

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1176 **FIRST APPEAL NO. 1014 OF 2014**

SUNITA VIJAYKUMAR@PAPPU MOE PRESENTAL SUNITA GOVIND
MANE
VERSUS
KAUSHALYA NIVRUTI MORE ANDOTHERS

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Advocate for Appellant : Mundhe Sanjay V.
Advocate for Respondents : Nagarkar Kiran M. for R/1
Advocate for Respondents : Kale N.G. for R/2,
Dhananjay Deshpande for R/3,

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CORAM : V.K. JADHAV, J.
DATE : 17-03-2017.

P.C. :

1. Heard finally with consent at the admission stage.
2. Being aggrieved by the judgment and award dated 29.09.2011 passed by M.A.C.T. Kandhar Link Court at Mukhed in M.A.C.P. No. 28 of 2007 to the extent of para nos. 4 and 5 of the operative part of the order, the original-respondent no.3 preferred this appeal.
3. Brief facts giving rise to the present appeal are as follows.
4. The present respondent no.1/Mother of the deceased filed M.A.C.P. No. 28 of 2007 on account of the accidental death of her son against the owner and the insurer of the vehicle involved in the accident. The appellant-original respondent no.3 appeared in

the said proceedings and raised the point of her entitlement to the compensation being the widow of the deceased. The learned Member of the M.A.C.T. Kandhar by its judgment and award dated 29.09.2011 directed the respondents to pay Rs. 4,20,500/- jointly and severally as a compensation to the present respondent no.1 and the appellant with interest @ 9% per annum from the date of institution of the claim petition till realisation of the amount in full, however, by the impugned para nos. 4 and 5 of the operative part of the judgment directed that the appellant/respondent no.3, is not entitled to the compensation, if she is get re-married. In the impugned para no.5 of the operative part of the judgment, the Tribunal has further directed that if the appellant is re-married then the entire amount of compensation be given to the respondent no.1/original petitioner. Hence this appeal.

5. The learned counsel for the appellant submits that, the respondent no.1-Mother of the deceased alone preferred the claim petition for grant of compensation on account of the accidental death of her son, wherein, the appellant was arrayed as a respondent no.3. In the year 2010 she got re-married with one Govind Mane and accordingly started residing with him at her matrimonial home. The learned counsel submits that, as on the date of the accident, the appellant being a widow is entitled to compensation and the subsequent act of re-marriage, as observed by the learned Member of the Tribunal in the operative part of the

judgment, cannot deprive the appellant to the said entitlement.

6. The learned counsel for the appellant in order to substantiate his submission placed his reliance in the case of **New India Insurance Co. Ltd. Vs. Mona and Ors.** reported in **2011 (4) T.A.C. 925 (Bom.)**

7. The learned counsel for the respondent no.1-original claimant submits that, the appellant was not willing to file claim petition and, on the other hand, she had claimed the lump-sum amount from the respondent no.1-original claimant so as to enable her to perform marriage. There was an agreement between the appellant and the respondent no.1 for payment of Rs. 85,000/- and the appellant, thus, agreed that she would not claim any share in the compensation amount on receipt of the said amount, however, according to the appellant, the respondent no.1 did not act upon the said agreement and, therefore, she claimed the compensation along with the respondent no.1. The learned counsel submits that, even before the Tribunal the appellant has not adduced any evidence and, on the other hand, she and her counsel remained absent when the matter was called for hearing. The learned counsel submits that, considering the conduct of the parties and the admissions given by the appellants, the Tribunal has rightly held that the respondent no.1-Mother is entitled for the entire compensation in case the appellant gets re-married. No

interference required.

8. In the case of **New India Insurance Co. Ltd. (supra)** relied upon by the learned counsel for the appellant in para no. 7 of the judgment this Court has made the following observations:

"Here one has to bear in mind that claim arises out of tort. As soon as the tort is committed, the person against whom such tort is committed becomes entitled to compensation. Therefore, if on the date the tort was committed, the claimant was entitled to a certain compensation, any subsequent act cannot deprive him or her of the said entitlement. As soon as the cause of action arises, the person is whose favour it so arises can prosecute the same. The provision in the form of Section 166 of the Act is a social legislation. The same, therefore, must be interpreted to further the objective of the said section. The law does not prohibit a widow from remarrying. Claimant No.1 was only 25 years of age when her husband died. To my mind, it would be too much for the Insurance Company to expect that if the claimant wants to have compensation, she should not remarry and suffer miseries. In fact, a legislation was required to be brought to overcome the evil of prohibition of remarriage of a widow. If these aspects of the matter are considered, re-marriage cannot be an impediment in claiming the compensation nor can it be a ground to reduce the compensation to which the widow is otherwise entitled."

9. The appellant is entitled for the compensation on account of the accidental death of her husband and if thereafter, if she gets married, the same would not dis-entitle her from claiming the compensation.

10. In view of the above discussion and in view of the observations made by this Court in the aforesaid case, the impugned para nos. 4 and 5 of the operative part of the judgment

and award passed by the Tribunal requires modification. Hence the following order:

ORDER

- i) The appeal is hereby partly allowed, no costs.
- ii) The judgment and award passed by the M M.A.C.T. Kandhar Link Court at Mukhed dated 29.09.2011 in M.A.C.P. No. 28 of 2007 to the extent of para nos. 4 and 5 of the operative part of the judgment and award are modified in the following manner.
- iii) Operative para no.4: The petitioner and respondent no.3 both are entitled to half share each in the amount of compensation.
- iv) The para no.5 of the operative part of judgment and award stands deleted.
- v) Rest of the judgment and award stands confirmed.
- vi) Award be drawn up as per above modification.
- vii) Appeal is accordingly disposed of.

(V.K. JADHAV)
JUDGE