IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO.140 OF 2006

1. Bhalchandra s/o. Shripati Suryawanshi, Age 36 years, Occ. Agri.,

2. Harishchandra s/o. Shripati Suryawanshi, Age 27 yrs. Occ. Agri.

3. Dropadabai w/o. Shripati Suryawanshi, Age 60 yrs. Occ. Agri. & H.H.

All resident of Tungi (Bk.) Tq. Ausa Dist. Latur.

.. APPELLANTS/ ORIG. CLAIMANTS

VERSUS

1. Sarjerao s/o. Goroba Kamble, Age 21 years, Occu. Driver, and owner of Auto Rickshaw MH-24/J-681, r/o Masalaga Tq. Ausa Dist. Latur.

   [R.1-dismissed as per Court's Order dtd.21.04.2009]

2. National Insurance Company, Branch at Latur Policy No. , period of validity from 7/01/03 to 6/01/04.

.. RESPONDENTS/ ORIG.OPPONENTS

…

Mr.R.B.Deshmukh, Advocate for the appellants
Mr.A.V.Soman h/f. Mr.D.V.Soman, Advocate for the respondent no.2.

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CORAM : V.L.ACHLIYA,J.
DATE : 08.01.2020

JUDGMENT:

1] Being aggrieved by the judgment and award dated 26.09.2005 passed by the Ex-Officio Member, MACT, Latur in MACP No.143 of 2003, the appellants–original claimants have preferred this Appeal for enhancement of compensation.

2] Heard learned counsel for the appellants–original claimants and the advocate representing the respondent no.2. Appeal is dismissed in default as against respondent no.1, vide order dated 21.04.2009. Perused the judgment and award passed by the Tribunal.

3] Before adverting to appreciate the submissions advanced, it is useful to refer few facts leading to filing of the Appeal. The appellants–original claimants had filed application under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.2,00,000/- on account of accidental death of Shripati Dadarao Suraywanshi, who died in motor vehicle accident, which took place on 23.03.2003. The appellant nos.1 and 2- original claimant nos.1 and 2 are the major sons of deceased Shripati. The appellant no.3 – original claimant no.3 is the widow of the deceased Shripati. At the time of accident, deceased was traveling in 6 seater auto rickshaw owned and driven by the respondent no.1 and insured with the respondent no.2. Due to rash and negligent driving on the part of the respondent no.1, the auto rickshaw turned turtle resulting in causing grievous injuries to the deceased. He succumbed to injuries on 24.03.2003, while admitted in Hospital.

4] The appellants – claimants have claimed compensation of Rs.2,00,000/- on account of accidental death of deceased, with contention that deceased was personally cultivating 6 acres of land owned by him and earning Rs.2,000/- per month. Due to accidental death of deceased, the appellants–claimants have suffered loss of Rs.24,000/- p.a. and claimed Rs.24,000/- x 5 = Rs.1,20,00/- as loss of income. Beside loss of income, they have also claimed compensation on account of mental shock and agony. They have claimed total compensation of Rs.2,00,000/-.

5] The respondent no.1 resisted the claim by filing written statement and denied that the accident was occurred due to rash and negligent driving on his part. The respondent no.2–Insurance Company resisted the claim with contention that the respondent no.1 has committed breach of policy condition and thereby the Insurance Company is not liable to pay the compensation. The respondent no.2 denied that the deceased was 'karta' of the family and earning Rs.2,000/- per month by personally cultivating the land.

6] In order to prove their case, the claimants have examined claimant no.1, namely, Bhalchandra Shripati Suryawanshi. On due consideration of overall facts of the case, the rival pleadings and evidence adduced, the Tribunal has reached to conclusion that at the time of accidental death, the deceased was 70 years of age and physically unable to work and earn income @ Rs.2,000/- per month. By considering the overall facts of the case and the age of the claimant no.3, the Tribunal has awarded the compensation of Rs.70,000/- to be payable to the appellant no.3–claimant no.3 i.e. wife of the deceased towards non pecuniary loss on account of accidental death of her husband. Beside awarding Rs.70,000/-, the Tribunal has awarded Rs.3,000/- towards funeral expenses. Being aggrieved, the appellants–original claimants have preferred this Appeal seeking enhancement of compensation.

7] The learned counsel for the appellants–original claimants assailed the reasons and findings recorded by the Tribunal to refuse to grant compensation towards loss of income with contention that the age itself not operates as bar for a person to do the physical work. In absence of any evidence brought on record that the deceased was physically unable to cultivate the land, the Tribunal should not have refused to award compensation towards loss of income. By referring the decision in the case of ***Sarla Verma (Smt) and others Vs. Delhi Transport Corporation & another*** reported in ***[2009] 6 SCC 121***, the learned counsel submits that considering the age of the deceased being 68 years, which falls in the age group of 65 to 70, the Tribunal ought to have applied the multiplier of 5 in assessing the loss of income. It is further submitted that the evidence adduced in the case by the appellants as to income of the deceased has not been challenged. In that view, the Tribunal ought to have awarded Rs.1,20,000/- towards loss of income. Since the appellant nos.1 and 2 having lost the love and affection of their father, they are also entitled for compensation under the non-pecuniary head.

