IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 852 OF 2021

The Divisional Controller
Maharashtra State Road Transport Corporation
Tal:- Jalna, Dist. Jalna **... Appellant**
[Original Respondent]

Versus

1] Surekha w/o Prabhu Kale
Age:- 36 years, Occ. Household

2] Shivani d/o Prabhu Kale
Age: 17 years, Occ: Education

3] Akanksha d/o Prabhu Kale
Age: 14 years, Occ: Education

4] Rani d/o Prabhu Kale
Age: 12 years, Occu. Education,

5] Devanand s/o Prabhu kale
Age: 9 years, Occ. Education,

[Respondent No. 2 to 5 are under
natural guardian of respondent no.1]

All R/o Surangali, Tq. Bhokardan,
District:- Jalna **... Respondents**
[Orig. Claimant no. 1 to 5]

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Mr. A. D. Wange, Advocate for appellant
Mr. V. P. Golewar, Advocate for respondents

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 23rd AUGUST, 2021
PRONOUNCED ON : 21st OCTOBER, 2021

<u>J U D G M E N T</u> :-

. This is an appeal from judgment and award dated 08.01.2021, passed by the Motor Accident Claims Tribunal, Jalna (Tribunal) in Motor Accident Claim Petition No.186 of 2018 (Petition), granting compensation of Rs. 42,64,157/- with interest @ 9% p.a. on account of death occurred in accident involving bus of Maharashtra State Road Transport Corporation (MSRTC). The MSRTC has, therefore, preferred this appeal taking exception to the quantum of compensation awarded.

2. The deceased Prabhu was serving as a 'Conductor' with the MSRTC. He was on duty on 31.08.2018. It was about 8.20 p.m., he was present on the campus of bus depot of the MSRTC. The S.T. bus No. MH-20-BL-2868 came out of the depot. The bus knocked down Prabhu. As a result of the injuries suffered in the said accident, Prabhu died. His legal representatives therefore preferred the petition for compensation. The Tribunal, considering the monthly income of the deceased at Rs.24,575/- plus Rs.3,000/- p.m. towards overtime, worked out the amount of compensation as stated above.

3. The challenge in this appeal is to the addition of compensation made on account of overtime salary.

4. Heard.

Shri A. D. Wange, learned Advocate for the MSRTC would submit that the Tribunal ought not to have considered overtime wages for calculating compensation on account of loss of dependency. According to him, overtime remuneration is not part of salary. Overtime work is not certain. The Tribunal even granted 30% towards future prospects on overtime salary as well. He, therefore, urged for modification of the impugned award.

5. Shri Golewar, learned Advocate for the claimants would, on the other hand, submit that the Tribunal is under obligation to grant just and reasonable compensation. According to him, the deceased had earned overtime salary consistently for over three years next before the accident. The same has been reflected in the impugned award. Learned Advocate relied on a few authorities to submit that overtime remuneration is part and parcel of the term wages/salary and the same therefore could not be ignored for grant of compensation.

6. In the case of ***General Manager, Kerala State Road Transport Corporation, Trivandrum vs Susamma Thomas (Mrs) and others – (1994) 2 SCC 176,*** it is held thus:-

> *"8. The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependent. Thus "except where there is express statutory direction to the contrary, the damages to be awarded to a dependent of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependent in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages." (Per Lord Macmillan in Davies v. Powell - ((1942) AC 601, 617). Lord Wright in the same case said, "The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death". These words of Lord Wright were adopted as the principle applicable also under the Indian Act in Gobald Motor Service Ltd. v. R.M.K. Veluswami – (AIR 1962 SC 1), where the Supreme Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependent by the death, must be ascertained.*

7. In the case of ***National Insurance Co. Ltd. Vs. Indira Srivastava and others – (2008) 2 SCC 763***, it is held thus:

> "*9. The term 'income' has different connotations for different purposes. A court of law, having regard to the*

change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetory terms.

10. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined.

8. The monthly salary of the deceased was Rs.24,575/-. His annual salary comes to Rs.2,94,090/-. Considering the age of the deceased as 47, multiplier of 13 was rightly applied by the Tribunal after making addition of 30% of his salary towards future prospects. Considering the number of dependents, 1/4th thereof was deducted towards personal and living expenses of the deceased. The appellant MSRTC has no quarrel over granting compensation in terms of the preceding calculation.

9. The Tribunal, however, considered Rs.3,000/- p.m. towards overtime salary. 30% has been added thereto towards future prospects. The annual income from overtime wages comes to Rs.46,800/-. 1/4th thereof was deducted towards leaving expenses. After deducting, it comes to Rs.35,100. Applying the multiplier of 13 thereto, the amount of compensation awarded considering the overtime remuneration comes to Rs.4,56,300/-.

10. It is true, there was evidence to indicate the deceased to have had worked overtime for number of months next before the accident. The Tribunal, therefore found it to be a case of a fixed income of the deceased and therefore considering the same for grant of compensation. It also relied upon the definition of the wages under Industrial Disputes Act. Under Rule 27 of the service rules applicable to the employees of MSRTC, the overtime payment has not been considered to be a part of salary or wages.

11. It is also true that by virtue of Section 14 of Employees State Insurance Act, 1948, payment for overtime work is included in wages for calculating employer's special contribution. In view of this Court, the said definition was meant for application under the E.S.I. Act, 1948.

12. Overtime allowances are not regular income. It is provided only to one who works overtime (***Drakshyani Vs. The Managing Director, KSRTC MFA No.103039/2014, decided in July, 2020***). Overtime is not certain. Let us take a judicial note of a fact that during Covid Pandemic, it is the MSRTC which was worst hit. The same still continues. Since the overtime work is not regular, the Tribunal ought not to have considered overtime wages for grant of compensation. This Court is therefore inclined to interfere with the impugned order to the extent of reducing the amount of compensation granted considering overtime wages, which comes to Rs.4,56,300/-, the same is therefore subtracted from the total amount of compensation awarded by the Tribunal. The rate of interest awarded also appears to be on very higher side. In view of the present economic scenario, the same is also scaled down to 6% p.a.

13. In the result, the appeal partly succeeds. Hence, following order:-

O R D E R

(i) The appeal is partly allowed.

(ii) The amount of compensation of Rs.42,64,157 is reduced to Rs.38,07,857/-, while the rate of interest is scaled down to 6% p.a.

(iii) The amount of compensation in deposit with this Court be paid to the claimants in terms of this modified award along with interest accrued thereon. The remaining amount be paid back to the appellant MSRTC.

(iv) Pending civil applications No.8247 of 2021 and 5394 of 2021, are disposed of.

[R. G. AVACHAT, J.]

SMS