IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 FIRST APPEAL NO. 2673 OF 2015

ANNAPURNA MOHAN PHAWADE AND OTHERS
VERSUS
ANIL SAHEBRAO PATIL AND OTHERS

WITH
FIRST APPEAL NO. 2674 OF 2015

GEETA GOWARDHAN PATIL @ PHAWADE AND OTHERS
VERSUS
ANIL SAHEBRAO PATIL AND OTHERS
...
Advocate for Appellants : Shinde Shrikishan S.
Advocate for Respondents : Kulkarni Sudhir V. for R.3
...

CORAM : V.K. JADHAV, J.
DATE : 23-02-2017.

P.C. :

1. Heard finally with consent at admission stage. As both the appeals arise out of the same accident they are taken together and decided by this common judgment.

2. Being aggrieved by the judgment and award passed by the Member of the Motor Accident Claims Tribunal, Latur on 22.01.2014 in M.A.C.P. No. 273 of 2011, the original claimants preferred the first appeal no. 2673 of 2015 and the judgment and award passed by the Member of the Motor Accident Claims Tribunal, Latur on 22.01.2014 in M.A.C.P. No. 272 of 2011, the original-claimants preferred the first appeal no. 2674 of 2015. In both the claim petitions the original-claimants preferred these two separate

appeals to the extent of quantum alone.

3. The learned counsel for the appellants in both the appeals submits that, deceased Mohan Phawade was serving as a Supervisor in Kirti Agro Tech Limited and deceased Gowardhan was serving in Kirti Udyog (sister concern of Kirti Agro Tech) as a Supervisor on a monthly salary. The appellant-claimants have proved their salary certificates through the representative of the said employer, however, the learned Member of the Tribunal has not considered the said salary certificate supported by the extract of the muster roll and the vouchers. The learned Member of the Tribunal has given weightage to the averments made in the claim petition filed before the Commissioner, Workmen's Compensation. In the said claim petitions before the Commissioner, Workmen's Compensation, the salary of both the deceased persons was shown as Rs.5,000/- per month. The learned counsel submits that, the appellant-claimants in both the appeals have withdrawn those petitions pending before the Commissioner, Workmen's Compensation and preferred these two separate claim petitions before the Motor Accident Claims Tribunal. The averments made in the petitions which were not pressed before the Commissioner cannot be taken into consideration. The appellant-claimants have independently proved the contents of their respective salary certificates before the Tribunal. The learned counsel submits that, the Tribunal has not made the addition in the income of both the

deceased persons towards the future prospects. Furthermore, the tribunal has awarded a meagre amount under the non-pecuniary heads and even the Tribunal has not awarded any compensation under the head of loss of estate.

4. The learned counsel for the respondent-insurer submits that, the appellant claimants have preferred the claim petitions for compensation against their employer of the deceased persons i.e. the said Kirti Agro Tech Limited and Kirti Dall Mills under the Workmen's Compensation Act, wherein, the salary of both the deceased persons shown at Rs. 5,000/- per month. The certified copies of those petitions are produced before the Tribunal and those are duly exhibited. The learned counsel submits that, those petitions before the Commissioner, Workmen's Compensation were filed on 11.03.2011 and after withdrawing the same, the claim petitions came to be filed before the Tribunal on 15.03.2011 for the compensation against the offending vehicle involved in the accident on the basis of the salary certificate issued by the same employer. The learned counsel submits that, in both the claim petitions the appellant-claimants have examined the representative of the employer of the deceased persons. As per the certified copy of the muster roll and the vouchers both the deceased persons were shown working as a Labour, however, their respective salary certificate produced on record speaks about their position as a Supervisor. The learned counsel submits that, the columns giving

details of the salary in the muster roll as well as on the voucher were kept blank. Even though on the extract of the vouchers there appears the signature of the respective employees on the revenue stamp, the salary amount is not mentioned against the name of any employee and those columns are kept blank. The learned counsel submits that, the Tribunal has, therefore, rightly considered their salary @ Rs. 5,000/- per month by treating them as a Labour and accordingly awarded the compensation. The learned counsel submits that, there is no evidence about their future prospects and, therefore, the tribunal has not considered the same. The learned counsel submits that, the Tribunal has awarded just and reasonable compensation under the non-pecuniary heads. No interference is required. There is no substance in both the appeals and the appeals are liable to be dismissed.

5. On careful perusal of the record and proceedings, I find that the certified copies of the petitions filed before the Labour Commissioner at Latur are produced before the tribunal. It appears from the contents of those petitions that in both the claim petitions, the salary of the deceased persons are shown at Rs. 5,000/- per month. Those petitions were preferred against the employer seeking compensation under the provisions of Workmen's Compensation, however, four days after filing of the said claim petitions, the claim petitions under appeals were preferred before the Tribunal showing more salary compared to the salary shown in

the petitions before the Commissioner. Though, the said petitions before the Commissioner, Workmen's Compensation were subsequently withdrawn, the contents thereof can be considered to the extent of averments made therein about the salary being paid to the deceased persons.

6. In both the claim petitions, the appellant-claimants have examined the representatives of their employer. As rightly pointed out by the learned counsel for the respondent-insurer, the muster roll as well as the extract of the voucher, the most of the columns were kept bank and the amount of the salary being paid to the employees including the deceased persons shown nowhere. Furthermore, even on the muster roll and the voucher extract the employment position of the deceased persons shown as a Labour. In their respective salary certificates, it has stated that, both the deceased persons were working as a Supervisor on a monthly salary of Rs. 9,100/- in case of deceased Mohan and in case of deceased Gowardhan Rs. 8,500/-. However, it is clear that, at the time of accident and even prior to the accident both the deceased were under the employment of the said establishment, though, as a Labour on certain fixed amount of wages.

