IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 476 OF 2016
WITH
CIVIL APPLICATION NO. 3443 OF 2017
IN
FIRST APPEAL NO. 476 OF 2016

Solapur Municipal Corporation
and anr. …. Appellants
v/s.
Mrs. Rupali Rahul Pawar and ors. …. Respondents

Mr. Sumedh Modak i/b. Mr. Vijay Killedar for the Appellants.
Mr. T.J. Mendon for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 29th AUGUST, 2023.

P. C. :-

CIVIL APPLICATION NO. 3443 OF 2017 :-

. Learned counsel for the Applicant states that the entire amount as per the impugned judgment and award dated 10/11/2014 passed by the MACT, Solapur in MACP No.12/2012 has been deposited before the Claims Tribunal.

2. In the light of said statement, execution and implementation of the impugned judgment and award is stayed pending hearing of the Appeal.

3. Civil Application stands disposed of.

FIRST APPEAL NO. 476 OF 2016 :-

4. Heard finally at the stage of admission.

5. By this Appeal under section 173 of Motor Vehicles Act, the Appellant – Corporation impugns the judgment and award dated 10/11/2014 passed by the MACT, Solapur in MACP No.12/2012. By the impugned judgment, the Claims Tribunal has awarded compensation of Rs.12,58,000/- with interest @ 7.5% p.a. from the date of petition till final realization.

6. The brief facts necessary to decide this Appeal are as under :-

The Respondent Nos.1 to 5 hereinafter referred to as 'the Claimants' filed claim petition under section 166 of the Motor Vehicles Act in view of death of Rahul Pawar in a motor vehicular accident on 24/12/2011 involving bus bearing No.MH-13/B-4016 owned by the Appellant – Corporation. It was the case of the Claimants that the deceased was 28 years of age, a skilled mason earning Rs.12,000/- per month. The Claimants being the widow, two minor children and the parents of the deceased claimed that they were solely dependent on the income of the deceased. Hence, they claimed compensation of Rs.7,00,000/-.

7. The Appellant – Corporation disputed the age and income of the deceased and denied that the accident was caused due to rash and

negligent driving by the driver of the offending vehicle.

8. The Tribunal after considering the evidence on record, held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle and that said Rahul Pawar has expired as a result of the injuries sustained in the said accident. The Tribunal rejected the plea that the deceased had also contributed to the accident. While determining the quantum of compensation, the Tribunal held that the Claimants had failed to prove the actual income of the deceased and considering that he was a skilled mason, computed loss of dependency on the basis of notional income of Rs.6,000/- per month. Taking into consideration the number of dependents, the Tribunal deducted 1/4th of the income towards personal expenses and further added 25% towards future prospects. Applying multiplier of 18, the Tribunal computed loss of dependency at Rs.12,15,000/-. In addition, the Tribunal awarded Rs.2,000/- towards mental shock, pain and agony and Rs.3,000/- towards funeral expenses and loss of consortium. The Tribunal also awarded compensation of Rs.38,000/- towards medical expenses and thus awarded total compensation of Rs.12,58,000/- payable with interest @ 7.5% p.a. from the date of the petition till final realization. Being aggrieved by this judgment and award, the Appellant – Corporation has filed this Appeal.

9. Heard learned counsel for the Appellant – Corporation and learned counsel for the Respondent. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

10. It is not in dispute that the deceased had expired as a result of the injuries sustained in a motor vehicular accident involving bus no.MH-13/ B-4016 owned by the Appellant – Corporation. There is no challenge to the finding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The challenge is essentially to the quantum of compensation awarded by the Tribunal. Hence, the only question for consideration is whether the compensation awarded by the Tribunal is just and reasonable.

11. It is not in dispute that the deceased was 28 years of age and was a mason by profession. The Claimants had not proved the actual income of the deceased. Hence, the Tribunal has computed the compensation on the basis of notional income @ Rs.6,000/- per month i.e., Rs.72,000/- p.a. which in my view is not excessive. The Claimants being the widow, two children and parents of the deceased were dependent on him. Considering the number of dependents, the Tribunal was justified in deducting 1/4th of the income towards personal expenses of the deceased.

12. The deceased was 28 years of age. Hence, the multiplier applicable was 17. Furthermore, considering the age of the deceased and the nature of employment, the Tribunal ought to have added 40% of the income towards future prospects. The Tribunal while computing loss of dependency, has applied multiplier of 18 and added 25% towards future prospects. The amount awarded on conventional heads is also very meagre. In such circumstances, the compensation awarded by the Tribunal is not just and reasonable.

13. Considering the annual income of the deceased at Rs.72,000/- and deducting 1/4th towards personal expenses and adding 40% towards future prospects, the actual income works out to Rs.75,600/- per annum. Applying multiplier of 17, the loss of dependency works out to Rs.12,85,200/-. The Claimants being the widow, minor children and parents of the deceased are entitled for compensation of Rs.2,50,000/- towards loss of spousal, parental and filial consortium. The Claimants are also entitled for compensation of Rs.16,500/- towards funeral expenses and Rs.16,500/- towards loss of estate. The records reveal that soon after the accident, the injured was shifted to Sidheshwar Hospital, Solapur and was later shifted to Ashwini Hospital, Solapur. The evidence of PW2 viz-a-viz the medical bills at Exhibit – 40 and 41 amply prove that medical expenses of Rs.38,000/- was incurred for the treatment of the deceased.

Hence, the Claimants are entitled for total compensation of Rs.16,06,200/- which is in excess of the compensation awarded by the Tribunal.

14. The Claimants have not filed an appeal or cross objection for enhancement of compensation. The question which therefore arises is whether this Court can enhance the compensation in the absence of the appeal or cross objection. In this regard, it would be advantageous to refer to the decision in ***A.P.S.R.T.C. Rep. by its General Manager and anr. V/s. M. Ramadevi and ors. 2008(1) T.A.C. 714 (S.C.)*** wherein the Apex Court while considering the question whether the High Court could have enhanced the compensation in the absence of an appeal by the claimant, reiterated the principles in ***Nagappa v/s. Gurdayal Singh and ors. 2003 (2) SCC 274*** that under Motor Vehicles Act there is no restriction that the Tribunal cannot award compensation amount exceeding the claimed amount. The obligation of the Tribunal/Court is to do complete justice by awarding 'just compensation' which is reasonable on the basis of the evidence produced on record.

15. It is thus well settled that the Tribunal/Court is under an obligation to award just and reasonable compensation and there is no embargo in enhancing the compensation in the absence of appeal or cross objection.

As stated earlier, the Tribunal has awarded compensation of Rs.12,58,000/- while the original Claimants are actually entitled for total compensation of Rs.16,06,200/-, which in my considered view is just and reasonable compensation.

16. Under the circumstances and in view of discussion supra, the Appeal is dismissed. It is held that the Claimants are entitled for compensation of Rs.16,06,200/- with interest @ 7.5% p.a. from the date of the accident till final realization. It is stated that the Appellant – Corporation has already deposited the compensation as per the impugned judgment and award. The Corporation to deposit the balance amount with interest @ 7.5% p.a. within a period of six weeks from the date of the order.

17. Statutory deposit be transferred to MACT, Solapur.

18. Appeal stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)