

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1397 OF 2005

1. Mahadev Vithal Supnur,)
50 years)

2. Smt.Kalabai Mahadev Supnur,)
47 years, R/at. Noble Residency,)
Plot No.7A, New Era Society,)
Survey No.588/B, Market Yard,)
Pune)

..... Appellants

VERSUS

1. Shri Santosh Bhausahab Shinde,))
R/at : At Post – Hanga, Tq. Parner,)
District – Ahmednagar)

2. United India Insurance Co. Ltd.)
Bharati Vidyapeeth Bhavan,)
Near Alka Talkies, Pune)

..... Respondents

Ms. Kruttika Pokale, i/b. Mr.Avinash Gokhale for the Appellants.

None for the Respondents.

CORAM : R.D. DHANUKA, J.

DATE : 13th DECEMBER, 2019

ORAL JUDGMENT

By this first appeal filed under section 173 of the Motor Vehicles Act, 1988, the appellants (original applicants) have impugned the judgment and award dated 11th April,2005 passed by the M.A.C.T., Pune in Civil Application No.1290 of 2002 partly rejecting the claims made by the appellants. None appeared for the respondents though served. Some of the relevant facts for the purpose of deciding this first appeal are as under :-

2. The appellants were the original applicants whereas the respondent no.1 was the original opponent no.1 and respondent no.2 was the original opponent no.2 before the Tribunal. The appellants are the parents of the deceased Mr.Vithal Mahadev Supnur. It was the case of the appellants that the said Mr.Vithal Mahadev Supnur (hereinafter referred to as the said deceased) was driving the vehicle motor-cycle bearing no. MH-12/ZA-8231 from Market Yard towards Kondhawa. When the said deceased reached near Defence Colony, the offending vehicle i.e. truck bearing no. MH-16/B-3134 came from back side in a rash and negligent manner and dashed against the motor-cycle. The rider of the motor-cycle i.e. the said deceased fell down and the wheel of the truck went over the head of the deceased. The said deceased immediately died on the spot due to the injuries sustained due to the said accident.

3. It was the case of the appellants that the deceased was 22 years old at the time of the accident. He was a bachelor son of the appellants and was working in a Noble Construction Company and was getting salary of Rs.3,000/- per month.

4. The opponent no.1 did not file any written statement. The matter proceeded with *ex-parte* against him. The respondent no.2 (original opponent no.2) with whom the said offending vehicle was insured filed a written statement and resisted the said claim made by the appellants. The respondent no.2 denied the entire averments made by the appellants in claim application in toto. In the amended written statement, it was urged by the respondent no.2 that the driver of the offending vehicle was not holding a valid licence and thus in breach of the terms and conditions of the policy committed by the owner of the

offending vehicle, the respondent no.2 was not liable to pay any compensation to the appellants. The Tribunal framed two issues.

5. The appellant no.1 was examined as a witness by the appellants who produced various documents including school leaving certificate, ration card, various FIR and various other related documents. The said witness was cross examined by the appellants' advocate. The appellants also examined Mr.Isaque Mastan Patel (PW-2) who was examined to prove that the said deceased was in the employment of Noble Construction Company and to prove the salary of the said deceased at the time of the accident. The said witness was also cross examined by the advocate of the respondent no.2.

6. The Tribunal however by a judgment and award dated 11th April,2005 only awarded the compensation in the sum of Rs.54,500/- as against the claim of the appellants at Rs.4,12,500/-. Being aggrieved by the said judgment and award dated 11th April,2005, the appellants preferred this appeal under section 173 of the Motor Vehicles Act, 1988. None of the respondents preferred an appeal against the said judgment and award dated 11th April,2005.

7. Learned counsel for the appellants invited my attention to the various documents from the records and proceedings of the said Claim Application No.1290 of 2002 including claim application transmitted to this court which is also annexed to the paper-book, evidence led by the appellants including their cross-examination and various other documents including ration card, salary certificate produced by the appellant no.1.