7. In view of the above discussion, it would just and appropriate if the wages of the deceased persons considered @ Rs. 5,000/- per month. Deceased Mohan was 31 years age at the time

of his accidental death and deceased Gowardhan was 32 years of age at the time of his accidental death. In both the cases, the Tribunal should have considered the addition in the income towards the future prospects. Thus, considering their age 50% of the amount of the wages is required to be considered towards their future prospects. Thus, the salary of the deceased in both the claim petitions is considered @ Rs. 7,500/- per month inclusive of the future prospects. In both the claim petitions, the learned Tribunal has rightly deducted $1/4^{th}$ of the amount towards the personal and living expenses of the deceased persons and also applied the relevant multiplier considering their respective age at the time of their accidental death. It further appears that, the Tribunal has awarded a meagre amount under the non-pecuniary heads such as loss of consortium and loss of love and affection and the Tribunal has also awarded less amount for the funeral expenses. The Tribunal has not awarded any compensation for loss of estate.

8. In view of the ratio laid down by the Supreme Court in the case of **Rajesh & Ors. Vs. Rajbir Singh & Ors.** reported in **2013 BCI 331,** the claimant no.1 in both the cases who are the young widow, are entitled for compensation of Rs. 1,00,000/- towards loss of consortium and the minor claimants are entitled for an amount of Rs. 50,000/- each towards the loss of love and affection. The claimants in both the claim petitions are entitled for an amount of Rs. 25,000/- towards funeral expenses as against Rs.

10,000/- awarded by the Tribunal. The claimants in both the claim petitions are also entitled for an amount of Rs. 10,000/- on account of the loss of estate. In view of the above discussion the break-up of compensation under the various heads which can be broadly categorised is as under:

In the case of Annapurna Mohan Phawade (F.A. No. 2673 of 2015)
-MACP No. 273 of 2011

1) Monthly salary

Rs. 5000 + 2500 = Rs.7,500/-

Rs. 7500 x 12 = Rs. 90,000/-

Rs. 90,000 – 22,500 = Rs. 67,500/-

Rs. 67,500 x 16 - Rs. 10,80,000/-

2) Funeral expenses - Rs. 25,000/-

(as against Rs. 10,000/- as awarded by the tribunal)

3) Loss of love & affection - Rs. 1,00,000/-

(Rs. 50,000/- each to claimant nos. 2 and 3)

4) Loss of consortium Rs. 1,00,000/-

5) Loss of estate - Rs. 10,000/-

Total Rs. 13,15,000/-

In the case of Geeta Gowardhan Patil (F.A. No. 2674 of 2015)
-MACP No. 272 of 2011

1) Monthly salary

Rs. 5000 + 2500 = Rs.7,500/-

Rs. 7500 x 12 = Rs. 90,000/-

Rs. 90,000 – 22,500 = Rs. 67,500/-

Rs. 67,500 x 16 - Rs. 10,80,000/-

2) Funeral expenses - Rs. 25,000/-

(as against Rs. 10,000/- as awarded by the tribunal)

3) Loss of love & affection - Rs. 50,000/-

(for minor claimant no. 2)

4)	Loss of consortium		Rs. 1,00,000/-
5)	Loss of estate	-	Rs. 10,000/-
		Total	**Rs. 12,65,000/-**

9. The claimants in first appeal no. 2673 of 2015 are, thus, entitled for the total compensation of Rs. 13,15,000/- (Rupees Thirteen Lakhs Fifteen Thousand Only) and the claimants in first appeal no. 2674 of 2015 are, entitled for the total compensation of Rs. 12,65,000/- (Rupees Twelve Lakhs Sixty Five Thousand Only). The judgment and award passed by the Tribunal in both the appeals, thus, require modification to that extent. Hence the following order:

ORDER

i) First Appeal No. 2673 of 2015 (*Annapurna Mohan Phawade & Ors. V/s. Anil Sahebrao Patil & Ors.*) and First Appeal No. 2674 of 2015 (*Geeta Gowardhan Patil & Ors. Vs. Anil Sahebrao Patil & Ors.*) are hereby partly allowed with proportionate costs.

ii) The judgment and award passed by the Member, Motor Accident Claims Tribunal, Latur dated 22.01.2014 in M.A.C.P. Nos. 272 of 2011 and 273 of 2011, are hereby modified in the following manner.

iii) The respondent nos.1 to 3 in M.A.C.P. No. 273 of

2011, jointly and severally do pay an amount of Rs. 13,15,000/- (Rupees Thirteen Lakhs Fifteen Thousand Only) and in M.A.C.P. No. 272 of 2011, respondent nos. 1 to 3, do pay an amount of Rs. 12,65,00/- (Rs. Rupees Twelve Lakhs Sixty Five Thousand Only) inclusive of no fault liability with interest @ 9% per annum from the date of filing of both the petitions till the realisation of the entire amount.

iv) Rest of the judgment and award in both the petitions stands confirmed.

v) Awards be drawn up as per the above modifications.

vi) Needles to say that, if any, amount is paid as per the award passed by the Tribunal, the same shall be adjusted in the modified award as above.

vii) In addition to that the claimants shall deposit the deficit court fees within four weeks from the date of this order.

viii) Both the First Appeals are accordingly disposed of.

(V.K. JADHAV)
JUDGE

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