IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1509 OF 2012

Mrs. Kunda R. Deshmukh and ors. .. Appellants (Claimants)
vs.
Mr. Shankar M. More and ors. .. Respondents

WITH
FIRST APPEAL NO. 1582 OF 2016

Mr. Aditya R. Deshmukh .. Appellant (Claimant)
vs.
Mr. Shankar M. More and ors. .. Respondents

WITH
FIRST APPEAL NO. 1584 OF 2016

Mrs. Kunda R. Deshmukh .. Appellant (Claimant)
vs.
Mr. Shankar M. More and ors. .. Respondents

Mr. Vishal Kanade a/w. B.G. Ligade i/b Drupad Patil for the Appellants-Claimants in all the matters
Mr. Sachin Gite for Respondent No.2 in all the matters.
Mr. Ketan Joshi for Respondent No.3 in all the matters.
Ms S.S. Dwivedi for Respondent No.4 in all the matters.

CORAM : M. S. SONAK, J.
DATE : 09 MARCH 2017.

COMMON ORDER :-

1] Heard Mr. Vishal Kanade, learned counsel for the appellants-claimants, Mr. Ketan Joshi, learned counsel for respondent No.3, Mr.Sachin Gite, learned counsel for respondent No.2 and Ms S.S.Dwivedi, learned counsel for respondent No.4, in each of these appeals.

2] Learned counsel for the parties agree that these three appeals can be disposed of by a common judgment and order, considering that the appeals arise out of claims relating to the same accident. Accordingly, these three appeals are disposed of by common judgment and order.

3] On 28 December 1993, Rajeev M. Deshmukh (deceased) was traveling in a vehicle bearing registration No. BLN-2312 along with his wife Kunda and his children Avanti and Aditya. The vehicle was being driven by their driver Arun Vadnere. Unfortunately, the vehicle met with an accident with a truck bearing registration No. MTS-6893, which came on the wrong side and as a result, both Rajeev and Arun Vadnere received fatal injuries. Kunda and Aditya were also injured in the accident.

4] Kunda, Avanti and Aditya instituted claim petition No. 948 of 2000 on account of demise of Rajeev before the Motor Accident Claims Tribunal (MACT), Nashik. Aditya also instituted a separate Claim Petition No. 951 of 2000, on account of injuries sustained by him in the accident. Similarly, Kunda also instituted a separate Claim Petition No. 949 of 2000, on account of injuries sustained by her in the very same accident. By the impugned judgment and awards, all dated 13 May 2011, the MACT Nashik has disposed of the claim petitions by awarding some compensation to the claimants. Dissatisfied with such awards, the claimants have instituted these appeals.

5] First Appeal No. 1509 of 2012 impugns the judgment and award dated 13 May 2011 in Claim Petition No. 948 of 2000, which was instituted by Kunda, Avanti and Aditya on account of the demise of Rajeev Deshmukh. In this case, the MACT has awarded compensation of Rs.7,50,000/- with interest at the rate of 7.5% per annum from 1 January 2009 till the date of realisation of the amount.

6] Mr. Kanade, learned counsel for the appellants-claimants, submits that the MACT has failed to even look into the relevant evidence on record. In any case, the MACT has failed to appreciate the evidence on record in its proper perspective, particularly on the aspect of annual income of the deceased Rajeev. Mr. Kanade submits that a pittance has been awarded towards loss of consortium and loss of love and affection to the dependents. Similarly, a pittance has been awarded towards loss of estate as well as funeral expenses. The MACT has failed to even consider that the deceased Rajeev had qualifications of B.E and MBA and therefore, there is a necessity to make some award on account of future prospects. There is a clear case of enhancement of compensation made out. Further, Mr.Kanade submits that there is absolutely no justification in denying interest from the date of filing of claim petition, which is 27 June 1994.

7] In First Appeal No. 1582 of 2016, which is instituted by Aditya, Mr. Kanade, learned counsel for the appellant, submits that the claim was made for Rs.1,05,000/- and in support of the same, adequate evidence was produced. Aditya sustained injuries to his eye and has also suffered disability, which stands established by the medical certificate produced on record. In such circumstances, the claim of Aditya was required to be granted in its entirety. Further, there is absolutely no justification in denying interest from the date of claim petition, which is 27 June 1994.

8] In First Appeal No.1584 of 2016, which is instituted by Kunda, Mr. Kanade, learned counsel for the appellants, submits that again relevant evidence has been ignored and the entire claimed compensation of Rs.6,11,358/- has been unduly denied. He submits that the compensation awarded is too inadequate, if the injuries sustained by Kunda are taken into consideration. In this matter also, he submits that there was no justification to deny the interest from the date of application, which is 27 June 1994.

