

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

920 FIRST APPEAL NO. 4189 OF 2016

LUTYA @ LUHYA GOATA PAWARA AND ANOTHER
VERSUS
RAHUL LOTAN HIWALE AND OTHERS

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Advocate for Appellants : Mr. Manish V. Bhamre.

Advocate for Respondent Nos.1 & 3 : Mr. M. R. Wagh.

Advocate for Respondent No.2 : Mr. Arun G. Kanade.

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

DATE : 30th March, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Dhule dated 19th July, 2016 in MACP No.518 of 2011, the original Claimants have preferred this appeal to the extent of quantum.

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

- i) On 13th December, 2010 at 09:00 am, deceased Chingibai was walking on the road and at that time, one Mahindra vehicle bearing registration

No.MH-22/N-3368 gave dash to her from her backside. In consequence of which, she died on the spot. The legal representatives i.e. parents of deceased Chingibai approached to the Motor Accident Claims Tribunal, Dhule by filing MACP No.518 of 2011 for grant of compensation under the various heads. It has been contended in the claim petition that deceased Chingibai was 18 years of age at the time of accidental death and she was earning Rs.4,000/- per month and the Claimants were depending upon her income. The Applicants have thus, claimed total compensation of Rs.2,00,000/-.

- ii) The learned Member of the Tribunal by impugned judgment and award, awarded the compensation of Rs.50,000/-. Being aggrieved by the quantum, the original Claimants preferred this appeal.

4 The learned counsel for the Appellants / original Claimants submits that though the Claimants have adduced oral evidence about the age of deceased Chingibai and her monthly income, the Tribunal has considered the age of the deceased as 10/11 years and accordingly treated her as a non-earning member of the family. The Tribunal ought to have considered her income and by applying relevant multiplier in consonance with her age, ought to have awarded the just and reasonable compensation. The learned counsel submits that even in the alternate if it is assumed that deceased Chingibai was 10/11 years of age at the time of her accidental death, even then the Tribunal though referred the case of **Kishan Gopal and another Vs. Lala and others**, reported in **2014(3) Mh.L.J. 560**, awarded the meager compensation of Rs.50,000/-. The Tribunal has also not awarded any compensation under the conventional heads.

5 The learned counsel for Respondent / Insurer submits that the Claimants have not approached the Tribunal with clean hands. The Claimants have shown the false age of deceased Chingibai as 18 years and by showing her as a person earning for the family, claimed the exorbitant amount of compensation. The

learned counsel submits that the Tribunal by referring the other documents like postmortem report etc. has rightly observed that deceased Chingibai was 10/11 years of age at the time of her accidental death and accordingly, awarded the just and reasonable compensation. No interference is required.

6 On perusal of the judgment and award passed by the Tribunal, it appears that the Tribunal has rightly held that deceased Chingibai was 10/11 years of age at the time of her accidental death. It is apparent that the Claimants have falsely shown the age of deceased Chingibai as 18 years at the time of her accidental death. In fact the age of Claimant No.2 / mother is shown in the title clause of the claim petition as 32 years and it is difficult to believe that the mother had conceived deceased Chingibai at the age of 14 years. The learned Member of the Tribunal has therefore, rightly considered deceased Chingibai as a non-earning member of the family. However, the Claimants are illiterate persons and even if they approached the Tribunal with some misleading statements, they are entitled for just and reasonable compensation after considering the age of deceased Chingibai as 10/11 years at the time of her accidental death.

7 In view of the ratio laid down by the Supreme Court in the case of *Kishan Gopal and another Vs. Lala and others* (supra) relied upon by the learned counsel for the Appellants and further the ratio laid down by the Supreme Court in the case of **Lata Wadhwa and others VS. State of Bihar and others**, reported in, **(2001) 8 Supreme Court Cases 197**, the notional income of deceased Chingibai is required to be considered at Rs.15,000/- per annum and considering the average age of the parents, the relevant multiplier would be 15 in this case. Furthermore, the Claimants are also entitled for an amount of Rs.25,000/- under conventional heads. Thus, the Claimants are entitled for the amount of Rs.2,50,000/- as compensation. The Claimants have restricted their claim to the extent of Rs.2,00,000/-. In any other such case, I would have awarded the compensation by directing the Claimants to pay the deficit Court fees. However, in the instant case, the Claimants have approached to the Tribunal with certain misleading facts and therefore, the Claimants are entitled for an amount of Rs.2,00,000/- for which they restricted their claim before the Tribunal. Hence, the following order:

ORDER

- I. The appeal, is hereby partly allowed. No costs.
- II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Dhule dated 19th July, 2016 in MACP No.518 of 2011, is hereby modified in the following manner:

“The Applicants are entitled to the compensation of Rs.2,00,000/- (Rupees Two Lacs Only) inclusive of the NFL amount jointly and severally from Respondent Nos.1 and 2 alongwith interest @7% per annum from the date of application, till realization.”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn as per the modification as above.
- V. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]