

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

70 FIRST APPEAL NO.801 OF 2004

FAKIRMOHAMMED PAPABHAI SHAIKH and ORS
VERSUS
DHARMARAJ RAMCHANDRA YELPADE and ORS

Mr. B. T. Bodkhe, Advocate for the appellants
Mr. S. V. Natu, Advocate for respondent No.1
Mr. M. R. Deshmukh, Advocate for resp. No. 3

CORAM : S. G. DIGE, J.

DATE : 01st August, 2022

P. C.

1. Heard.

2. The learned counsel for the appellant submits that the appellant No.1-Fakir Mohammed Pababhai Shaikh is died during pendency of the appeal. His legal heirs are already on record. He placed death certificate of Fakirmohammed Pababhai Shaikh. It is taken on record and marked as 'X' for identification.

3. I have heard all the learned counsels for the parties and perused the judgment and award dated 06-09-2003 passed by the MACT, Ahmednagar in MACP No.768/1995.

4. It is seen from the evidence of Shaikh Fakirmohammad Papabhai Exh. 38 that the deceased was 19 years old at the time of accident and he was driving Tempo. His income was 9,000/- per month.

5. The learned tribunal has considered the monthly income of the deceased as Rs. 1,000/-. In my view, when it has come on record that the deceased was driver at the time of accident then Rs.1,000/- salary is considered by the learned tribunal is very less. It should be Rs.1,500/-. Hence, I am considering the income of the deceased Rs. 1,500/- per month. Being bachelor 50% of deduction towards

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personal and living expenses, then it comes to Rs.750/-, the tribunal has granted 40% future prospects, then it comes to Rs.300/-. After addition of future prospects the monthly income come to Rs.1050/-. The age of the deceased at the time of accident was 19 years, the tribunal has applied multiplier of the age of the parents, it should be multiplier the age of the deceased i.e. 18, if it calculates $1050 \times 12 \times 18$ it comes to Rs.2,26,800/-.

6. The tribunal has awarded Rs.19,000/- for non pecuniary loss and Rs.27,000/- for medical expenses.

7. Considering the above total compensation, the total compensation come to Rs.2,72,800/-. The tribunal has awarded Rs.1,36,800/-. Considering the above calculations, the appellants are entitled for enhancement of

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Rs.1,36,000/- with 6% interest from the date of filing of the claim petition till today.

8. In view of the above, I pass the following order:-

ORDER

a] The appeal is partly allowed.

b] The appellant is entitled for the enhancement of Rs.1,36,000/- @ 6% interest from the date of filing of application till realization of amount.

c] The applicant shall deposit the deficit court fee on the enhanced amount, if not paid.

d] The respondents shall deposit the enhanced amount before this court and

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after depositing the said amount, the
appellants are permitted to withdraw
it.

[S. G. DIGE, J.]

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