

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1432 OF 2015

SITARAM RANGNATH AGHAM THR HIS LEGAL HEIRS DATTATRAY
SITARAM AGHAM AND OTHERS
VERSUS
SHAIKH SALIM SHAIKH BASHIR AND ANOTHER

...
Advocate for Appellants : Mr. Rajebhosale Sandeep B.
Advocate for Respondents : Mrs. R.D. Reddy
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CORAM : V. K. JADHAV, J.
DATED : 15th JUNE, 2017

PER COURT:-

1. Heard finally at admissions stage.
2. Being aggrieved by the judgment and award dated 16.2.2015 passed by the learned Member, M.A.C.T. Vaijapur in M.A.C.P. No. 224 of 2012, the legal heirs of original claimant preferred this appeal to the extent of quantum of compensation.
3. Learned counsel for the appellants-claimants submits that deceased Sitaram was agriculturist by occupation and he was personally cultivating the agricultural land admeasuring 2 acres and 26 Are, situated at Mouje Gurudhanora. The claimant Nos. 1 and 2 are taking education and the other claimants are not in position to cultivate the land. The claimant No.1 has deposed that deceased Sitaram was earning Rs.20,000/- p.m. from his agricultural land. Learned counsel

submits that though the corpus of land remained as it is, the Tribunal ought to have considered the loss in the agriculture income on account of lack of supervision by skilled and experienced person, like deceased Sitaram. However, the Tribunal has considered the loss of Rs.3000/- p.m. which is even not equivalent to the daily wages of labour. Learned counsel submits that the Tribunal ought to have considered the loss in agriculture income at Rs.4000/- p.m. Deceased Sitaram was 42 years of age at the time of his death and as per the photo copy of Aadhar card placed on record, his date of birth is 1.1.1970. The claimant No.1 had admitted the age of his father deceased Sitaram as 45 years at the time of his accidental death, however, without any basis, the Tribunal has considered the age of deceased Sitaram as 45 plus and erroneously applied the multiplier as 13 instead of 14. Learned counsel submits that though the respondent M.S.R.T.C. has admitted original documents including hospital bill, the tribunal has awarded less amount of Rs.21,376/-.

4. Learned counsel for the appellants-claimants further submits that the Tribunal has not awarded any compensation for attendance charges though deceased Sitaram during his life time, admitted in the hospital of Dr. Dunakhe twice and also taken follow up treatment. Learned counsel submits that the Tribunal has also awarded very meager amount under the heads of transportation charges and special diet. Learned counsel though submits that the Tribunal has awarded meager amount under

non pecuniary heads, however, he fairly admitted that the legal heirs of original claimant Sitaram are not entitled to claim compensation under non pecuniary heads, awardable to deceased Sitaram, who had preferred claim petition before the Tribunal seeking compensation for the personal injury sustained by him in the accident.

5. Learned counsel for the respondent M.S.R.T.C. submits that though the respondent M.S.R.T.C. has admitted permanent disablement certificate in Form "COMP. B" Exh.32, it was incumbent upon the appellants-claimants to prove its contents by examining concerned doctor. In absence of the same, there was no material before the Tribunal to arrive at a conclusion about the permanent disablement sustained by deceased Sitaram. Learned counsel submits that the Tribunal has awarded just and reasonable compensation by applying the relevant multiplier. No interference is required in the quantum of compensation.

6. On perusal of pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the Tribunal has considered the loss in his agriculture income equivalent to the daily wages of labour. Deceased Sitaram was personally cultivating the agriculture land admeasuring 2 Acres 26 R and due to untimely death, the claimants suffered loss in income on account of lack of supervision by skilled and experienced person. The Tribunal ought to have considered at least the

loss of Rs.4000/- p.m. on account of loss due to lack of skilled and experienced supervision. It also appears that after the accident, deceased Sitaram had taken treatment in the hospital of Dr. Dunakhe and original receipts issued by the said Hospital are produced on record. Even the respondent M.S.R.T.C. had admitted those receipts and cash memo of the medicines purchased by deceased Sitaram from time to time, the Tribunal has awarded only Rs.1,00,000/- instead of Rs.1,21,376/-, thus the claimants are entitled for balance amount of Rs.21,376/-.

