IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.932 OF 2006

Kamalkishor s/o Sawarmal Kayal
Age: 50 Yrs., occu. Nil
R/o Komtigalli, Hingoli, Tq.
and District Hingoli.
(Died through L.Rs.) -

i) Smt. Rajehwari w/o Kamalkishor Agrawal, Age: 54 Yrs., occ. Household,R/o Komti Galli, Hingoli,Tq. and Dist. Hingoli.

ii) Saurabh s/o Kamalkishor Agrawal Age: 21 Yrs.,occu. Student, R/o as above

iii) Sow Shardha w/o Ratan Agrawal Age: 25 Yrs.Occu. Housewife, R/o Kasara. = **APPELLANT/S**

VERSUS

1) Ramesh s/o Nagjibhai Chauvdiya (Appeal stood dismissed as against Respondent No.1.)

2) United India Insurance Company Ltd., Jamnagar (Gujrat State) Through Branch Manager, United India Insurance Company Ltd., Branch Parbhani District Parbhani.

3) Maharashtra State Road Transport Corporation, Through its Divisional Controller, Parbhani. Gangakhed Road, Parbhani. = **RESPONDENT/S**

Mr. PS Agrawal, Advocate for Appellant;
Mr. SP Chapalgaonkar, Adv.for Respondent No.2;
Mr. A.D.Wange, Advocate for Resp.No.3.

CORAM : P.R.BORA, J.

DATE : 27th June,2017.

ORAL JUDGMENT:

1) Heard. The present appeal is filed against the Judgment and Award dated 19th April, 2006 passed by Motor Accident Claims Tribunal, Hingoli (for short, the Tribunal) in MACP No. 512/2000.

2) The aforesaid claim petition was filed by one Kamalkishor for the injury caused to him in a vehicular accident happened on 3.8.1999 having involvement of an ST bus bearing registration No.MH-20-D-1785 and the goods truck bearing registration No. GJ-10-T-9099. Said Kamalkishor, at the relevant time, was travelling by ST bus. The said ST bus collided with the goods truck and in the accident so happened, said Kamalkishor was severely injured and was required

to be under treatment for quite a long period. He suffered major injury to his right leg and the same was required to be ultimately amputated. It was the case of said Kamalkishor that he incurred 53% permanent disablement because of the injuries caused to him in the alleged accident. The learned Tribunal, after having assessed the oral as well as documentary evidence brought before it by the parties, awarded the compensation of Rs.3,79,487/- to the claimant. The ST Corporation and the owner and insurer of the truck were held jointly and severally liable for the payment of compensation to the claimant and their liability was fixed in equal proportion, i.e. 50 : 50.

3) Dissatisfied with the amount of compensation so awarded by the Tribunal, the claimant Kamalkishor filed the present appeal before this court. However, during pendency of the appeal, he died and his legal heirs have prosecuted the appeal further.

4) Shri Agrawal, learned Counsel appearing for the appellants, submitted that some inherent mistakes are committed by the Tribunal while determining the amount of compensation. The learned Counsel submitted that though a very cogent evidence was adduced by the original claimant Kamalkishor as about his income to the tune of Rs.4,500/- per month, the Tribunal has, without assigning any good reason, discarded the said evidence and held the income of said Kamalkishor on notional basis only to the tune of Rs.15,000/- per annum.

5) The learned Counsel further submitted that the Tribunal has determined the amount of compensation by wrongly deducting 1/3rd of the total income of the claimant towards personal expenses, which could have been done by the Tribunal only in the case of fatal accident.

6) The learned Counsel further submitted that the Tribunal has completely ignored that the

claimant Kamalkishor had incurred permanent disability and was permanently deprived from enjoying the amenities of life, and as such, was entitled for grant of separate compensation under the said head. By not awarding such compensation, according to the learned Counsel, the Tribunal has committed further error. The learned Counsel, therefore, prayed for allowing the appeal by enhancing the amount of compensation.