8. It is submitted by the learned counsel for the appellants that though the appellants had examined a witness from the office of the employer to prove that the said deceased was permanently employed with the said employer and was drawing a salary of Rs.3,000/- per month and had produced the salary certificate of the said deceased, the Tribunal ignored the said evidence produced by the said appellant and considered the notional income of the deceased of Rs.15,000/- per annum. It is submitted by the learned counsel that the Tribunal has wrongly applied the multiplier of 5 on the premise that the age of the appellant no.1 was 65 years and age of the appellant no.2 was 60 years in the year 2001. She submits that the multiplier of 18 was required to be applied by the Tribunal and not multiplier of 5 considering the age of the deceased and not considering the age of the appellants.

9. The next submission of the learned counsel is that both the appellants are alive even today. The Tribunal did not award the compensation towards future prospect at 40% of the salary income. In support of this submission, learned counsel placed reliance on the judgment of the Supreme Court in case of ***National Insurance Company Ltd. vs. Pranay Sethi & Ors. , 2017 ACJ 2700.***

10. The next submission of the learned counsel for the appellants are that the appellants are also entitled to be awarded consortium of Rs.40,000/- under conventional head awarded by the Supreme Court in case of ***National Insurance Company Ltd.*** (supra).

11. The next submission of the learned counsel for the applicants is that since the said deceased was bachelor on the date of his accident, the appellant would also be entitled to the award filial compensation at

the rate of Rs.40,000/- each. In support of his submission, learned counsel placed reliance on the judgment of Supreme Court in case of ***Magma General Insurance Com. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors. 2018 (8) SCJ 338.***

REASONS AND CONCLUSION

12. The Tribunal rejected the school leaving certificate produced by the appellants to show the age of the said deceased on the ground that in the said school leaving certificate, name of the father of the said deceased was mentioned as Madhuraya. There was no explanation brought on record in this regard by the appellant no.1 by saying that he was also known as Madhuraya. A perusal of paragraph 10 of the judgment and award of the Tribunal indicates that the appellant no.1 had filed an affidavit stating that he was known as Madhuraya also. A perusal of the amended claim application clearly indicates that the amendment was allowed to be carried on the claim application by the appellant no.1 in the cause title and in the averments showing the name Mahadev alias Madhuraya Vithal Supnur, which amendment was carried as per order below Exh.36 dated 11th April, 2005. The Tribunal having allowed the appellant no.1 to carry out such amendment and the affidavit already having filed by the appellant no.1 being on record to the effect that he was also known as Madhuraya, the Tribunal could not have rejected the case of the appellants and more particularly the case that the said deceased was 22 years old as reflected in the said school leaving certificate. This part of the judgment and award shows perversity.

13. In so far as the monthly income of the said deceased considered as notional income at Rs.15,000/- p.a. by the Tribunal is concerned, a perusal of the findings of the Tribunal in the paragraphs 11 to 13 indicates that though the Tribunal rendered a finding that from the testimony of the said PW-2, it was evident that the said deceased was working in the said partnership firm as an office boy and he was being paid salary of Rs.3,000/- p.m., the said salary certificate was not accepted by the Tribunal on the ground that the employer was not having a license under the Shops and Establishment Act and that the said witness had not maintained the muster roll or any other record to show that the said deceased was working with him.

14. A perusal of the evidence of the said PW-2 indicates that in his examination-in-chief, he had deposed that he was working as a Civil Contractor. Such Noble Construction Company was his partnership firm. He further deposed that the said deceased was working in the said firm as an office boy since September 2000 and was being paid salary of Rs.3,000/- p.m. The said witness also identified his signatures on the salary certificate which was marked as Exh.21. In the cross-examination of the said PW-2, he deposed that the said firm was registered under a Partnership Act. The firm did not have license under the Shops and Establishment Act to run the business. He also deposed that the said firm was required to maintain a muster roll of all the employees which included the names of the attendants, leave granted to the employees, etc.