7. It is a matter of record that deceased Sitaram was admitted as indoor patient in the Hospital of Dr. Dunakhe for considerable period, however, the Tribunal has not awarded any amount for attendance charges. It has also come in the evidence that deceased Sitaram had lost his memory due to head injury and suffered many complications and as such, attendant was required to take care of him. In view of the same, the claimants are entitled for amount of Rs.15,000/- towards attendant charges. The Tribunal has awarded very meager amount on account of transportation and special diet. The claimants are entitled for amount of Rs.10,000/- for transportation and Rs.5000/- for special diet. Though a photo copy of Aadhar card is produced on record, on perusal of the same, it appears that the date of birth of deceased Sitaram is 1.1.1970, thus on the date of accident, he was 42 years of age. Though claimant No.1 Dattatraya has admitted the age of his father 45 years at

the time of his accidental death, the Tribunal has unnecessarily considered the age of 45 plus and applied the multiplier 13 instead of 14. Considering the evidence on record, the relevant multiplier would be 14 instead of 13.

8. So far as the injuries sustained by deceased Sitaram which is resulted into permanent disablement to the extent of 20% is concerned, the learned counsel for the respondent M.S.R.T.C. has strongly objected for the same. Learned counsel placed reliance on the judgment of Supreme court in the case of **Raj Kumar vs. Ajay Kumar and Anr, reported in 2011 (1) SCC 343**, wherein in para 9 of the judgment, the Supreme Court has observed thus:-

“9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent

disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.”

9. In the instant case, the respondent M.S.R.T.C. has admitted original documents, including permanent disablement certificate Exh.32. On perusal of same, it appears that the said certificate has been issued by Dr. Jaiswal (M.S. Orthopedics), Aurangabad. It is specifically mentioned in the said certificate that deceased Sitaram had sustained head injury. CT scan report says extra dural bleeding of maximum 2.8 cm left front parietal temporal region causing shift of midline to right side linear fracture, lateral wall of left orbit. The patient was operated for craniotomy. The patient has scar at left temporal-parietal region measuring 16 cm in C shape. The patient has tingling numbness at right upper and lower limb. The patient has intense headache due to which he cannot concentrate on routine work. The patient has giddiness and says he has less memory than before. The patient has permanent disablement to the extent of 20%. In view of the contents of aforesaid certificate, the Tribunal has rightly considered the permanent disablement sustained by the claimant as mentioned in the said certificate or in FORM COMP “B” Exh.32. Furthermore, claimant No.1 Datatraya has also stated in his affidavit of evidence that after the accident deceased Sitaram was not able to do any work and even he could not do his routine work with the help of others. He used to

have headache and suffering from loss of memory. This court is unable to understand as to why the Tribunal has reduced the said percentage of permanent disablement from 20% to 15%. Let it be as it is. The Tribunal has considered the permanent disablement sustained on the basis of the certificate given by Orthopedics Surgeon and as such there is sufficient compliance of the observations, as made by the Supreme Court in the case of ***Raj Kumar vs. Ajay Kumar and Anr, (supra)***, relied upon by the learned counsel for respondent M.S.R.T.C.

10. In view of the above discussion, the impugned judgment and award requires modification. Thus, the break up of compensation under various heads which can be broadly categorized is as under:-

i)	Loss of future income (Rs. 4000X12x14=6,72,000 15% of the same comes to 1,00,800/- rounded up Rs.1,00,000/-, against Rs.44,450/- as awarded by the Tribunal)	Rs. 1,00,000.00
ii)	Medical expenses (As against Rs.1,00,000 awarded by the Tribunal)	Rs.1,21,376.00
iii)	Attendant charges	Rs. 15,000.00
iv)	Transportation charges (As against Rs.3,000/- as awarded by the Tribunal)	Rs. 10,000.00
iv)	Special diet (As against Rs.3,000/- as awarded by the Tribunal)	Rs. 5,000.00

Total Rs. 2,51,376.00
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11. Thus, the claimants are entitled for amount of Rs.2,51,376.00.

Hence, I proceed to pass the following order:-

O R D E R

I. The judgment and award dated 16.02.2015 passed by the learned Member, M.A.C.T. Vaijapur in M.A.C.P. No. 224 of 2012 is modified in the following manner:-

“The claimants are entitled for compensation of Rs.2,51,376.00 (Rupees Two lacs fifty one thousand three hundred seventy six only) (inclusive of 'no fault liability') with interest at the rate of Rs.9% p.a. from the date of petition till realization of the amount with costs”.

II. Rest of the judgment and award stands confirmed.

III. Award be drawn up as per above modification.

IV. Appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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