IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO. 212 OF 2015

Sanjayrao Madhukarrao Dongare and others
vs.
Fakira Rambhauji Kumare and others

Office Notes, Office Memorandum of Coram, appearances, Court's orders of directions and Registrar's orders — Court's or Judge's orders

---

Shri. S. S. Alaspurkar, counsel for appellant.
Shri. U. L. Chhagani, counsel for respondent No.2.
Shri. P. N. Khadgi, counsel for respondent No.3.

CORAM : Manish Pitale J
DATED : 10.10.2019

By this appeal, the appellants who are parents and siblings of the victim, who were claimants before the Tribunal have challenged judgment and order dated 18.10.2014, passed by the Motor Accident Claims Tribunal Amravati, dissatisfied with the quantum of compensation granted to them concerning an incident that took place on 12.07.2010.

2. The victim in the present case was travelling by a mini truck on the said date. It dashed into a stationary truck at about 9.00p.m., due to which, he suffered injuries and finally succumbed. The Tribunal did not accept the documents on record regarding the age of the victim and refused to treat him as a 16 year old boy and also rejected the claim

made on behalf of the appellants that victim was working in a painting mill since documentary evidence in that regard was not produced and therefore he was not treated as skilled labour working in the painting mill.

3. By taking annual notional income of the victim as Rs.15,000/-, the Tribunal applied multiplier and thereupon after adding amounts under other heads concluded that total compensation amount of Rs.2,91,000/- along with interest @7.00%p.a. was payable to the appellant No.2 i.e. mother of the victim.

4. The learned counsel appearing for the appellants contended that the stated case of the appellants was the that victim was 19 years old, working in a painting mill as skilled worker and that his income was about Rs.8000/-p.m. It was submitted that even if there was absence of documentary evidence to show that the victim was working with the said specific painting mill, the victim could have been treated as an unskilled labour.

5. It was suffer submitted that as per law laid down by the Hon'ble Supreme Court in the case of **Ramchandrappa vs. The Manager, Royal Sundaram Aliance Insurance Company Limited** reported in **AIR 2011 SC 2951**, followed in the case of **Syed Sadiq etc vs. Divisional Manager,**

United India Insurance Company reported in **AIR 2014 SC 1052**, the income of the victim ought to have been taken as Rs.4500/- p.m. and then the quantum of compensation ought to have been calculated in line with Constitution Bench Judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi** reported in **2017 (13) Scale 12.** It was submitted that treating the annual income of the victim only at Rs.15,000/- per year was wholly unsustainable and therefore, enhancement of compensation was required to be granted in the present case.

6. The learned counsel appearing for the respondents contended that since there was complete absence of any proof regarding employment of the victim in the present case, the approach adopted by the Tribunal could not be faulted and therefore, the appeal deserved to be dismissed.

7. In the present case there is no doubt about the fact that the appellants could not produce documentary evidence to support their claim that the victim was working in painting mill as a skilled worker. The Tribunal disbelieved the documents on record and held that it could not be accepted that the victim was a boy of tender age of 16 years. The stated case of the appellants was that the victim was a 19 years old person and that he was working with

the said painting mill. In this situation, there is substance in the contention raised on behalf of the appellants that the Tribunal could at least have treated the victim as unskilled labour and on that basis the notional income of the victim could have been calculated, to be made a basis for deriving the quantum of compensation payable to the appellant. Applying the position of law laid down by the Hon'ble Supreme Court in the case of *Ramchandrappa* (supra) and *Syed Sadiq* (supra), it becomes clear that in the facts of the present case, it could have been treated that the victim was having monthly income of Rs.4500/- p.m. and on that basis quantum of compensation could have been calculated.

8. Applying the said position of law it is found that the impugned judgment and order passed by the Tribunal deserves interference. The monthly income of the victim ought to have been treated as Rs.4500/- p.m. and after applying the multiplier of 18 and making deduction of half since victim was a bachelor, further calculations ought to have been made.

9. It is significant that in terms of law laid down by Hon'ble Supreme Court in the case of **Hem Raj vs. Oriental Insurance co. Ltd. reported in 2018 (3) ACC 42**, addition of 40% towards future prospects was clearly payable in the present case. Thereafter, applying the position of law laid down by the Hon'ble Supreme Court in the case of **National**

Insurance company Limited vs. Pranay Sethi reported in 2017 (13) Scale 12, the quantum of compensation payable to the appellants would come to Rs.7,10,400/- in the following manner :-

i	Monthly Income	Rs.4,500/-
ii	Annual Income	Rs.54,000/-
iii	Appropriate multiplier	18
iv	Multiply (ii) X (iii)	Rs.9,72,000/-
v	½ deduction of Rs.9,72,000/- as deceased was bachelor	Rs.4,86,000/-
vi	Future prospects of 40% of (v)	Rs.1,94,400/-
	Total loss of earning (v) (+) future prospects (vi)	Rs.6,80,400/-
a)	Loss of estate	Rs.15,000/-
b)	Loss of Funeral Expenses	Rs.15,000/-
	Total compensation (Rs.6,80,400/- as a loss of earning and future prospects (+) Rs.30,000/- as on account of other heads)	Rs.7,10,400/-

10. Since in the impugned judgment and order itself the compensation has been granted only to appellant No.2 i.e. mother of the victim, it is held that the amount of compensation of Rs.7,10,400/- shall be paid to the appellant No.2 along with interest @9.00%p.a. The rate of interest at @9.00%p.a. is being granted in line with such rate granted in similar cases by the Hon'ble Supreme Court in various judgments.

11. Accordingly, the appeal is allowed and the

impugned judgment and order of the Tribunal is modified by holding that the respondents shall pay amount of Rs.7,10,400/- with 9.00%p.a. from the date of filing of the petition before the Tribunal till actual payment. The enhanced amount of compensation shall be deposited by respondent No.3 in this Court within a period of three months from today. Upon such deposit, the appellant No.2 shall be entitled to withdraw the same immediately.

12. The appellants are granted time of two months for depositing additional Court fees. Appeal is disposed of in above terms.

JUDGE

KOLHE