tribunal is erroneous and I accept certificate Exh.41, ledger computerized extract of Exh.42 and document Tax Audit Report exh.43 as genuine documents and considering the same, I hold that deceased Ganpat was getting Rs.7,000/- p.m. as salary.

6. Learned Member of the Tribunal has not considered the future prospects of deceased Ganpat. Deceased Ganpat had earned such a reputation at very young age though he was possessing only 7^{th} standard qualification. In future, he would have earned more amount than what he was getting prior to the accident. In view of settled law in this regard, addition to the extent of 50% in his income is required to be considered towards future prospects. Thus, considering his future prospects and addition of income as stated above, loss of income sustained by the claimant is considered to the extent of Rs.10,000/- p.m.

7. It further appears that, the learned Member of the Tribunal in paragraph no.19 of the Judgment has considered the age of the parents as 60 and 50 years

respectively. It is well settled that, average age of the parents is required to be considered for applying the relevant multiplier in case of death of an unmarried son. Thus, considering the average age of the parents, the relevant multiplier is '11'. However, the learned member of the Tribunal has erroneously applied multiplier '8' instead of '11'.

8. The learned Member of the tribunal has awarded a very meager amount of Rs.2,000/- under the head funeral expenses and Rs.7,000/- each on account of loss of love and affection. The claimants are entitled for Rs.25,000/- towards funeral expenses and Rs.25,000/- on account of loss of love and affection. The claimants are entitled for an amount of Rs.15,000/- under head of loss of estate. There is no evidence about income from the agricultural source, and, therefore, I am not inclined to consider the same. The learned Member of the Tribunal ought to have awarded interest @ 9% instead of 7.5%.

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

compensation as worked out here-in-above, which can be broadly categorized is as under :-

1	Loss of future income/dependency Rs.10,000x12= 1,20,000/- 50% deductions 60,000 x 11 =	Rs.6,60,000/-.
2	Funeral Expenses As against Rs.2,000/- as awarded by the Tribunal	Rs.25,000/-
3	Loss of Love and affection as against Rs.7,000/- awarded by the Tribunal	Rs.25,000/-
4	Loss of Estate Not awarded by the Tribunal	Rs.15,000/-
	TOTAL (Rs. Seven Lac Twenty five thousand only)	Rs.7,25,000/-

10. Thus, the claimants are entitled to Rs.7,25,000/- (Rs. Seven Lac Twenty Five Thousand only) as total compensation and the respondents are liable to pay the same. Hence, the judgment and award passed by the Tribunal thus requires modification. Hence, following order.

O R D E R

i. First appeal is hereby partly allowed with proportionate costs.

ii. The judgment and Award passed by the Member, Motor Accident Claims Tribunal, Ambajogai dated 24.12.2009 in M.A.C.P. No.69/2009 is hereby modified in the following manner :-

a] The respondents no.1 and 2 shall jointly and severally do pay a sum of compensation of Rs.7,25,000/- (Rs.Seven Lacs Twenty five thousand only) including 'No Fault liability' amount as a compensation to the claimants together with interest thereon @ 9% p.a. from the date of petition till the judgment and award passed by the Tribunal i.e. 24.12.2009.

b] The claimants are not entitled for the interest from 24.3.2010 to 29.4.2015 i.e. period of condonation of delay of 1862 days caused in filing the first appeal.

C] Thereafter till the realization of the amount as per the above award.

iii. Award be drawn up as per the above modifications.

iv. Rest of the judgment and award stands confirmed.

v. Needless to say that, if any amount is paid as per the award passed by the Tribunal, the same shall be adjusted in the modified award.

vi. First Appeal is accordingly disposed of.

(V.K. JADHAV, J.)

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aaa/-