

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

952 FIRST APPEAL NO. 128 OF 2002

Tamija w/o Rashid Shaikh
Age: 32 years, Occu.: Household,
R/o.Ward No.2, Shrirampur,
District Ahmednagar.

..Appellant
(Orig. Petitioner 2)

Versus

1) Gorakhnath Kalpanath Sharma
(Deceased through his Lrs.)

1A) Deepak s/o.Gorakhnath Sharma
Age: 53 years, Occu.: Business.

1B) Bhupendra s/o. Gorakhnath Sharma
Age: 49 years, Occu.: Business.

1C) Dharmendra s/o. Gorakhnath Sharma
Age: 47 years, Occu.: Business.

1D) Anand s/o. Gorakhnath Sharma
Age: 45 years, Occu.: Business.

1E) Vivekanand s/o. Gorakhnath Sharma
Age: 42 years, Occu.: Business.

All R/o. G.K.Motors,
Opp. Central Bank of India,
Shrirampur, Dist.Ahmednagar.

2) The Branch Manager,
The New India Assurance Co.Ltd.,
Khatod Building, Opp. Central Bank,
Shrirampur, District Ahmednagar.

3) Shaikh Rashid Latif
Age: 38 years, Occu.: Business,
R/o. Ward No.2, Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

..Respondents
(Orig. Opponents &
Ori. Petitioner)

...
Advocate for Appellant : Shri V.S.Bedre
Advocate for Respondent Nos.1D & 1E : Shri L.B.Palod
Advocate for Respondent No.2 : Shri S.G.Chapalgaonkar
Respondent Nos.1A to 1C are served.

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CORAM : P.R.BORA, J.

DATE: 27th September, 2018

ORAL JUDGMENT:-

1. Heard Shri V.S.Bedre, learned Counsel appearing for the appellant, Shri L.B.Palod, learned Counsel appearing for the respondent Nos.1D and 1E and Shri S.G.Chapalgaonkar, learned Counsel appearing for the respondent Insurance Company.

2. The only challenge in the appeal is as about quantum of compensation awarded by the Tribunal. Admittedly, the age of deceased was ten and half years and claimants were parents of the deceased. The tribunal, after having considered the facts and circumstances of the case and evidence on record, has awarded compensation to the tune of Rs.50,000/-. According to Shri Bedre, the amount so awarded by the Tribunal is unjust and improper and needs to be adequately enhanced. The learned Counsel further submitted that even if at the relevant time, the claimants had claimed the compensation only to the tune of Rs.1,00,000/-, the Tribunal was under an obligation to assess

just and fair compensation and to make the award of that amount. According to the learned Counsel, the Tribunal has failed in discharging its duty. The learned Counsel placed reliance on the Judgment of the Hon'ble Apex Court in the case of ***Kishan Gopal and another Vs. Lala and others [2014 (3) Mh.L.J. 560]***. Referring to the observations made and conclusion recorded by the Apex Court in the aforesaid Judgment, the learned Counsel submitted that the facts in the present case are identical. The learned Counsel submitted that the deceased in the case before the Hon'ble Apex Court was a boy aged about 10 years, and the Hon'ble Apex Court awarded compensation of Rs.5,00,000/- to the claimants. The learned Counsel, therefore, prayed for passing similar award in the present matter.

3. Shri L.B.Palod, learned Counsel appearing for the respondent Nos.1D & 1E supported the impugned Judgment and award.

4. Shri S.G.Chapalgaonkar, learned Counsel appearing for the respondent Insurance Company also supported the impugned Judgment and award. The learned Counsel submitted that in the year 1993, in the prevailing circumstances, the Tribunal has correctly awarded the compensation to the tune of Rs.50,000/-.

The learned Counsel submitted that facts in the case of ***Kishan Gopal and another*** (supra) are distinguishable. The learned Counsel submitted that in the said matter before the Hon'ble Apex Court, there was specific evidence showing that the deceased was assisting his father in carrying out agricultural operation and that was the reason for considering the notional income and accordingly amount of compensation was assessed. The learned Counsel submitted that there is no such evidence in the present case and as such same view cannot be taken in the present case. The learned Counsel relied upon the Judgment in the case of ***Kaushlya Devi Vs. Karan Arora and others [(2007) 11 Supreme Court Cases 120]***. The learned Counsel pointed out that in the said matter, the Hon'ble Apex Court declined to cause interference in the award passed by the Tribunal and confirmed by the High Court awarding compensation to the tune of Rs.50,000/- to the parents of the deceased child aged of about 14 years. The learned Counsel in the circumstances, submitted for confirming the order passed by the Tribunal.

5. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have gone through the record of the case also.

6. In his testimony before the Tribunal, Sk.Rashid Nazir (PW-1) i.e. father of the deceased child had deposed that his deceased son used to help him in his business of selling Bhaji-pav. In view of such evidence on record, the submission made by the learned Counsel appearing for the respondent Insurance Company that there was no such evidence and hence, the facts involved in the present case were distinguishable from the facts in the case of ***Kishan Gopal and another*** (supra), cannot be accepted. This fact seems to have been not appreciated by the Tribunal. Considering the facts as aforesaid and having regard to other evidence on record, it appears to me that the total compensation of Rs.1,50,000/- inclusive of the amount of no fault liability, would be just and fair compensation payable to the parents of the deceased i.e. the claimants. Hence, the following order:-

ORDER

I) The amount of compensation payable to the claimants is enhanced by Rs.1,00,000/- (Rs. One lakh only).

II) Respondent No.1 (now deceased) through his legal heir Nos.1A to 1E and respondent No.2 shall jointly or severally pay the enhanced compensation of Rs.1,00,000/- (Rs. One lakh only) to the claimants with interest @ 9% p.a. from the date of filing of the appeal till its realization.

III) The deficit Court fee, if any, shall be recovered from the appellant.

IV) Award be prepared accordingly.

V) Appeal is allowed in the above terms.

(P.R.BORA)
JUDGE

SPT