7) Shri Chapalgaonkar, learned Counsel appearing for Respondent No.2 – insurance company and learned Counsel Shri Aanand Wange, appearing for Respondent No.3 , i.e. MSRTC, supported the impugned Judgment and Award. The learned Counsel submitted that the Tribunal has rightly assessed the amount of compensation on the basis of the evidence which was adduced before it.

8) Both the learned Counsel Shri Wange, and Shri Chapalgaonkar, invited my attention to the

discussion made by the Tribunal as about the evidence adduced by the claimant Kamalkishor in respect of his income and submitted that the said evidence was rightly rejected by the tribunal since the salary certificate, as was produced by the claimant, was admittedly issued by a person, who, at the relevant time was minor. The learned Counsel further submitted that it has also come on record that the firm on whose letter-head the salary certificate was issued, was admittedly opened in the year 2002 whereas the claimant was claiming to be in the employment of the said firm since the year 1995. The learned Counsel further submitted that the witness examined in that regard has also admitted that the expenses incurred on the salary of the claimant Kamalkishor were not shown in the income tax returns. The learned Counsel further submitted that the evidence, as aforesaid, was, therefore, rightly not relied upon by the Tribunal for holding the income of the original claimant on that basis. The learned Counsel further submitted that in absence of any such cogent evidence as about the income of the original claimant, the tribunal has rightly assessed the amount of compensation on the basis of the notional income.

9) Both the learned Counsel, however, conceded that while assessing the amount of compensation, the tribunal has erred in deducting 1/3rd of the total income of the claimant. The learned Counsel submitted that to that extent the appropriate orders may be passed.

10) I have carefully considered the submissions advanced by the learned Counsel appearing for the appellants as well as for the respondents. Two aspects need to be considered in the present appeal, i) whether the income of the original claimant Kamalkishor has been rightly considered by the Tribunal while determining the amount of compensation or otherwise; and ii) whether the Tribunal has erred in deducting 1/3rd of the total income of the

claimant while awarding the amount of compensation.

11) In so far as second issue is concerned, learned counsel appearing for the respondents were fair enough in submitting that no such course could have been adopted by the Tribunal and the Tribunal has committed an error in deducting 1/3rd amount while determining the amount of compensation payable in the injury claim when such deductions are only permissible in the cases of fatal accident.

12) It was the contention of the original claimant that he was working as Salesman and was earning around Rs.4,500/- per month. In order to substantiate the said contention, he had also examined one witness, viz. Nishant Agrawal at Exh.45. However, having regard to the discussion made by the Tribunal while analyzing the said evidence. I do not find it necessary to make any more discussion in that regard. However, even if the evidence of said witness is kept out of

consideration, it appears to me that some injustice has been caused while determining the amount of compensation by the Tribunal. Having regard to the nature of work, which the original claimant was performing, it was unjust on the part of the Tribunal to hold the income of such person on notional basis. True it is that the claimants failed in establishing that he was earning around Rs.4,500/-, per month as was pleaded by him in the claim petition, however, considering overall evidence and the nature of work he was performing as well as his age and the years he spent in doing the said work, it appears to me that to hold his annual income, for the purpose of assessing the amount of compensation only to the extent of Rs.10,000/- was wholly unjust and improper. For assessing just compensation, income of the original claimant could not have been held less than Rs.20,000/- per annum; and based on this income, the Tribunal ought to have determined the amount of compensation under the said head to the tune of

Rs.3,00,000/- (i.e. Rs.20,000 x 15). I, therefore, deem it appropriate to enhance the amount of compensation to that extent and modify the award accordingly. In addition to that, as has been awarded by the Tribunal, the medical expenses were liable to be awarded amounting to Rs.2,29,487/-. Thus, the claimant is held entitled for the total compensation of Rs.5,29,487/-. Save and except the enhancement in the amount of compensation, as aforesaid, the remaining part of the Award shall remain unchanged. Appellants are entitled for the interest on the enhanced amount of compensation from the date of filing of the claim petition till its realization at the rate of 6% per annum. The first appeal stands allowed in the aforesaid terms. Modified award be prepared accordingly. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/