IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.706 OF 2019

1. Manda @ Rima Ajay Rangari
2. Akash Ajay Rangari
3. Dhanshri Ajay Rangari ..Appellants

Vs.

1. M/s. Ideal Movers Pvt. Ltd.
(Deleted as per Court's order dated 19.06.2021)
2. Branch Manager,
Reliance General Insurance Co. Ltd.
3. Arun Bajirao Lahane
4. Branch Manager,
Bajaj Allianz General Insurance Co. Ltd. ..Respondents

Mr.A.K.Gawali, Advocate for appellants
Mr.S.S.Dargad, Advocate h/f. Mr.S.G.Chapalgaonkar, Advocate for respondent nos.2 and 4

CORAM : R.G. AVACHAT, J.
DATE : OCTOBER 13, 2021

JUDGMENT :-

This appeal is filed for enhancement of compensation granted by the Motor Accident Claims Tribunal, Ahmednagar ("the Tribunal", for short) in Motor Accident Claim Petition No.637 of 2011, on account of death in a vehicular accident. The Tribunal has awarded a sum of Rs.10,24,000/- as compensation with interest @ 8% per annum. The appellants herein are widow and children of deceased – Ajay.

2. It is the case of the appellants/claimants that deceased - Ajay was returning from Pune to Ahmednagar in Innova car bearing registration No.MH-20-BN-9081 on 27.06.2011. While they were passing by village Chas on Pune-Ahmednagar road, a container bearing registration no.GJ-05-AT-1650 was parked on the road in breach of the traffic rules and regulations. No tail lamp of the container was kept glowing. It was about 04:30 a.m. The driver of Innova car could not notice presence of the container on the road. As a result, Innova car dashed against the stationary container. Due to the injuries suffered in the accident, Ajay passed away.

3. It is the case of the appellants/claimants that deceased Ajay was 43 years of age. He was serving as a Manager with Badal Bahar Mineral Water Co. P. Ltd. at a monthly pay of Rs.15,000/-. The deceased was the sole breadwinner of the family. Due to his untimely death, the appellants/claimants suffered incalculable loss. The claim petition was, therefore, filed against the owners of the container and Innova car involved in the accident besides their respective insurance companies.

4. The Tribunal considered notional income of the deceased at Rs.9,000/- per month and granted compensation as under:-

Loss of dependency (i.e.Rs.9000 x 12 months - 1/3rd x 13)	Rs.	9,36,000/-
Consortium for claimant no.1	Rs.	40,000/-
Towards Love and affection (for claimant nos.1 and 2)	Rs.	40,000/-
Towards ambulance charges	Rs.	3,000/-
Funeral Expenses	Rs.	5,000/-
	Rs.	10,24,000/-

The Tribunal has dismissed the claim petition against the owner of the container and its insurance company. The owner of the Innova car and its insurance company were directed to pay the amount of compensation of Rs.10,24,000/-. The Tribunal also found the Innova car driver to have not held valid and effective driving licence. It, therefore, directed the respondent-insurance company to pay the amount of compensation and then recover the same from the owner of the Innova car (respondent no.3 in claim petition).

5. Heard learned counsel appearing for the parties.

6. Mr.A.G.Gawali, learned counsel for the appellants, would submit that the employer of the deceased was examined as witness

in proof of salary of Rs.15,000/- per month. The salary certificate was produced on record. The Tribunal, therefore, ought to have relied on the salary certificate. He would further submit that the Tribunal has not awarded any amount towards future prospects. The compensation awarded on account of loss of love affection and funeral expenses is grossly inadequate. He, therefore, urged for enhancement of the amount of compensation.

7. Mr.S.S.Dargad, learned counsel for the respondents-insurance company, would submit that for want of concrete evidence regarding the salary of the deceased, the Tribunal has rightly considered his salary at Rs.9,000/- per month. According to him, considering the facts and circumstances of the case, the amount of compensation awarded by the Tribunal is just and reasonable. He, therefore, urged for dismissal of the appeal.

8. Considered the submissions advanced by learned counsel. Perused the impugned award. Gone through the evidence relied upon.

9. The deceased was 48 years of age when he breathed his last. He was serving with Badal Bahar Mineral Water Co. P. Ltd. His

monthly salary was stated to be Rs.15,000/-. There was, however, no concrete evidence in that regard. The appellants claimed to have placed on record the documentary evidence in proof of monthly salary of the deceased. The employer of the deceased testified that the salary would be paid in cash. The Tribunal has rightly not accepted said case of the claimants. This Court gave the appellants an opportunity to place on record a statement of bank account of the deceased, to show whether the salary was being paid to him by cheque or directly deposited in his bank account. The statement of bank account of the deceased has been placed on record. Although the same indicates a number of transactions and financial position of the deceased, the Court does come across a single entry to suggest deposit of Rs.15,000/- towards salary. The Tribunal was, therefore, justified in considering the deceased’s notional income at Rs.9,000/- per month. This Court does not find any reason to interfere therewith.

10. The Tribunal has, however, not granted any amount towards future prospects. It has also not awarded any sum towards the loss of estate. No adequate compensation has been awarded for funeral expenses and loss of love and affection. The amount of

compensation, therefore, needs to be reworked out in terms of the Apex Court's judgments in the cases of **National Insurance Company Ltd. Vs. Pranay Sethi and ors., (2017)16 SCC 680** and **Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and ors., (2018)18 SCC 130.**

11. The compensation is reworked out as under :-

Particulars		Figures in Rupees
Income of deceased per annum (Rs.9,000/- per month x 12 months)		1,08,000
Addition of 30% towards future prospects since the deceased had a permanent job with a private limited company	+ (plus)	32,400
	:-	1,40,400
Since the claimants were three in number, 1/3rd amount is deducted towards personal and living expenses of the deceased.	- (minus)	46,800
	:-	93,600
Applying multiplier of 13, amount of compensation on account of loss of dependency is (Rs.93,600 x 13)	:-	12,16,800
Addition of amount towards loss of consortium for appellant-widow granted by the Tribunal	+ (plus)	40,000
Addition of amount towards loss of love and affection for appellant nos.2 & 3 i.e. Rs.40,000/- each (Tribunal awarded Rs.20,000/- each).	+ (plus)	80,000

Loss of estate	+ (plus)	15,000
Loss of funeral expenses	+ (plus)	15,000
Amount of compensation	Rs.	13,66,800

In view of the above, the compensation amount comes to Rs.13,66,800/-. Interest shall not be awarded pendente lite on the amount of compensation of Rs.1,10,000/- granted towards loss of love and affection for appellant nos.2 and 3, loss of estate and loss of funeral expenses.

12. Hence, the following order:-

(i) The appeal partly succeeds.

(ii) The amount of compensation awarded by the Tribunal is enhanced from Rs.10,24,000/- to Rs.13,66,800/-.

(iii) Interest shall not be awarded on the amount of Rs.1,10,000/-. However, if this amount is not paid/ deposited within two months, it shall carry interest at the rate of 6% per annum from the date of this order to the date of payment.

(iv) Rest of the terms of the impugned award to stand unaltered.

(v) The amount in deposit, if any, with this Court or the Tribunal, be paid to the claimants with interest accrued thereon.

[**R.G. AVACHAT, J.**]

KBP