

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 FIRST APPEAL NO. 1311 OF 2016

ANITA JITENDRA KEDARE AND OTHERS
VERSUS
VIJAYKUMAR TRIMBAK KALE AND ANOTHER

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Advocate for Appellants : Pavse Ashok S And S.D.tawshikar

Advocate for Respondents : Rathi Swapnil S. For R/2

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CORAM : V.K. JADHAV, J.
DATE : 13-01-2017.

P.C. :

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Ahmednagar dated 30.04.2014 in Motor Accident Claim Petition No. 585 of 2010. The original claimants preferred this appeal to the extent of quantum.
3. Brief facts giving rise to the present appeal are as follows.
4. On 03.02.2010 deceased Jitendra was proceeding on Nagar-Solapur road by his motor cycle, one pick-up van of Mahindra company bearing registration no. MH-16-Q-0769 came in high speed and gave a dash to the motorcycle of deceased Jitendra. In consequence of which deceased Jitendra fell down from the motorcycle and sustained injuries. He was immediately shifted to

civil hospital at Ahmednagar. However, he succumbed to the injuries while under treatment. The said accident had taken place on account of the rash and negligent driving of the driver of the said pickup van. The appellant-legal representatives of deceased Jitendra preferred Motor Accident Claim Petition No. 585 of 2010 before the Motor Accident Claims Tribunal at Ahmednagar for grant of compensation under the various heads. It is contended that, deceased Jitendra was serving as an Electrical Technician in M.S.E.D.C.L. on a monthly salary of Rs. 16,000/- and the appellant-claimants are entirely depending on his income and they have no independent source of income.

The respondent no. 1 has strongly resisted the claim by filing the written statement at exhibit-15. It has denied that the accident taken place on account of rash and negligent driving on the part of the driver of the pick-up van. It has contended that the driver of the pick-up van was proceeding in slow speed by observing all traffic rules and deceased Jitendra was not taking proper care and he was proceeding in high speed. Thus, deceased Jitendra gave a dash to the pickup van.

The respondent no.2-insurer has also strongly resisted the claim petition by filing written statement at exhibit-13. It is admitted that, the said van is owned by respondent no.1 and insured with respondent no.2, however, the respondent no.2 has denied remaining contents of the claim petition. It has also

contended that, the accident had taken place on account of rash and negligent driving of the motorcycle by deceased Jitendra and the driver of the pick-up van was not at fault.

5. The appellant-claimants have adduced the oral and documentary evidence in support of their contention. Respondents have not adduced any evidence. The learned Member, M.A.C.T. Ahmednagar by its impugned judgment and award dated 30.04.2014 partly allowed the petition and, thereby, directed the respondents jointly and severally to pay compensation of Rs. 19,55,000/- inclusive of the N.F.L. amount with interest @ 7% per annum from the date of filing of the petition till realization of the amount. Aggrieved by same, the appellant-claimants preferred this appeal to the extent of quantum.

6. The learned counsel for the appellant original claimants submits that, the learned Member of the Tribunal has not considered the future prospects of deceased Jitendra who died at the age of 38 years. The learned counsel submits that, though, deceased was working as an Electrical Technician in M.S.E.D.C.L., the tribunal has not considered his future prospects. The tribunal should have considered the future prospects by adding 50% of the amount of the salary. The learned counsel submits that, as per the ratio laid down in the case of **Sarla Varma and ors. Vs. Delhi Transport Corporation and Anr.** reported in **(2009) 6 SCC 121**,

the tribunal should have deducted 1/4th of the amount from the income of the deceased towards his personal expenses instead of 1/3rd as the number of the dependant family members is five. The learned counsel submits that, the tribunal has also awarded meager amount under non-pecuniary heads. The learned counsel submits that, the tribunal has awarded the compensation with interest @ 7% instead of 9%.

7. The learned counsel for the respondent-insurer submits that, the appellant-claimants have not adduced any evidence, so as to consider the future prospects of deceased Jitendra. The learned counsel submits that, the tribunal has rightly awarded the reasonable compensation under the various heads. Thus, no interference is required and the appeal is liable to be dismissed.

8. The appellant-original claimants have preferred this appeal to the extent of quantum only and since the respondent insurer has not preferred any appeal nor filed any cross objection, the other aspects of the case except quantum, are not required to be considered.

9. The appellant-claimants had produced the salary slip of deceased Jitendra at exhibit-32 and the copy of his service book at exhibit-33 in the month of January. It appears that, from the said document that, for the month of January 2010 deceased Jitendra got the gross salary of Rs. 16,572/-. It has further come in the

evidence that, the appellant-claimants have examined witness Nivrutti Pote who happen to be a employee of M.S.E.D.C.L. and he had also deposed that, deceased Jitendra had joined the department as a Helper and he was likely to get promotion as Assistant Lineman in future. On careful perusal of the impugned judgment and award, it appears that, the tribunal has not considered the future prospects of deceased Jitendra. In view of the documents at exhibit-32 and 33 respectively, deceased Jitendra was getting salary of Rs. 16,000/- per month. It is not disputed that, deceased Jitendra met with an accidental death at the age of 38 years. Thus, considering his age at the time of his accidental death, 50% of the amount is required to be added in his salaried income towards the future prospects, thus, the total loss of income/dependency comes to Rs. 24,000/- per month.

10. In view of the ratio laid down in the Sarla Verma's case, if the dependants are in between 4 to 6 in numbers the deductions on account of personal expenses shall be $\frac{1}{4}^{\text{th}}$. In the instant case, the learned Member of the Tribunal has deducted $\frac{1}{3}^{\text{rd}}$ of the amount from the income of the deceased towards his personal expenses.

11. In view of the above discussion, the income of the deceased Jitendra is required to be considered at Rs. 24,000/- per month and if the amount to the extent of $\frac{1}{4}^{\text{th}}$ is deducted towards

his personal expenses, the total loss of future income / dependency comes to Rs. 18,000/- per month. The claimants are also entitled for the interest @ 9% per annum.

12. It appears that, from the impugned judgment and award that, the Tribunal has rightly granted the compensation under the non-pecuniary heads and no interference is required.

13. In view of the above calculations, the break-up of compensation under the various heads which can be broadly categorized, is as under:

1)	Loss of income /dependency (Rs. 2,16,000/- x 15)	Rs. 32,40,000/-
2)	Loss of consortium (As awarded by the tribunal)	Rs. 50,000/-
3)	Funeral expenses (As awarded by the tribunal).	Rs. 15,000/- -----
	Total	Rs. 33,05,000/- -----

14. Hence I proceed to pass the following order.

ORDER

i) Appeal is hereby partly allowed.

ii) The judgment and award passed by the Member, Motor Accident Claims Tribunal, Ahmednagar dated 18.11.2014 in M.A.C.P. No. 190 of 2014 is hereby modified to the following manner.

- iii) "The respondent nos. 1 and 2 to pay jointly and severally amount of Rs. 33,05,000/- (Rupees Thirty Three Lakhs Five Thousand) inclusive of N.F.L. amount to the petitioners along with interest @ 9% per annum from the date of the application till realization of entire amount".
- iv) Rest of the judgment passed by the tribunal stands confirmed.
- v) Award be drawn up as per the modification.
- vi) Needless to say that if any amount is deposited and paid to the claimants, as per earlier award by respondent-insurer, the same shall be deducted from the aforesaid amount.
- vii) Appeal is accordingly disposed of

(V.K. JADHAV)
JUDGE