

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1717 OF 2008
WITH
CIVIL APPLICATION NO. 4903 OF 2008

Yashwant D. Waragade and anr. .. Appellants.
vs.
Smt. Yasmin B. Shah and ors. .. Respondents

Mr. A.J. Kenjale for the Appellant.
Mr. A.A. Joshi for Respondent Nos.1, 4 and 5.
Ms Divya Menon i/b Mr. S.M. Vidyarthi for Respondent No.6.

CORAM : M. S. SONAK, J.
DATE : 30 JANUARY 2017.

P.C. :-

1] Hear Mr. Kenjale, learned counsel for the appellants and Mr.Joshi, learned counsel for respondent Nos.1,4 and 5.

2] Respondent Nos.2 and 3, who are the parents of deceased Badshaha, on account of whose demise, the claim petition was instituted, though served, neither present nor represented.

3] Mr. Kenjale, learned counsel for the appellants, at the outset submits that the appellants have entered into settlement with respondent Nos.1,4 and 5 and such settlement has culminated into disposal of execution proceedings instituted by the said respondents. Mr. Joshi, learned counsel for respondent Nos.1,4 and 5 does not dispute this position. On account of such settlement, Mr. Kenjale seeks leave to withdraw this appeal as against respondent Nos.1,4 and 5. Leave is granted and this appeal is dismissed as against respondent Nos.1,4 and 5.

4] Insofar as respondent Nos.2 and 3 are concerned, the appeal is heard and in view of short controversy involved, the same is being disposed of finally.

5] Mr. Kenjale, learned counsel for the appellants, submits that in this case appellant No.2, who was the driver of the truck, in which, Badshaha was engaged as a Loader/Unloader was not driven by appellant No.2 in a rash and negligent manner. Mr. Kenjale points out that the accident has taken place in the Ghat section and the accident was on account of one taxi which came from opposite side in high speed, thereby losing control and coming towards truck. In order to save the taxi, appellant No.2 was required to take some steps, which caused the accident. In absence of any negligence on the part of appellant No.2, Mr. Kenjale submits that neither of the appellants will have been held liable for payment of compensation. Mr. Kenjale also submitted that the criminal case filed against appellant No.2 has ended in his acquittal and this is circumstance which is required to be taken into consideration for this appeal.

6] Without prejudice, Mr. Kenjale submitted that in this case there was no proof that deceased Badshaha was earning Rs.2500/- per month. In absence of any proof of income, compensation awarded is excessive and therefore, unsustainable.

7] On the aspect of negligence of appellant No.2, who is incidentally, the son of appellant No.1, i.e., the owner of the truck, it must be noted that appellant No.2 did not step into the witness box to depose about the accident and their plea that appellant No.2 was

not negligent or that the accident was caused on account of any negligence attributable to appellant No.2. In these circumstances, the fact that appellant No.2 may have been acquitted in the criminal case by itself is not any legal and valid defence to resist payment of compensation. There is absolutely no material on record to establish the theory of taxi coming from the opposite side and the accident taking place in order to save the taxi/taxi driver. This is also not a case where the appellants have instituted any independent proceedings against any such alleged taxi owner/driver.

8] At paragraph '11', the Motor Accident Claims Tribunal (MACT) has appreciated the material on record and rejected the plea of absence of any negligence on the part of appellant No.2. In this paragraph, the MACT has observed thus:

'11. The opponent No.2 who was driving the truck at the time of the accident was only witness who had knowledge about the cause of the accident but the opponent No.2 did not resist the claim and did not enter into the witness box and did not explain about the cause of accident. The opponent No.2 is the son of the opponent Nod.1. So it was easy for the opponent No.1 to bring the opponent No.2 before the Court to explain about the cause of the accident. Thus, from the documents placed on record, it is quite clear that the accident occurred due to the rash and negligent driving of the opponent No.2 and in that accident deceased Badshaha sustained injuries and died. Hence, I answer this issue in the affirmative.'

9] On the aspect of income, in fact, the claimant No.1, wife of Badshaha, has deposed that at the time of accident Badshaha was 27 years age and was earning income of Rs.4000/- to Rs.5000/- per month. The documentary evidence on record also averments that Badshaha was a labourer working with the appellants on the date of

accident. The appellants have also not disputed this position. The appellants did not even examine themselves or state what were the wages that they were paying to Badshaha. In such a situation, there was really no reason to disbelieve the statement of Smt. Yasmin Shaikh. However, the MACT has proceeded on the basis that a labourer can get Rs.80/- to Rs.1000/- per day as wages and on the said basis held that income could be taken as Rs.2500/- per month. Besides, the MACT has taken the age of the deceased as 30 years on basis of an endorsement in the postmortem notes. The MACT has made no addition towards any future prospects, though in a situation of this nature, at least 50% addition could have very well be made. On such conservative basis, the MACT has concluded that the compensation payable will be Rs.3,57,000/-. However, since the claimants claimed and applied for only compensation of Rs.3 lakhs, the MACT has proceeded to make such award together with interest.

10] There is really no case made out to interfere with the determination of compensation of Rs.3,57,000/-, though, the determination ought to have been higher by making allowance of future prospects. The MACT was, however, wrong in restricting the compensation to Rs.3 lakhs merely because such was claimed by the claimants. In a matter of this nature, it is the duty of the MACT to determine "*just compensation*". This duty cannot be abdicated merely because the claimants may have claimed any amount, which is less than the just compensation. In such a situation, the impugned award is modified and it is directed that the appellants shall pay compensation of Rs.3,57,000/- in place of Rs.3 lakhs. The additional compensation of Rs.57000/- now awarded alongwith proportionate

interest at the rate of 8% thereon per annum from the date of petition till realization of the amount in its entirety, shall be paid in the following manner:

- (a) 50% of the said amount shall be paid to respondent Nos.2 and 3, i.e., parents of Badshaha; and
- (b) 50% of the said amount shall be paid, again in equal proportions, to Ms Sameena and Ms Sahista the minor daughters of Badshaha.

11] This court is conscious of the submission made by learned counsel for the appellants that there is some sort settlement between the appellants and respondent Nos.1, 4 and 5. Respondent Nos.4 and 5 are the said minor daughters. However, there cannot be any binding settlement with regard to interest of minors unless, proper permission is obtained from the court. In any case, now that the compensation amount has been enhanced, it is only proper that 50% of such enhanced amount is made available to Ms Sameena and Ms Sahista, who were stated to be only three months old on the date when they lost their father Badshaha.

12] An amount of Rs. 55000/- is stated to be deposited in this court by the appellants. The said amount is to be transmitted within a period of four weeks from today to the MACT, Satara. Respondent Nos.2 and 3 shall be entitled to withdraw the said amount unconditionally.

13] The parties shall be entitled to apply for execution of the award as now modified in this order.

14] The first appeal is disposed of in the aforesaid terms. There shall, however, be no order as to costs.

15] The civil application seeking stay does not survive and the same is also disposed of.

16] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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