

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

FIRST APPEAL NO. 4394 OF 2016

THE PRINCIPAL, P.T.S. OFFICE BABHALGAON, LATUR AND ANOTHER
VERSUS
VANITA GORAKH BANDE AND OTHERS

AGP for Appellants : Mr.S.S.Dande.

Advocate for Respondents : Mr. D. D. Pokharkar.

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

DATE : 12th January, 2017.

ORDER:

. Heard both the parties finally at admission stage.

2 Being aggrieved by the judgment and award dated 20th February, 2016 passed by Ex-Officio Member of the Motor Accident Claims Tribunal, Latur in M.A.C.P. No.139 of 2014, the original Respondents preferred this first appeal to the extent of quantum.

3 Brief facts giving rise to the present appeal are as follows:

- a) On 27th April, 2014, deceased Suresh Gorakh was going to village Hadga via Latur – Babhalgaon road on his motorcycle bearing

registration No.MH-12-AC-967. On way in front of Mahada Colony, near Bharat Engineering Workshop, Latur, the Tanker bearing registration No.MH-24-D-7501 being driven by Appellant No.2 / driver came from opposite direction and while overtaking one Omni Car, gave dash to the motorcycle of Gorakh by going to wrong side of the road. In consequence of which, deceased Gorakh died on the spot. Crime No.72 of 2014 also came to be registered at Police Station, Latur (Rural) against Appellant No.2 / driver. The said tanker involved in the accident, is admittedly owned by Appellant No.1. Deceased Gorakh was 30 years of age at the time of accident. He was working in Dal Mill as a labour on daily wages of Rs.500/- to Rs.800/-. Thus, the legal representatives of deceased Gorakh preferred M.A.C.P. No.139 of 2014 before the Motor Accident Claims Tribunal, Latur for grant of

compensation under the various heads.

- b) Appellant No.1 / original Respondent No.1 has strongly resisted the claim by filing written statement at Exhibit – 18. Appellant No.1 / original Respondent No.1 has not denied the involvement of the vehicle in the accident and the ownership is also not disputed. It has contended that Appellant No.2 / original Respondent No.2 driver had driven the tanker without any direction / order / assignment of work to him and he had taken the tanker on his own.
- c) Appellant No.2 / driver has also resisted the claim petition by filing his written statement at Exhibit – 22. He denied that he was driving the tanker in rash and negligent manner at the time of accident. It has contended that deceased Gorakh was wearing black goggle and he had driven his motorcycle in rash and negligent

manner. Deceased Gorakh himself gave dash to the tanker. It has also contended that at the relevant time, he was driving the tanker as per the order issued by the higher authority. The Claimants as well as the Respondents led their oral and documentary evidence in support of their rival contentions. The learned Member of the Motor Accident Claims Tribunal, Latur vide its judgment and award dated 20th February, 2016 allowed the petition and thereby directed the Respondents to pay jointly and severally Rs.10,43,000/- to the Claimants with interest at the rate of 7.5% per annum. Hence, this appeal.

4 The learned AGP submits that there is no evidence about the income of the deceased and the learned Member of the Tribunal has erroneously considered deceased Gorakh as a Mathadi Kamgar. The learned Member of the Tribunal has committed mistake in considering the notional income of deceased Gorakh at Rs.6,000/- per month. The learned AGP submits that the

Tribunal has also committed mistake in deducting 1/4th of the amount towards his personal expenses of the deceased instead of 1/3rd of the amount. The learned AGP submits that the Tribunal has awarded the exorbitant amount of compensation.

5 The learned counsel for Respondents / Claimants submits that deceased Gorakh was serving in Dal Mill on daily wages of Rs.500/- to Rs.800/-. The Claimants have also produced on record the identity card of deceased Gorakh showing that he was working as a Mathadi Kamgar. The learned counsel submits that considering the wage rates at the time of accidental death of the deceased, the learned Member of the Tribunal has correctly considered the notional income of deceased Gorakh at Rs.6,000/- per month. There were four dependents on the income of deceased Gorakh and as such in view of the ratio laid down in the case of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another**, reported in, **(2009) 6 Supreme Court Cases 121**, the learned Member of the Tribunal has rightly deducted 1/4th of the income of deceased Gorakh towards his personal expenses. The learned counsel submits that no interference is called for. There is no substance in the appeal and the same is liable to be dismissed.

6 The Appellants have preferred this appeal to the extent of quantum only and therefore, the other aspects of the case require no consideration. The Claimants have produced on record the identity card of deceased Gorakh at Exhibit – 36. On perusal of the same, it appears that deceased Gorakh was working as a Mathadi Kamgar in Latur district. The learned Member of the Tribunal has considered the prevailing wage rates and arrived at a notional income of deceased Gorakh at Rs.6,000/- per month. The learned AGP appearing for the Appellants has not pointed out that the wage rates for Mathadi workers were less than Rs.6,000/- per month at the time when deceased Gorakh met with an accidental death. The learned Member of the Tribunal has therefore, rightly considered the notional income of deceased Gorakh at Rs.6,000/- per month.

7 As per the ratio laid down in *Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another* (supra), 1/4th deduction towards the personal and living expenses of the deceased is permissible when the number of dependent family members is 4 to 6. In the instant case, there are 4 dependents / Claimants. The learned Member of the Tribunal has therefore,

rightly deducted 1/4th of the income of deceased Gorakh towards his personal and living expenses. The Tribunal therefore, after said deduction, has rightly considered the loss of income / dependency to the tune of Rs.4,500/- corresponds to Rs.54,000/- per annum. The learned Member of the Tribunal has also applied the correct multiplier 17 by considering the age of deceased Gorakh. The Claimants have produced on record the school leaving certificate of deceased Gorakh and his date of birth is shown as 1st May, 1984. Thus, at the time of accident, deceased Gorakh was 30 years of age and the multiplier 17 is correctly applied by the Tribunal. The learned Member of the Tribunal has also awarded the reasonable compensation under the non-pecuniary head.

8 In view of the above discussion, no interference is required. There is no merit in the appeal. Hence, the following order:

ORDER

- I. The appeal is hereby dismissed with costs.
- II. The Appellants have deposited the amount before

this Court. The same shall be transferred to the Motor Accident Claims Tribunal, Latur. Needless to say that the Respondents / Claimants are permitted to withdraw the same.

III. The appeal is disposed of accordingly.

[V. K. JADHAV, J.]

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