9] Mr. Ketan Joshi, learned counsel for the Insurance Company (respondent No.3) in each of the appeals, submits that the awards are quite appropriate and commensurate to the material produced on record by the appellants. He submits that the claimants/appellants in First Appeal No. 1509 of 2012 had cross-examined one Mr. Ramesh Aher, the Accountant of the company (respondent No.5) of which, the deceased Rajeev was a whole time Director and this witness has not even supported the claim of income made by the appellants. He submits that on the basis of the material on record, the MACT has rightly taken the income of Rajeev as Rs.6000/- per month and there is no infirmity in the record of this finding. Mr. Joshi points out that the accident took place in the year 1993 and in such circumstances, it is reasonable to proceed on the basis that the monthly income of Rajeev was in the range of Rs.6000/- per month, even if his qualifications are taken into consideration.

10] Mr. Joshi further submits that in the cross-examination of Kunda, both in First Appeal No. 1509 of 2012 as well as First Appeal No. 1584 of 2016, it has been admitted that the medical expenses incurred by her and Aditya were borne by respondent No.5 company. In such circumstances, there was no case made out to award any compensation towards medical expenses. He submits that whatever has been awarded is itself excessive and therefore, the impugned awards may not be interfered. Mr. Joshi submits that the impugned awards are quite consistent with the law as it stood in the year 1993 when the accident took place and that is the additional reason as to why all these three appeals are liable to be dismissed.

11] Mr. Sachin Gite, learned counsel for the owner of the truck (respondent No.2) in each of these appeals, adopts the submissions made by Mr. Ketan Joshi, learned counsel for respondent No.3. In any case, Mr. Gite submits that since respondent No.2 had taken out insurance policy, which was valid on the date of the accident, it is the Insurance Company which is liable to indemnify respondent No.2 in the matter of claims made or awarded.

12] Ms S.W.Dwivedi, learned counsel for respondent No.4, submits that there was neither any claim against this respondent in the claim petition as originally filed, nor in the present appeal and therefore, she has no submission to make in this matter. In these appeals, she submits that there is no question of foisting any liability upon Respondent No.4.

13] The rival contentions now fall for my determination.

14] Essentially, these appeals are on the issue of quantum of compensation. There is no dispute as regards certain basic facts. The Rajeev was 39 years of age at the time of his unfortunate demise in the accident which took place on 28 December 1993. Rajeev had qualification of B.E. And MBA and was the whole time Director in respondent No.5 company. There is ample evidence on record to establish this position.

15] The MACT has taken income of Rajeev at Rs.6000/- per month. This is because Kunda, in her deposition had stated that her husband's salary was in the scale of Rs.6000-500-8000. However, the MACT has ignored the salary certificate and the income tax returns placed on record in the course of evidence. The salary certificate indicates that Rajeev's basic salary in the year 1988-89 was Rs.6000/-. However, for each year, thereafter, there was an increase in basic salary by Rs.500/- and Rajeev’s salary for the year 1993-1994 was Rs.8000/-. The MACT has clearly misread the deposition of Kunda. In any case, the MACT failed to even take notice of the salary certificate which was duly proved in the course of evidence. In fact, as per the salary certificate, if the perquisites in the form of gas and electricity which were obviously enure for the benefit of the family members is taken into consideration, then the annual income of Rajeev comes to Rs.76,500/- at and around the time of his demise. To this amount, the contribution towards the Provident Fund, which was Rs.4500/- is required to be added. This means that annual income of Rajeev at the time of his demise was required to be taken conservatively at Rs.81,000/-. As per evidence on record, the amount of Rs.21,000/- or thereabouts was paid towards income which is required to be deducted. This means that annual income can be safely taken as Rs.60,000/- per annum.

16] Towards personal expenses, an amount of 1/3rd is required to be deducted taking into consideration the number of dependents left behind by Rajeev. This means that the annual dependency will have to be determined at Rs.40,000/-. From the documents like salary certificate, income tax returns and most importantly, the qualifications of deceased Rajeev, an addition to the extent of 50% is due towards future prospects. This will be consistent with the law laid down by the Hon'ble Supreme Court in ***Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors. - (2015) 6 SCC 347*** This means that the annual dependency, in this case, will have to be taken as Rs.60,000/- per annum.

17] There is no dispute that the multiplier in the present case will be 15, taking into consideration the age of deceased Rajeev. The total amount towards dependency, therefore, will be Rs. 60,000 x 15 = Rs.9,00,000/-. In terms of the decisions of the Hon'ble Supreme Court in case of ***Sarla Verma (Smt.) & ors. vs. Delhi Transport Corporation and anr. - (2009) 6 SCC 121*** and ***Rajesh vs. Rajbir Singh – 2013(6) Scale 563***, an amount of Rs.1,00,000/- will have to be awarded to Kunda towards loss of consortium and Rs.1,00,000/- each to Avanti and Aditya towards loss of love and affection. Further, considering the facts and circumstances of the present case, it will be appropriate if the amount of Rs.1,00,000/- each is awarded to each of the claimants towards loss of estate, on account of untimely demise of Rajeev in the accident. An amount of

Rs.25,000/- is payable towards the funeral expenses. This means that total compensation payable will be Rs.15,25,000/-.

