

((1))

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPEAL NO.884 OF 2007

1. Deepmala w/o Anand Saindane,
Age 24 years, Occu. Nil
2. Shakuntala w/o Vishnu Saindane,
Age 53 years, Occu.Nil,

Both R/o Sakri, Tq. Sakri,
District Dhule

... APPELLANTS

VERSUS

1. Raysing s/o Miru Kokani,
Age 29 years, Occu. Truck Driver
R/o Bhandarpada, Tq. and
District Nandurbar
2. Shailesh s/o Pandit Sawant,
Age 3 years, Occu. Truck Owner,
R/o Daswel, Tq. Satana,
District Nashik

3. The Oriental Insurance Co. Ltd.,
through its Branch Manager,
Bhawsar Complex, Lane No.5,
Near School No.9, Dhule ... RESPONDENTS

.....
Mr. Chaitanya C. Deshpande, Advocate for appellants
Mr. A.G. Kanade, Advocate for respondent No.3
.....

((2))

CORAM: A.M. DHAVALÉ, J.

DATED : 8th August, 2018.

ORAL JUDGMENT :

1. This is an appeal for enhancement of compensation amount in Motor Accident Claim Petition No.500/2004. The learned Member, Claims Tribunal, Dhule awarded compensation of Rs.2,75,500/- to the legal heirs of a Peon, who was aged 25 years, earning Rs.4488/- per month. The aggrieved legal heirs have preferred this Appeal.

2. Heard learned Advocate Mr. Chaitanya Deshpande for the appellant and Mr. A.G. Kanade, learned Advocate for respondent No.3. As per the Claim Petition, on 31.5.2004 at 6.30 p.m., deceased Anand met with an accident on Sakri Nandurbar Road and died in the hospital. The truck of respondent No.2, driven by respondent No.1, insured with respondent No.3 was involved. Respondent No.1 was shown to be rash and negligent. The claimants claimed compensation of Rs.10 Lakhs.

3. Respondent No.1 filed written statement Exh.21. He claimed that, there was rashness and negligence on the part of deceased as he was driving his bike under the influence of liquor.

He had given indication by light and had blown horn, still the accident took place. Hence the claimants are not entitled for compensation. Respondent No.2 filed written statement denying various claims made in the claim petition. The Insurance Company also filed written statement denying all material particularly shown in the claim.

4. The learned Member framed issues. The claimants examined claimant No.1 widow of the deceased, who had no personal knowledge. She relied on the police papers and other documents. She examined one employee to show that the deceased was working as Peon in Panchayat Samiti on a salary of Rs.4488/- per month as per the Salary Certificate Exh.48.

5. The learned Member took into consideration only the net salary of Rs.1841/- and awarded compensation for loss of income at Rs.2,50,478/- and further awarded Rs.5022/- for transportation and funeral expenses and Rs.20,000/- for loss of life award total compensation of Rs.2,75,500/-.

6. Shri Chaitanya Deshpande, learned Advocate for the appellants submitted that, the total salary of the deceased should have been considered and the deductions towards G.P.F., G.I.S. and Society Loan could not have been deducted for calculating

loss of income. The learned trial Judge has not awarded the future prospects and compensation awarded under conventional head is also on lower side. Hence the appeal be allowed.

7. Learned Advocate for respondent submitted that, out of the salary amount, the conveyance allowance should be deducted as the same is not part of the salary. It is by way of reimbursement for personal expenses of the deceased. He also argued that, no claim was made towards future prospects and there was negligence on the part of the deceased which should be taken into consideration.

8. The points for my consideration with my findings are as follows :

(1) Whether the learned Member has awarded just and reasonable compensation to the claimants ? **In the negative.**

(2) What order ? **The compensation is enhanced to Rs.9,97,300/-**

9. Though the learned trial Judge has held that there was complete rashness and negligence on the part of the truck driver, respondent No.1, the said finding has not been assailed

by filing any cross objection or cross appeal. The claimants have no personal knowledge about the accident. Admittedly the charge sheet is filed against the truck driver, respondent No.1. The respondents have not examined him. The F.I.R. Is filed against him. The spot panchanama shows that the deceased along with his bike was lying on the road side and the truck was standing at some distance and the truck driver had fled away. Deceased Ananda was alive at the time of arrival of the police and he was taken to the hospital, but he died in the hospital. One Sham Patil was pillion rider and on the basis of his statement the F.I.R. was lodged by the Police Head Constable. It is not disputed that the truck was owned by respondent No.2 and insured with respondent No.3. In absence of any evidence from the respondents' side, I find that no interference is called for in the findings of the learned Judge that there was 100% negligence on the part of the truck driver. The finding holding respondents No.1 to 3 as liable to pay compensation has not been challenged.

10. Therefore, the only issue is about the quantum of compensation. As per the Certificate Exh.48, the deceased was working as a Peon in Panchayat Samiti and was getting salary of Rs.4488/- per month. The allowance for conveyance of Rs.75/- seems to be not part of the salary as it has been awarded in

connection with reimbursement of the expenses of employment. Therefore, the salary will have to be taken at Rs.4413/- and after deducting Professional Tax of Rs.120/-, it comes to Rs.4293/-.

11. The learned trial Judge has relied on judgments in *Asha Vs. United India Insurance Company* reported in 2004 ACJ 448 to take into consideration only the net salary. However, the law has now been settled in the case of **National Insurance Co. Ltd. Vs. Anjana Shyam & ors.** reported in [**(2007) 7 SCC 445**]. It has been held that, the entire salary deducting the allowances towards expenses for attending the place of employment and the compulsory deductible income tax and professional tax are to be deducted.

12. Though the claimants have not claimed enhancement on account of future prospects, as per the judgment in **Sarla Verma (Smt.) & ors. Vs. Delhi Transport Corporation & anr.** reported in [**(2009) 6 SCC 121**] and **National Insurance Company Limited Vs. Pranay Sethi & ors.**, reported in [**(2017) 16 Supreme Court Cases 680**], they are entitled to get 50% enhancement in the salary on account of future prospects. Therefore, the assumed salary will be Rs.6440/-. There will be one third deduction towards personal expenses and the loss of income would be Rs.4293/- per month

i.e. Rs.51,516/- p.a. The deceased was aged 25 years. Therefore, the multiplier will be 18 and the loss of income will be Rs.9,27,288/-. As held in Pranay Sethi's case, the claimants will be entitled to additional compensation of Rs.40,000/- towards consortium and Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, the claimants are entitled for Rs.9,97,288/-, rounded to Rs.9,97,300/-.

13. The compensation awarded by the learned Member, Claims Tribunal, Dhule is too meagre. He has wrongly considered the loss of income as calculated from only net salary. He has not granted future prospects. Even the compensation under conventional heads is also awarded at very low rates. Considering the facts, the point No.1 is answered in the negative and I allow the appeal as follows :

ORDER

14. The Appeal is allowed. The judgment and decree passed by the Member, Motor Accident Claims Tribunal, in Motor Accident Claim Petition No.500/2004 is modified and it is directed that the respondents No.1 to 3 do jointly and severally pay to the claimants compensation of Rs.9,97,300/- less any compensation paid earlier including No Fault Liability amount. They shall also

((8))

pay interest @ 9% p.a. from the date of claim and proportionate costs throughout. On payment of deficit court fees within one month, award amounting to decree be drawn accordingly.

(A.M. DHAVALA)
JUDGE

fmp/