

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 1594 OF 2015

SHILPA D/O. SHANKAR SALVE AND ANOTHER
VERSUS
MANGESH KISAN MORE AND OTHERS

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Advocate for Appellants : Mr. Sandeep B. Rajebhosale.

Advocate for Respondent No.3 : Mr. S. G. Chapalgaonkar.

...

CORAM : **V. K. JADHAV, J.**

DATE : 06th March, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Aurangabad dated 21st April, 2015 in MACP No.59 of 2012, the original Claimants preferred this appeal to the extent of quantum.

3 The learned counsel for the Appellants / Claimants submits that deceased Chandrabhagabai was earning member of the family. The Appellant / original Claimant No.1, who is unmarried and deceased Shankar, who alive at the time of filing of claim and who happened to be the husband of deceased Chandrabhagabai, was also depending upon her earnings. Deceased

Chandrabhagabai was doing the labour work and earning for the family. The learned Member of the Tribunal in absence of satisfactory evidence about the income of deceased Chandrabhagabai considered her income at Rs.3,000/- per month instead of Rs.6,000/- per month as claimed by the Claimants. The learned counsel submits that there cannot be any documentary evidence in respect of the earnings from the labour work. The learned counsel submits that after the accident, deceased Chandrabhagabai was admitted in one hospital and she remained under treatment for near about 19 days before her death. However, the learned Member of the Tribunal has not awarded any compensation for attendant charges. The learned counsel submits that the Tribunal has also awarded very meager amount under the head of loss of love and affection and transportation charges. The learned counsel submits that after the accident, deceased was brought from Daultabad to Aurangabad, which is at a distance of near about 7-8 kilometers and thereafter, shifted to Nashik. The learned Member of the Tribunal has not awarded any compensation under the head of loss of consortium only on the ground that original Claimant No.2 / husband of deceased Chandrabhagabai died during

the pendency of claim petition. The learned counsel submits that Claimant No.2 / husband of the deceased was alive at the time of accident and merely because during the pendency of the claim petition he died, the claim under that head could not have been denied to his legal representatives. The learned counsel in order to substantiate his contentions placed reliance on the following cases:

- a) **Rajesh and others Vs. Rajbir Singh and others**, reported in, **2013 (3) T.A.C. 697 (S.C.)**.
- b) **Harish A. Sadarangani and another Vs. Reliance Textiles Industries Ltd. and Oriental Insurance Co. Ltd. (Insurer)**, reported in, **2001 (2) MAH.L.J. 913**.
- c) **Housabai Baburao Karjule (Died) Through her L.Rs. Vs. Vijay Janardhan Koli and others**, decided by this Court on 22nd September, 2016 in First Appeal No.825 of 2004 (2016(11)LJSOFT 5).

4 The learned counsel for the Respondent / Insurer submits that the Appellant / Claimant No.1, considering her age at the time of filing of claim petition, was not dependent as such on the income of deceased Chandrabhagabai. The learned counsel

submits that even the husband of deceased Chandrabhagabai, who died during the pendency of claim petition, was also not depending on the income of deceased Chandrabhagabai. The Claimants have failed to prove the aspect of dependency. The learned Member of the Tribunal ought to have refused to award any compensation based on the dependency of the Claimants. The learned counsel submits that in absence of any satisfactory evidence about the income of deceased Chandrabhagabai, the Tribunal has rightly considered her income at Rs.3,000/- per month. The Tribunal has awarded just and reasonable compensation under the non-pecuniary heads. The original Claimant No.2 / husband of deceased Chandrabhagabai died during the pendency of claim petition and thus, the Tribunal has not awarded any compensation under the head of loss of consortium. No interference is required. The learned counsel in order to substantiate his contentions placed reliance in the case of **Farzana d/o Abbas Bhai and another Vs. Maharashtra State Road Transport Corporation**, reported in, **(2016) 4 Mah LJ 602**.

5 On careful perusal of the pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the

Claimants approached to the Tribunal with a specific pleading that they were depending upon the income of deceased Chandrabhagabai. It is an admitted position that the Appellant / original Claimant No.1 is the unmarried daughter and she was taking education at the time of accidental death of her mother. The Appellant / Claimant No.1 has filed her affidavit of evidence at Exhibit – 31 before the Tribunal and also deposed accordingly. Original Claimant No.2 / husband of deceased Chandrabhagabai was the retired person at the time of accidental death of his wife. Thus, I find substance in the evidence of the Claimants that they were depending upon the income of deceased Chandrabhagabai. Claimant No.2 / husband of deceased Chandrabhagabai died during the pendency of claim petition.

6 In the case of *Farzana d/o Abbas Bhai and another Vs. Maharashtra State Road Transport Corporation* (supra) relied upon by the learned counsel for Respondent / Insurer, this Court has observed that the locus to maintain an application for compensation under Section 166 of the Motor Vehicles Act and grant of compensation based on dependency of the Claimants are two distinct aspects. While it would be open for a legal representative to

maintain proceedings for grant of compensation, the entitlement to the same would depend on the material placed on record with regard to dependency of the Claimants vis-a-vis the deceased.