18] There is absolutely no justification in this case to restrict interest from 1 January 2009. Admittedly, in this case, the claim petition was filed on 27 June 1994. There are no reasons set out in the impugned awards as to why the normal rule that is interest should be awarded from the date of filing claim petition has been deviated. There is nothing on record to indicate that the claimants were responsible for delay in institution or the progress in the claim petitions. Accordingly, the interest at the rate of 7.5% per annum is liable to be awarded to the claimants from the date of claim petition on 27 June 1994.

19] The appellants had claimed compensation on the basis that the annual income of Rajeev was Rs.6,00,000/- per annum. However, the income has to be determined on the basis of salary certificate and income tax returns on record. The determination now made, is on the basis of documentary evidence on record, which, it appears was overlooked by learned MACT. The MACT was also not justified in denying the claimants appropriate compensation towards loss of consortium, loss of love and affection, loss of estate and funeral expenses. The responsibility for awarding '*just compensation*' is upon the Tribunal, irrespective of whether or not the claimants have claimed for the same or not. In this case, the claim was in an amount of Rs.1 crore or thereabouts, which was undoubtedly excessive. However, the award by the MACT was also inadequate and not commensurate to the evidence on record.

20] There is no scope to accept the submissions made by Mr. Joshi in support of the impugned award. The evidence of Mr. Ramesh Aher has been misread. In any case, the MACT was duty bound to take cognizance of the documentary evidence on record, which included salary certificate and income tax returns. The MACT was also required to take cognizance of the qualifications of Rajeev and make provisions for future prospects consistent with the law laid down by the Hon'ble Supreme Court in *Munna Lal Jain (supra)*.

21] First Appeal No. 1509 of 2012 is therefore, liable to be allowed partly. The compensation amount is enhanced from Rs.7,50,000/- to Rs.15,25,000/-. Further, it is directed that the interest at the rate of 7.5% on such amount shall be paid from 27 June 1994 till realization of the amount. The respondents are obviously entitled to credit for the amounts already paid to the claimants in pursuance of the impugned award. The directions for investment have, by now, become redundant, since both Avanti and Aditya have attained the majority. The compensation amount to be paid to each of the claimants in the equal measure.

22] In First Appeal No. 1582 of 2016, the material on record justifies the award of claimed amount of Rs.1,05,000/- to Aditya. The MACT, in the impugned award, has restricted this claim to Rs.75,000/-. However, no award has been made towards marriage prospects. No significant award has also been made towards pain and suffering and disablement. The award made, is rather a conservative basis. Again, there is absolutely no reason stated for restricting the interest payment from 1 January 2009. For all these reasons, the compensation amount is enhanced from Rs.75,000/- to Rs.1,05,000/-. Further, it is directed that the interest shall be payable from the date of claim petition, which is 27 June 1994.

23] Accordingly, First Appeal No. 1582 of 2016 is allowed. The compensation is enhanced to Rs.1,05,000/- and the same shall bear interest at the rate of 7.5% from 27 June 1994 till the date of payment/realisation of the amount. Since, Aditya has already attained the majority, there is no question of any investment and the amount may be directly paid to Aditya. Needless to add that the respondents shall be entitled to credit for the amounts already paid to the claimants in pursuance of the impugned award.

24] In First Appeal No. 1584 of 2016, Kunda had raised a claim for Rs.6,11,358/-. The MACT has however, made an award for Rs.2,25,000/-. Kunda, in her evidence, has admitted that most of the medical expenses were borne by respondent No.5 company. Accordingly, the award cannot be said to be totally inadequate. However, some additional amount was required to be awarded towards pain, suffering and disablement. It is to be noted that the nature of injuries suffered by Kunda, involved not only mere physical pain and suffering, but also, there was disfigurement of her face/body, leading to necessity of plastic surgery. Such injuries and disabilities, undoubtedly, hamper the quality of life. The compensation is therefore, enhanced from Rs.2,25,000/- to Rs.3,00,000/-. Again, there is no reason to deny interest at the rate of 7.5% per annum from the date of institution of the claim petition, which is 27 June 1994.

25] First Appeal No. 1584 of 2016 is therefore, partly allowed. The amount of compensation is enhanced to Rs.3,00,000/-. This shall bear interest at the rate of 7.5 % per annum from 27 June 1994 till the date of payment/realisation of the amount. Needless to add that the respondents shall be entitled to credit for the amounts already paid to the claimants in pursuance of the impugned award.

26] The three appeals are disposed of in the aforesaid terms. There shall, however, be no order as to costs in all the three appeals.

(M. S. SONAK, J.)

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