IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1028 OF 2003

1. Smt. Mangalabai Shivaji Patil
Age: 23 years, Occu: Householdwork

2. Ankush Shivaji Patil
Age: 3 years, Occu: Nil

3. Rupali d/o Shivaji Patil
Age 1 years, Occu: Nil,
2 & 3 minor Through legal Guardian
Their Mother Appellant No.1

All R/o. Arunnagar, Chopada,
Tq. Chopada, Dist. Jalgaon

4. Smt. Gangubai Rama Patil
Age: 50 years, Occu: Labour Work
R/o Ramanand nagar, M.I.D.C., Jalgaon

… Appellants
[Orig. Claimants]

Versus

1. The General Manager
The Maharashtra State Transport
Corporation Vahatuk Bhawan
Dr. A. N. Marg. Mumbai - 32

2. Adbul Rajjak Sk. Ahmed
Age: 40 years, Occu: S. T. Driver
at S.T. Depot. No.2, Aurangabad,
District Aurangabad … Respondents

…

Mr. A. I. Deshmukh, Advocate for the Appellants
Mr. M. K. Goyanka, Advocate for Respondent No.1

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 07.06.2023
PRONOUNCED ON : 28.06.2023

JUDGMENT :

1. The appellants / original claimants impugn the judgment and award dated 23/09/2002, passed by the Motor Accident Claims Tribunal, Jalgaon [for short 'the Tribunal'], in Motor Accident Claim Petition (MACP) No.279/1995 in this appeal, filed under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short].

2. The claimants are aggrieved by the assessment of compensation made by the Tribunal and seeks enhancement of compensation in this appeal. The claimants had approached the Motor Accident Claims Tribunal, Jalgaon by filing a MACP No.279/1995, contending that, they were dependents of deceased Shivaji Patil, who lost his life in motor vehicle accident on 30/06/1995. It is the contention of the claimants that, while deceased was proceeding in hawker-four-wheeler, a MSRTC Bus bearing Registration No.MH20/D-0961 dashed against the four-wheeler. The deceased suffered fatal injuries owing to accident. According to the claimants, the deceased was engaged in the business of sale of kerosene oil and he was also pulling rickshaw. He was 25 years of age at the time of his death. The Tribunal, considering the pleading and evidence of respective parties, partly allowed the claim petition and passed an award of Rs.2,01,500/-, including NFL in favour of the claimants.

3. Mr. Deshmukh learned Advocate appearing for the appellants / claimants would submit that, the Tribunal has erroneously adopted the income of deceased to the tune of Rs.1500/- per month only though the income of deceased was much more. He would further submit that, the Tribunal has wrongly applied multiplier of 16 although looking to the age of deceased appropriate multiplier would be 18. He would further submit that, nothing is granted towards future prospects of the deceased. The compensation granted towards non-pecuniary heads is also meager and inadequate, which requires reconsideration.

4. Mr. Goyanka learned Advocate appearing for respondent No.1 / MSRTC would support the judgment passed by the Tribunal. He submits that, the claimants have pleaded income of deceased to the tune of Rs.1500/- per month in the claim petition. He points out that, though claimants had sought amendment in the claim petition to seek increased compensation, the pleading regarding income has not been amended. He would submit that, considering the fact that, the accident took place in the year 1995 the Tribunal has rightly considered income of the deceased to the tune of Rs.1500/- per month based on the law as stood at the time of accident. He would justify assessment of compensation is made by tribunal in impugned judgment.

5. Having considered the submissions advanced by the learned Advocates appearing for the respective parties and after considering the pleadings and evidence on record, it can be gathered that, the challenge in present appeal is restricted only to assessment of compensation. The pleading in claim petition would show that, the claimants have specifically pleaded in Paragraph No.3 of the claim petition that the deceased used to drive the rickshaw and also engaged in the business of kerosene vending to generate getting monthly income of Rs.1500/-.

6 Pertinently, the claimants had moved an application at Exhibit-25 seeking permission to amend the pleading regarding income of deceased and incorporate his income as Rs.2500/- per month. The said application was allowed. However, the amended claim petition again shows his income to the tune Rs.1500/- per month. The claimants have recorded evidence of CW-1 - Gangubai. In her evidence, she asserts that, the deceased was getting income of Rs.5000/- to Rs.7000/- per month. The claimants have further recorded the evidence of CW-2 - Kailash Jadhav at Exhibit-47, who states that, the deceased was dealing in the business of kerosene and used to earn Rs.3000/- to Rs.4000/-. It can be observed that, the pleading and

evidence of claimants regarding income of deceased is inconsistent. Tribunal, in backdrop of the anomaly appearing in the pleading and evidence, fixed notional income of the deceased to the tune of Rs.1500/- per month i.e. 18000/- per annum for assessment of compensation. This Court do not find infirmity in the course adopted by the Tribunal on appreciation of evidence on record. The notional income of the deceased is rightly assessed to Rs.18000/- per annum. Considering the fact that, the accident occurred in the year 1995.

6. The Tribunal adopted multiplier of 16 since the age of deceased was approximately 25 years. The Tribunal has further added compensation of Rs.9500/- towards non-pecuniary heads. The Supreme Court of India in the case of **Sarla Verma and Ors. Vs. Delhi Transport Corporation and Ors.** reported in **(2009) 6 SCC 121** and **National Insurance Company Limited Vs. Pranay Sethi and Ors.** reported in **(2017) 16 SCC 680** laid down the principles for assessment of compensation in the matter of motor accident claims filed under Section 166 of the Act. Applying the principles settled by Supreme Court and considering the age of the deceased as 25 years, the appropriate applicable multiplier would be 18. Similarly, the addition of 40% amount by way of future prospects needs to be made in the income of the deceased. The compensation of Rs.70,000/- needs to be added towards non-pecuniary heads. Since there were four dependents of deceased as on the date of his death, 25% (i.e. 1/4 th) amount of his income needs to be deducted towards his personal and living expenses. In that view of the matter, the assessment of compensation needs to be modified as under:

Income of deceased per annum	Rs.18000/-
Addition of 40% towards future prospects	Rs.18000/- + Rs.7200 = Rs.25200/-
25% deduction towards personal and living expenses	Rs.25200/- – Rs.6300/- [25% Ded] = Rs.18900/-
Multiplier of 18	Rs.18900/- x 18 = Rs.3,40,200/-
Add Rs.70000/- non pecuniary heads	Rs.70000
Total	**Rs.4,10,200/-**

7. The claimants would be entitled for total compensation of Rs.4,10,200/- along interest @ 7.5% per annum from the day of filing of claim petition till the realization of amount. Hence, this Court proceeds to pass following order:

ORDER

(i) The Appeal is partly allowed with cost.

(ii) The respondent nos.1 and 2 shall jointly and severally to pay the compensation of Rs.4,10,200/- [inclusive of Rs.50000/- paid under NFL] along with interest @ 7.5% per annum from the date of the petition till realization of the amount.

(iii) The compensation amount already disbursed/paid to the claimants shall be appropriated against the total compensation amount assessed in this appeal.

(iv) After recovery of the compensation amount, it be disbursed amongst the claimants in terms of Clause No.4 of the order passed by the Tribunal.

(v) Award be drawn accordingly on payment of deficit Court fees, if any.

(S. G. CHAPALGAONKAR, J.)

Sameer