15. The said witness further deposed that the said firm was maintaining the muster roll and the name of the said deceased was appearing in the record. The said witness further deposed that though

he has not brought the vouchers showing the payment made to the said deceased, however was ready to produce those vouchers. The said witness denied the suggestion of the advocate for the respondent no.2 that the said witness had made false statement in the evidence to the effect that the said deceased was working with the said firm and was drawing a salary of Rs.3,000/- p.m.

16. A perusal of the record thus clearly indicates that the said salary certificate produced by the said PW-2 was proved by him in evidence including the contents thereof. Merely because the said firm did not have license under the Shops and Establishment Act to run the business, that would not indicate that the said deceased was not employed with the said firm. Though the said witness was ready to produce the vouchers showing the payment of Rs.3,000/- p.m. made by the said firm to the said deceased, the respondent no.2 did not call upon the said witness to produce those vouchers. In my view, the Tribunal thus ought to have drawn an adverse inference against the respondent no.2. In my view, the Tribunal thus could not have ignored the evidence of the said witness who had proved that the said deceased was employed with the said Noble Construction Company as an office boy since September 2000 and was being paid salary of Rs.3,000/- p.m.. This part of the judgment and award also shows perversity and thus deserves to be set aside.

17. In my view, since the appellants have proved that the said deceased was employed with the said Noble Construction Company and was getting salary of Rs.3,000/- p.m. and was working since September 2000, the Tribunal could not have considered the notional income of the said deceased at Rs.15,000/- per annum. In my view, the

Tribunal thus ought to have allowed the notional income at Rs.36,000/- p.m. 1/3rd of the deduction towards personal expenses out of the said amount is required to be made. After deducting 1/3rd of the personal expenses, the yearly income of the said deceased would come to Rs.24,000/-.

18. In accordance with the law laid down by the Supreme Court in case of ***National Insurance Company Limited v/s. Pranay Sethi*** (supra), since, the said deceased was working on permanent basis, the appellants were also entitled to additional compensation of 40% towards future prospect. The amount including future prospect would come to Rs.33,600/-.

19. In so far as multiplier applied by the Tribunal at 5 is concerned, in my view, the Tribunal has committed an error in applying the multiplier of 5 by considering the age of the appellants who were dependents upon the said deceased instead of considering the age of the said deceased at the time of accident. In my view, considering the age of the said deceased as 22 years at the time of accident, the Tribunal ought to have applied the multiplier of 18. After applying the multiplier of 18, the amount would come to Rs.6,04,800/-.

20. In addition to the aforesaid compensation, the appellants being parents of the said deceased would also be entitled to amount of Rs.50,000/- towards love and affection, in view of the principle laid down by the Supreme Court in case of ***Magma General Insurance Co. Ltd.*** (supra). The said deceased being a bachelor, the appellants being parents of the said deceased would be also entitled to Rs.40,000/- as and by way of filial compensation in view of the judgment of Supreme

Court in case of ***Magma General Insurance Co. Ltd.*** (supra). The appellants thus would be entitled to recover a sum of Rs.7,64,800/- from the respondent no.2.

21. I therefore pass the following order:-

- (a) The respondents are jointly and severally liable to pay the sum of Rs.7,84,800/- to the appellants with interest @ 6% p.a. from the date of application till realization of the entire amount. The respondents are directed to deposit the decretal amount before the M.A.C.T., if not deposited within two weeks from the date of computation of the said amount by the M.A.C.T. The appellants would be entitled to withdraw the decretal amount out of the said amount that will be deposited by the respondents, on production of an authenticated copy of this order. If there is any surplus after paying the decretal amount to the appellants, the said surplus amount shall be refunded to the respondents as the case may be.
- (b) The appellants to pay the deficit of payment of Court fees, if any, before M.A.C.T. from the date of computation of such deficit. Appellants would be entitled to recover the amount only upon payment of deficit payment of Court fees, if any.
- (c) Judgment and award dated 11th April, 2004 is modified to the aforesaid extent.

- (d) First Appeal is disposed of on aforesaid terms. No order as to costs.
- (e) Parties as well as the M.A.C.T. to act on the authenticated copy of this order.

[R.D.DHANUKA, J.]