

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 340 OF 2017

HIRABAI MOTILAL JANGHALE AND ORS
VERSUS
DIVISIONAL MANAGER (CONTROLLER) MSRTC ABAD AND ANR

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Advocate for Appellants : Mr. M.G. Deokate h/f Mr. D.E. Padwale
Advocate for Respondent No.1 : Mrs. Ranjana Reddy
Advocate for Respondent No.2 : Mrs. Meghana V. Reddy
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CORAM : V. K. JADHAV, J.
DATED : 28th JUNE, 2017

PER COURT:-

1. By consent, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 30.9.2011, passed by the learned Member, M.A.C.T. Aurangabad in M.A.C.P. No. 29 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-claimants submits that deceased Sajjansing was serving in private company and earning Rs.4,000/- p.m. In addition to that, he had passed written and physical test conducted for the post policeman and he was called for oral interview scheduled on the date of accident itself. He could have drawn the salary after his appointment as policeman, however, the

Tribunal has not considered the same only on the ground that deceased was not selected for the post of policeman at the relevant time. The Tribunal has considered the income of deceased Sajjansing equivalent to labour. Even the Tribunal has not considered the future prospects of deceased Sajjansing though he met with an accidental death at the age of 24. The Tribunal has erroneously applied the multiplier 13 instead of 14. Even though original claimant No.3, younger brother of deceased Sajjansing was depending on the income of deceased Sajjansing entirely, the Tribunal has not considered the same and dismissed the claim petition to his extent and in that way considered the deduction towards personal and living expenses of deceased to the extent of half percent instead of 1/3rd. Learned counsel submits that the Tribunal has also erroneously awarded the interest at the rate of 7.5% instead of 9%. Learned counsel submits that under the head of funeral expenses and loss of love and affection, the Tribunal has awarded very meager amount of compensation.

4. Learned counsel for the respondent M.S.R.T.C. submits that there is no evidence about income of deceased Sajjansing from his employment in a private company. Further the appellants-claimants have produced on record the entrance card which is generally issued to the candidates appearing to examination for the post of policeman,

except that the appellants-claimants have not produced on record any other documents to substantiate their contention that deceased Sajjansing had passed written and physical test conducted for the post of policeman and was called for oral interview to be held on the date of accident. The Tribunal has therefore, rightly considered the notional income of deceased Sajjansing at Rs.3000/- p.m. and awarded the compensation. The appellants-claimants are below 45 years of age and it is difficult to accept that the appellants claimants were depending upon the income of deceased when the deceased Sajjansing had no fixed income as such. The Tribunal has therefore, rightly rejected the claim of his minor brother and deducted half of the amount of notional income towards personal and living expenses of deceased. The Tribunal has granted just and reasonable compensation under all heads, including non pecuniary head and the Tribunal has also rightly awarded the interest at the rate of 7.5% p.a. Learned counsel submits that if this Court comes to the conclusion to award interest @ 9% p.a. the same may be awarded from the date of order and not from the date of application.

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

6. On perusal of evidence and the judgment and award passed by the Tribunal, it appears that the claimants have not adduced

satisfactory evidence about the income of deceased Sajjansing. The appellants claimants have produced on record only entry card permitting the candidates to appear for examination for the post of policeman. The appellants-claimants have not produced on record any document to substantiate their contentions that deceased Sajjansing has passed written and physical test conducted for the post of policeman and that he was called for oral interview. Even the appellants claimants have not bothered to produce on record the certificate about educational qualification possessed by deceased Sajjansing. However, on perusal of entry card it appears that deceased Sajjansing was called for selection process of the said post and a judicial note can be taken that only eligible candidates can be called in such selection process being undertaken for the post of policeman. The Tribunal has therefore, committed error in considering the income of deceased Sajjansing equivalent to labour.

7. Thus, considering the age of deceased Sajjansing at the time of his accidental death and evidence about his income, as discussed above, it would be just and appropriate if the income of deceased Sajjansing is considered at Rs.4500/- p.m. inclusive future prospects. I do not find any substance in the submission made on behalf of the appellants-claimants that the claimants were entirely depending upon the income of deceased Sajjansing. In fact, deceased Sajjansing

was not having any permanent job or fixed income. The Tribunal has therefore, rightly rejected the claim of his minor brother. In view of the same, I do not find any fault in the order of the Tribunal while determining the compensation. The Tribunal has rightly deducted half of the amount from the income of deceased Sajjansing, who happened to be unmarried son, towards his personal and living expenses. It is now well settled that the average age of the parents is required to be considered for applying correct multiplier instead of considering the age of deceased. In view of the same, the Tribunal ought to have applied the multiplier 14 instead of 13.

8. It further appears that the Tribunal has awarded very meager amount of compensation under the head of funeral expenses and loss of love and affection. The appellants claimants are entitled for amount of Rs.25,000/- towards funeral expenses as against Rs.2000/- awarded by Tribunal and Rs.25,000/- each towards love and affection as against Rs.5,000/- awarded by the Tribunal. The appellants claimants are also entitled for interest on the amount of compensation at the rate of 9% p.a. instead of 7.5% p.a.. I do not find any substance in the submission made by counsel for M.S.R.T.C. that 9% interest shall be awarded from the date of this order. The provisions of Section 171 of Motor Vehicles Act 1988 clearly mandates that if the court has exercised discretion to grant interest to

the claimants, the same should be from the date of application till realization of entire amount.

9. In view of above discussion, the break up of compensation, as awardable to the claimants, can be broadly categorized is as under:-

I)	Loss of future income (Rs.2250x12x14) (As against Rs.2,34,000/- awarded by the Tribunal).	Rs.3,78,000.00
II)	Medical expenses including purchase of medicine (As awarded by the Tribunal).	Rs. 86,900.00
III)	Hospital Bills (As awarded by the Tribunal).	Rs.1,09,800.00
IV)	Funeral expenses (As against Rs.2000/- awarded by the Tribunal).	Rs. 25,000.00
V)	Loss of love and affection (Rs.25,000/- each) (As against Rs.5,000/- awarded by the Tribunal).	Rs. 50,000.00

	Total	Rs.6,49,700.00
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Thus, the claimants are entitled for total compensation of Rs.6,49,700.00 (Rupees Six lacs forty nine thousand seven hundred only) at the rate of 9% p.a. from the date of petition till realization of entire amount. In view of the above, 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 30.9.2011 passed by the Member, M.A.C.T. Aurangabad in M.A.C.P. No. 29 of 2009 is hereby modified in the following manner:-

"The opponent Nos. 1 and 2 do pay jointly and severally an amount of Rs.6,49,700.00 (Rupees Six lacs forty nine thousand seven hundred only) (inclusive of amount of Rs.50,000/- already awarded to the claimants under N.F.L.) with interest @ 9% p.a. from the date of petition till realization."

- III. Rest of the judgment and award stands confirmed.
- IV. The award be drawn up as per the above modification.
- V. The appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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