7 In the instant case, the Appellant / Claimant No.1 was the unmarried daughter taking education at the time of death of her mother and Claimant No.2 was the retired non-earning person. Thus, I am satisfied on the basis of material placed on record that the Claimants are entitled for the compensation on account of loss of future income / dependency.

8 The Claimants have claimed that deceased Chandrabhagabai was working as a labour and earning Rs.5,000/- per month. The Tribunal has considered Rs.3,000/- per month as a notional income for the reason that the accident had taken place in the year 2011. The Tribunal ought to have considered the notional income of deceased Chandrabhagabai at Rs.4,500/- per month instead of Rs.3,000/- per month. After considering deduction of 1/3rd amount from her income towards her personal and living expenses, the Claimants are entitled for loss of dependency / future income of Rs.3,96,000/- (3000 x 12 x 11).

9 The learned Member of the Tribunal has not awarded any compensation under the head of loss of consortium. Claimant No.2 / husband of deceased Chandrabhagabai was alive at the time of accident. Merely because during the pendency of claim petition he died, the claim under that head could not have been denied to the legal representatives. This Court in the case of *Harish A. Sadarangani and another Vs. Reliance Textiles Industries Ltd. and Oriental Insurance Co. Ltd. (Insurer)* (supra) relied upon by the learned counsel for the Appellant, in para 11 of the judgment has made the following observation:

“11. As regards the third contention of the learned counsel for the appellant that tribunal ought to have awarded loss of consortium, I find some merit in the said contention. Admittedly, the husband of deceased Maya was alive at the time of her death in the accident. He lost companionship of his wife. Though he died after filing of the claim application, but then he became entitled to the compensation for loss of consortium on the date of death of his wife. The husband so long as he lived after the death of his wife was deprived consortium et servitium i.e. her society and service. The original claimant No.1 i.e. husband of the deceased was therefore entitled to damages for loss of consortium which I assess at

the rate of Rs.7,500/-. The tribunal was not justified in rejecting the claim of the claimants under the head “loss of consortium” on the ground that since the husband is died, the other claimants are not entitled to claim that amount. The tribunal overlooked the fact that cause of action for claim of loss of consortium accrued on the death of Maya and the relevant date for claiming compensation by the husband (original claimant No.1) for loss of consortium was the date on which the claim application was made and merely because during pendency of claim application, the husband died, the claim under that head could not have been denied to his legal representatives.”

10 In view of the above, the Claimants are entitled for an amount of Rs.1,00,000/- under the head of loss of consortium. The Claimants are also entitled for an amount of Rs.3,000/- for attendant charges of deceased Chandrabhagabai, who was hospitalized and remained under treatment for near about 19 days. Though there is evidence on record, the Tribunal has not awarded any compensation under that head. The Tribunal has awarded just and reasonable compensation towards loss of love and affection, funeral expenses and transportation charges. The Tribunal has awarded Rs.25,000/- for funeral expenses that usually include the

transportation charges. So far as transportation charges incurred by the Claimants prior to the death of deceased Chandrabhagabai, no evidence is brought on record about the same. The Tribunal has awarded just and reasonable compensation under that head. No interference is required.

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

Sr. No.	Particulars of the head	Amount in Rupees
1)	Towards loss of dependency / future income (3000 x 12 x 11) as against Rs.2,64,000/- awarded by the Tribunal	Rs.3,96,000/-
2)	Towards medical expenses (as awarded by the Tribunal)	Rs.4,26,354/-
3)	Towards loss of consortium	Rs.1,00,000/-
4)	Towards loss of love and affection (as awarded by the Tribunal)	Rs.60,000/-
5)	Towards funeral expenses (as awarded by the Tribunal)	Rs.25,000/-
6)	Towards transportation charges (as awarded by the Tribunal)	Rs.10,000/-
7)	Towards attendant Charges	Rs.3,000/-
	Total =	Rs.10,20,354/-

12 Thus, the judgment and award passed by the Tribunal requires modification to that effect. Hence, the following order:

ORDER

- I. The appeal, is hereby partly allowed with proportionate costs.
- II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Aurangabad dated 21st April, 2015 in MACP No.59 of 2012, is hereby modified in the following manner:

“The Claimant is entitled for an amount of Rs.10,20,354/- (Rupees Ten Lacs Twenty Thousand Three-Hundred and Fifty-Four Only) towards compensation from Respondent Nos.1 to 3 jointly and severally including the compensation under no fault liability alongwith interest @9% per annum from the date of filing of petition till realization of the entire amount.”

- III. Rest of the judgment and award stands confirmed, except the apportionment of compensation amongst the Claimant and the

Respondent / legal representative.

- IV. Out of the amount as per the amount of compensation under the modified award, Claimant No.1 is entitled for the compensation of 85% alongwith accrued interest and the remaining amount alongwith accrued interest shall be paid to the Respondent / legal representative in equal shares.
- V. Award be drawn up as per the above modification.
- VI. Needless to say that if any amount is paid as per the judgment and award passed by the Tribunal, the same shall be adjusted in the award as per the above modification.
- VII. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]