8] On the other hand, learned counsel for the respondent no.2 supported the judgment and award passed by the Tribunal. By referring to overall facts of the case, pleadings and the evidence on record, learned counsel submits that the judgment and award passed by the Tribunal is quite reasoned and suffers from no illegality so as to call for interference in exercise of the appellate jurisdiction of this Court. It is submitted that as per the facts pleaded and the evidence adduced, it is claimed that the deceased was personally cultivating the land and earning income @ Rs.2,000/- per month and he was karta of the family. After the death of the deceased, the land owned by the deceased has devolved upon the appellants–claimants. All of them are physically fit persons. They continued to cultivate the land after the death of the deceased and earning income from the agricultural land even after the death of deceased Shripati. In that view, no loss of income has resulted to the appellants–claimants on account of accidental death of the deceased. It is submitted that the Tribunal has awarded compensation of Rs.73,000/- under non-pecuniary head on due consideration of overall facts of the case. On the basis of evidence brought on record no loss of income proved to be resulted to the appellants–claimants on account of death of deceased. In this background, it is contended that the judgment and award passed by Tribunal calls for no interference in exercise of appellate jurisdiction.

9] I have carefully considered the submissions advanced in the light of overall facts of the case, rival pleadings and the evidence adduced in the case. The appellant nos.1 and 2–original claimant nos.1 and 2 are the major sons of the deceased. At the time of death of deceased, their age was 36 and 27 respectively. Their occupation is mentioned to be agriculturists. The appellants– claimants are residing together. The agricultural land owned by the deceased has devolved upon the claimants after demise of the deceased Shripati. In that view, the Tribunal was justified in holding that no loss of income has resulted on account of death of the deceased. In that view, the reasons and findings recorded by the Tribunal quite consistent with pleading and evidence adduced in the case and suffers from no perversity. However, the fact remains that the deceased claimed to have personally cultivating the land. On account of death of the deceased, the claimants are required to engage the labour for superversion and cultivation of land. In that view, the claimants are entitled to seek some compensation on account of loss of income towards supervision and cultivation of the land by engaging labour.

10] The accident has taken place in the year 2003. Considering the fact that the labours are employed only during limited period of 5 to 6 months in a year, I am of the view that, the yearly loss of income on account of death of the deceased can be worked out as Rs.7500/- per year. Considering the decision in the case of ***Sarla Verma (Smt) and others Vs. Delhi Transport Corporation & another [supra]***, the multiplier 5 is to be made applicable for assessment of the loss of income as deceased falls in age group of 65 years to 70 years of age. Hence, considering the yearly loss of income as Rs.7500/- per month, the loss of income worked to be Rs.7500 x 5 = Rs.37,500/-.

11] The Tribunal has awarded Rs.73,000/- under conventional heads such as loss of estate, loss of consortium and funeral expenses. In terms of the decision in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***[2017] 16 SCC 680,*** the amount of Rs.15,000/- to be awarded towards funeral expenses and Rs.40,000/- and Rs.15,000/- to be awarded towards loss of consortium and estate respectively. Thus, in the light of principles laid down by the Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** *(supra)*, the appellants are entitled for Rs.70,000/- under conventional heads such as loss of estate, loss of consortium and funeral expenses. In that view, the appellants are entitled to receive the compensation of Rs.70,000/- + Rs.37,500/- = Rs.1,07,500/-.

12] In view of above, the compensation deserves to be enhanced from Rs.73,000/- to Rs.1,07,500/- on account of accidental death of the deceased Shripati, the husband of appellant no.3 and the father of the appellant nos. 1 and 2. In my view, the appellant no.3 alone entitled to receive the compensation. It is the appellant no.3, who alone suffered due to accidental death of her husband. She lost the company of her husband at old age. While passing the order dated 19.04.2004 for disbursement of amount of award u/s.140 of the Motor Vehicles Act, the Tribunal has directed to pay Rs.12,500/- to each of appellant nos.1 and 2 and Rs.25,000/- to appellant no.3. In that view, the appellant nos.1 and 2 have already received Rs.25,000/-. Therefore, the appellant no.3 alone entitled to receive the compensation to be payable in terms of award, excluding the amount already paid to appellant nos.1 and 2.

13] In the result, Appeal deserves to be partly allowed. Accordingly, the Appeal is partly allowed. The compensation awarded by the Tribunal is enhanced from Rs.73,000/- to Rs.1,07,500/-, inclusive of no fault liability. The enhanced compensation of Rs.34,500/- be paid to the appellant no.3–claimant no.3 by respondent no.2–Insurance Company with future interest @ Rs.6% p.a. from the date of claim application till its realization. In the circumstances parties to bear their respective costs.

14] The Appeal is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC