

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1265 OF 2003

Smt. Anjali Jayprakash Kalaskar and
Ors.

...Appellants

Versus

Prakash Raghunath Dalvi and Ors.

...Respondents

.....

Mr. T.J. Mendon for the Appellants.

Mrs. Poonam Mittal for the Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 23rd SEPTEMBER, 2019.

ORAL JUDGMENT :-

The Appellants, who are the original claimants, have challenged the judgment and award dated 7th September, 2002 passed by the learned Member of M.A.C.T., Thane in Claim Petition No.966 of 1992. By the impugned judgment and award the Claims Tribunal has awarded compensation of Rs.3,54,000/- with interest @ 9% p.a. from the date of the claim petition till final realisation.

2. The Appellant No.1 is the widow and the Appellant Nos.2, 3 and 4 are the children of Jayprakash, who expired in a motor vehicular accident on 12th August, 1992 involving a motor lorry No. MCU-2669. It was the case of the Appellants/Claimants that on 12/8/1992 while

the deceased Jayprakash was proceeding to Bhiwandi on a scooter No.MGG 5977, a motor lorry MCU-2669 came from the opposite direction and dashed against his scooter. Said Jayprakash expired as a result of the injuries sustained in the said accident. The Appellants claimed that the deceased was 43 years of age. He was a Junior Assistant in the Maharashtra State Road Transport Corporation(MSRTC) and was earning Rs.4,449/- per month. The Appellants/Claimants alleged that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle. The offending vehicle was owned by the Respondent No.1 and insured by the Respondent Nos.2 and 3. The Appellants therefore filed an application under Section 166 of the Motor Vehicles Act claiming total compensation of Rs.7,00,000/- from the owner/driver and the insurer of the offending vehicle.

3. The Respondent Nos. 1 and 2 did not contest the proceedings. The Respondent No.3 claimed that the accident was caused due to rash and negligent driving by the deceased. The Respondent No.3 therefore disputed its liability to pay the compensation.

4. Upon considering the evidence on record the Tribunal has recorded a finding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal considered the income of the deceased as Rs.4,000/- and deducted 1/3rd towards personal expenses of the deceased. Upon applying multiplier of 12, the Tribunal assessed loss of dependency at Rs.3,24,000/-. The Tribunal also awarded compensation of Rs.10,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. The Tribunal thus awarded total compensation of Rs.3,54,000/-. Being dissatisfied with the quantum of compensation awarded by the Tribunal the Appellant/ Claimant filed this appeal under Section 173 of the Motor Vehicle Act.

5. Heard Mr. T.J. Mendon, the learned counsel for the Appellants and Mrs. Poonam Mittal, the learned counsel for the Respondent No.2. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. The Respondents have not filed appeal or cross objection challenging the finding of the Tribunal that the accident was caused due to rash and negligent driving by the driver of the offending

vehicle. The Respondent Nos.2 and 3, insurers of the said offending vehicle have also not disputed their liability to indemnify the insured. The question in the present appeal is restricted only to the quantum of compensation.

7. The evidence of AW1 vis-a-vis the salary certificate at Exhibit-28 clearly indicates that the deceased was working as an Assistant Accountant in (MSRTC). He was a permanent employee and was earning salary of Rs.4,449/- per month. However, the Tribunal without assigning reasons, considered the income of the deceased as Rs.4,000/- per month. Furthermore, the school leaving certificate at Exhibit-27 indicates that on the date of the accident, the deceased was 43 years of age. Hence, the appropriate multiplier applicable, as per the decision of the Apex Court in *Sarla Varma vs. Delhi Transport Corporation (2009) 6 SCC 121* is 14 and not 9 as held by the Tribunal. It is also seen that the Tribunal has not awarded any compensation towards future prospect though the deceased was a permanent employee of MSRTC. The compensation awarded by the Tribunal cannot be considered as just and reasonable and the same needs to be computed on the basis of the settled principles enunciated by the Apex Court.

8. The deceased was a permanent employee of M.S.R.T.C. and was earning Rs.4,449/- per month i.e. Rs.53,388/- per annum. Upon adding 30% of the established income towards future prospect, the total income works out to Rs.69,404/-. The deceased is survived by his widow and three minor children. Considering the number of the dependents, 1/4th is required to be deducted towards the personal expenses of the deceased. Upon deducting 1/4th towards his personal expenses, the deceased would be contributing Rs.52,053/- per annum towards his family. Considering the fact that the deceased was 43 years of age and applying multiplier of 14, the loss of dependency works out to Rs.7,28,742/-. The Appellant No.1 is the widow and is entitled for Rs.40,000/- towards loss of spousal consortium, the Appellant No.2 is the daughter and the Appellant Nos.3 and 4 are minor sons of the deceased. Considering the fact that they were deprived of love, affection and guidance of their father due to his untimely accidental death, the Appellant Nos.2, 3 and 4 are entitled for compensation of Rs.40,000/- each towards loss of parental consortium. In addition, the Appellants/Claimants are also entitled for compensation of Rs.30,000/- towards loss of estate and funeral expenses. The Appellants/Claimants are therefore entitled for total

compensation of Rs.9,18,798/- as against the total compensation of Rs.7,00,000/- claimed by the claimants in application under Section 166 of Motor Vehicles Act.

9. In ***Ramla vs. National Insurance Co. Ltd. AIR (2019)SCC 404***, the Apex Court has observed thus :-

“ 6.....There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award “just compensation”. The Motor Vehicles Act is beneficial and welfare legislation. A “just compensation” is one which is reasonable and welfare legislation. A “just compensation is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time barred. Further, there is no need for a new cause of action to claim and enhanced amount. The Courts are duty bound to award just compensation (see the judgments of this Court in the cases of Nagappa v. Gurudayal Singh (b) Magma General Insurance v. Nanu Ram, (c) Ibrahim v. Raju.”

10. It is thus well settled that there is no embargo in awarding compensation more than that is claimed. The only mandate is that the compensation should be ‘just compensation’. In the instant case, considering the facts and circumstances of the case, in my considered view, compensation of Rs.9,18,798/- would be just and reasonable compensation. Hence, the following order:-

- (i) The Appeal is allowed.
- (ii) The compensation payable to the appellants is enhanced from Rs.3,54,000/- to Rs.9,18,798/- with interest @ 9% p.a. from the date of the petition till final realization.
- (iii) The Respondent Nos.1, 2 and 3 are jointly and severally directed to pay / deposit before the Claims Tribunal the balance compensation of Rs.5,64,798/- with proportionate interest within a period of eight weeks from the date of uploading of this order.
- (iv) The Appellants are at liberty to withdraw the compensation on payment of additional court fee, if any, as per the statute.
- (v) Record and proceeding be returned to the Tribunal.

Megha
Parab

Digitally
signed by
Megha
Parab
Date:
2019.11.04
15:06:21
+0530

(SMT. ANUJA PRABHUDESSAI, J.)