

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 600 OF 2004

- 1) Waheedabegam Abdul Lateef,
Age : 30 years, Occ. : Household,
- 2) Shabanabegum Abdul Lateef,
Age : 7 years (minor) u/g of appellant No.1,
- 3) Rehanabegum Abdul Lateef,
Age : 4 years (minor) u/g of appellant No.1,
- 4) Abdul Rafeeq Abdul Lateef,
Age : 2 years (minor) u/g of appellant No.1,
- 5) Abdul Shafi Abdul Lateef,
Age : 18 years

All R/o. : Kinwat, Dist. Nanded **...(APPELLANTS)**
(Original Petitioners)

VERSUS

- 1) S. Dinkar Rajeswar,
Age : Major, Occ. : Business,
R/o. : Gunj Road, Adilabad (A.P.)
- 2) National Insurance Company Ltd.,
per its Branch Manager, Branch office at
Adilabad, 504001 (A.P.)

...(RESPONDENTS)
(Original Respondents)

...

Advocate for Appellants : Mrs. A.N. Ansari
Advocate for Respondent No.1 : Mr. P.P. Mandlik h/f.
Mr. P.V. Mandlik

CORAM : S.G. DIGE, J.
DATE : 25th July, 2022

ORDER :

. Being aggrieved and dissatisfied by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Nanded, appellants - original claimants have preferred this appeal for enhancement of the compensation amount.

2. Heard learned Counsel for appellants and learned Counsel for respondent No.1. Though the respondent No.2 was served but none appears for respondent No.2.

3. Brief facts of the case are as under :-

The husband of appellant No.1 Abdul Lateef Abdul Kareem was in private service at Vardan Clothes Centre, Kinwat. Deceased had been deputed by his employer to Adilabad to bring bundles of clothes from Adilabad. He was travelling in truck No. AP-1-T-468. The truck was driven by the driver in rash, negligent manner and in high speed. As a result, truck turned down in Amba Ghat, due to which deceased caused fatal injuries and died.

4. The appellants filed Claim Petition before the Motor Accident Claims Tribunal (*for short "the Tribunal"*). The Tribunal has granted amount of Rs.90,000/- as compensation. The said judgment and order is under challenge.

5. Learned Counsel for the appellants submits that, the Tribunal has not granted the amount under the head of love and affection and towards the pain and suffering. The Tribunal has also not considered salary of deceased. Appellant No.1's husband was serving in cloth shop and the cloth owner had obtained signature of appellant No.1's husband on the salary slip of Rs.1200/- on revenue stamp. The Tribunal has considered only Rs.1000/- as salary. Hence, requested to allow the appeal.

6. Learned Counsel for respondent No.1 submits that, the Tribunal has considered all the aspects and evidence produced before him and accordingly passed reasoned order. No witness was examined to prove the salary slip of the deceased. Hence, amount of Rs.1200/- was not considered by the Tribunal. The Tribunal has granted just

and proper compensation. The order passed by the Tribunal is legal and valid, in connected group of matters, out of the same accident. The Tribunal has fastened liability on the Insurance Company whereas in the claim petition of appellants, the liability is fastened on the respondent No.1. Hence, requested to dismiss the appeal.

7. I have heard both the learned Counsel. Perused judgment and order passed by the Tribunal.

8. The Tribunal by common judgment and order granted compensation of amount of Rs.90,000/- in favour of appellants.

9. Appellants are seeking enhancement of the compensation on two grounds :

- i. Salary of deceased is not properly considered
- ii. Future prospects and consortium amount not awarded

10. Firstly I deal with the issue of salary of deceased.

For proving the salary of the deceased, the appellant No.1 examined herself as P.W.-1. She has stated that, her

husband was getting amount Rs.1200/- per month. She has produced the copy of muster-cum-acquittance roll at Exh.40. The Tribunal has observed that, muster roll has been duly signed by the deceased over revenue stamp in acknowledgment of receipt of salary. Since signature of the deceased could not have been obtained for the purpose of this petition therefore, the Tribunal has accepted the muster roll at its face value. The Tribunal has considered salary of deceased of Rs.1000/- per month which is proper.

11. The Tribunal has granted amount towards loss of dependency of amount of Rs.84,000/- and in addition thereto has granted amount of Rs.6,000/- under the heads of non-pecuniary losses such as loss of consortium and father's love etc., i.e. total compensation amount of Rs.90,000/-. In my view, the deceased has two daughters and two sons so amount given Rs.6,000/- under the heads of non-pecuniary losses is not sufficient so each appellant is entitle to get amount of Rs.3,000/- under this head, then it would come to amount of Rs.15,000/-. It is

admitted fact that, accident is occurred in Ambadi Ghat deceased was resident of Kinwat, Dist. Nanded therefore, appellants are entitle to receive the transport expenses. Funeral expenses are not awarded. Therefore, appellants are entitle to the amount of Rs. 10,000/- for funeral expenses and transport expenses.

12. Considering above calculations, appellants are entitle for the enhanced amount of Rs.25,000/-. In view of the above, I pass the following order :-

ORDER

- (a) Appeal is partly allowed.
- (b) Appellants are entitle to enhanced amount of Rs.25,000/- at the rate of 6% interest thereon from filing of the application till realisation.
- (c) Respondent No.1 shall deposit enhanced amount within four (04) weeks' after the receipt of the order.
- (d) Appellants are permitted to withdraw amount deposited by respondent No.1.
- (e) Appeal is disposed of accordingly.

[S.G. DIGE, J.]