

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL No. 348 of 1995

1) Sitabai Rajaram Dhangda,
2) Sitaram Rajaram,
3) Sumitra,
4) Chandrakant
5) Gondya Vansia Dhangda ..Appellants.

Vs

1) Maruti Dattatraya Patil
2) Executive Engineer
3) The State of Maharashtra ..Respondents.

None for the appellants.

Mr Yogesh Dabke, A.G.P. for Respondents No. 2 and 3.

CORAM : C.V. BHADANG, J.

DATE : 22nd May, 2017.

ORAL JUDGMENT:

1) The appellants are legal representatives/dependents of Rajaram Gondya. Appellant no.1 is a widow, appellant Nos. 2 to 4 are children, while appellant no.5 is the father of deceased Rajaram. Rajaram was in employment of the second respondent as a road roller driver at Tava, worksite of Surya Dam Project. On 4th April, 1984 at about 5:30 p.m. the deceased along with another employee of the Surya Dam

Project, one Shantaram Kamat (PW-3) boarded a truck bearing MFF-7072 for going to the office at Suryanagar for some work. Indisputably, the truck was belonging to the Irrigation Department and was driven by the first respondent. The deceased as well as Shantaram Kamat (PW 3) were travelling in the rear portion of the truck. It is said that when the truck reached the inter- section and was negotiating a right side turn, the deceased, was thrown out of the vehicle and suffered serious injuries to which he subsequently succumbed at Kasa Government Hospital.

2) The appellants sought compensation of Rs. 1 lakh before Motor Accident Claims Tribunal Thane ("Tribunal" for short) claiming that the age of the deceased at the relevant time was 27 years and the deceased was earning salary of Rs.700/- per month. It was contended that the accident occurred due to negligence of the first respondent.

3) The opponents resisted the claim. It was denied that the accident was caused due to negligence of the first respondent.

4) Before the Tribunal the appellant no.1 Sita examined herself along with one Shaniwar Babu Bhoir (PW

2), a spot panch and Shantaram Kamat (PW 3).

5) The first respondent examined himself.

6) The learned Tribunal came to the conclusion that the deceased and the first respondent were equally responsible for the accident and apportioned contributory negligence at 50% each. The Tribunal reckoned income of the deceased at Rs.700/- per month and after adding the compensation towards loss of consortium and love and affection arrived at a sum of Rs.96,000/- and granted compensation of Rs.48000/- along with interest @ 12% per annum. Being aggrieved by the quantum of compensation, the appellants are before this Court.

7) None for the appellants. I have heard the learned A.G.P. for the second and third respondent and perused record.

8) There is no challenge to the aspect of the age of the deceased, being 27 years and deceased earning salary of Rs.700/- per month. It is also not in dispute that the appellants were dependents on the deceased. The annual income of the deceased would be Rs.8400/-. The deduction towards personal and living expenses, when the dependents

are more than three, can be taken as $1/4^{\text{th}}$ i.e. Rs.2100/-. The annual dependency would be Rs.8400/- Rs.2100 = Rs.6300/-. The appropriate multiplier for the age group of 26 to 30 years would be 17 (see Smt. Sarla Verma Vs. Delhi Transport Corporation & Anr (2009) 6 SCC 121. Thus, the compensation would be Rs. 6,300x17=1,07,100/-. The Tribunal has observed that the deceased was not holding the side guard plank unlike Shantaram Kamat (PW 3), although the deceased must have been aware about the road condition. This has promoted the Tribunal to hold that the deceased was negligent to the extent of 50%. In my considered view, the reasoning cannot be accepted. The evidence of Rajaram clearly shows that the deceased was thrown out of the vehicle, while the truck was negotiating a turn. The Tribunal has found that the driver did not care to slow down the vehicle while negotiating the turn. It has come in the evidence of PW 3 that there was enough space in the cabin for PW 3 and the deceased to have travelled in the cabin. However, there is nothing in the evidence of PW 3 that the deceased was not holding the side plank for support. In my considered view, the contributory negligence in this case

can be apportioned as 75% and 25%, the later being attributed to the deceased. Thus, the compensation would be Rs.80,325/-. (75% of 1,07,100/-). An amount of Rs.10,000/- can be added by way of loss of consortium to the appellant no.1 and Rs.5000/- towards funeral expenses. Thus, the total compensation would come to Rs.95,325/-. The respondents have not challenged rate of interest awarded. In such circumstances, appeal is partly allowed. The amount awarded is modified. The respondent shall jointly and severally pay Rs.95,325/- to the appellants along with interest as awarded by the Tribunal. Rest of the award stands confirmed.

In the circumstances, there shall be no order as to costs.

(C.V.BHADANG,J)