

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.990 OF 2022

1. Smt.Chabibai Ananta Khandagale, }
2. Shri.Avinash Ananta Khandagale }
3. Mrs.Laxmi Ananta Khandagale }
4. Shri.Sagar Ananta Khandagale }
5. Shri.Bhika Rama Khandagale, }
6. Smt.Sagabai Bhika Khandagale }

All R/at Indira Nagar, Dattatraya Chawl }
No.5, Zone No.2, Sainath Nagar Road, }
Ghatkopar (W), Mumbai-86 }

...Appellants

Versus

1. Mr.Sayad Ali Mohiddin }
- R/at Plot No.14/N/5, Shivaji Nagar, }
- Govandi, Mumbai-43 }
2. The Oriental Insurance Company Ltd }
- Building Annexe, 3rd Floor, Bank Street, }
- Fort. }

...Respondents

Ms.Reena Kundu, for the Appellants.

Mrs.Poonam Mital, for the Respondents.

CORAM : S.G. DIGE, J.

DATE : 27 FEBRUARY 2023

JUDGMENT :-

. By way of this Appeal the Appellants-Claimants are seeking enhancement of compensation.

2. It is contention of the learned counsel for the Appellant that the Tribunal while awarding the compensation has observed that Claimants are entitled for enhancement. But while passing order has observed that the Claimants are seeking compensation of Rs.4 lakhs and no amendment for enhancement was made in the Claim Petition, hence he restricted the compensation at Rs.4 Lakhs.

3. The learned counsel further submit that it is settled principle of law that if Claimants are entitled for more compensation then claimed. The Tribunal has power to enhance the compensation but said power is not used by the Tribunal. Hence, requested to allow the Appeal.

4. It is contention of the learned counsel for the Respondent/Insurance Company that while awarding compensation the Tribunal has considered all the aspects, on that basis compensation is awarded. No reasons are given by the Claimants why amendment was not made for enhancement of compensation in the Claim Petition. The order passed by the Tribunal is legal and valid.

5. I have heard both the learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal (for short 'The Tribunal').

6. The issue involved in this appeal is whether the Tribunal has power to enhance the compensation when the Claim Petition was for particular amount. The Tribunal in paragraph 16 of the impugned order has observed that the Claimants are entitled to the sum of Rs.4 Lakhs as no amendment for enhancement was made in the Appeal. Accordingly, the Tribunal has awarded Rs.4 lakhs compensation though the Tribunal has calculated the compensation of Rs.5,61,600/-. I am unable to understand the finding given by the Tribunal as no amendment was carried out in the Claim Petition. Hence, he can't award the more compensation than claim. In my view, Motor Vehicles Act, 1908 (for short 'M.V. Act') is a beneficial legislation. The Tribunal after considering the evidence on record if comes to the conclusion that the Claimants are entitled more compensation, then it is duty of the Tribunal to award the more compensation and direct the parties to pay Court fees on it. Section 168 of M.V. Act reads as under:-

168. Award of the Claims Tribunal.—*On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.*

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.”

7. This Section empowers the Tribunal to award the just compensation. The just compensation includes the compensation which is not mentioned in the Claim Petition. If Claimants are entitled for compensation the Tribunal has to award it. The Tribunal has considered the monthly income of deceased Rs.3,000/- per month. The Tribunal has considered 30% future prospects. As per view of ***National Insurance Co. Ltd. vs. Pranay Sethi***¹. As deceased was 35 years of age and he was self-employed. The Claimants are entitled for 40% future prospects. Hence, I am considering 40% future prospects, it comes to Rs.1,200/- total income of deceased comes to Rs.4,200/-. 1/4th deduction for personal expenses it comes to Rs.1,050/-. The income remains at Rs.3,150/-. The yearly income comes to Rs.3,150/- x 12 with multiplier of 16 comes to Rs.6,04,800/-. There are six Claimants. As per view of ***Magma General Insurance Co. Ltd. vs. Nanu Ram***². Each Claimants is entitled for Rs.44,000/- with 10% increase it comes to Rs.2,64,000/-. Loss of estate Rs.16,500/-, funeral expenses Rs.16,500/-. Total comes to Rs.9,01,800/-. The

1 2017 ACJ 2700 (SC).

2 2018 ACJ 2782 (SC)

Tribunal has awarded Rs.4 Lakhs, if this amount deducts from the compensation considered by this Court. It comes to Rs.5,01,800/-. The Claimants are entitled for this amount.

8. In view of the above I pass following order.

ORDER

- (i) The Appeal is allowed.
- (ii) The Claimants are entitled for enhanced amount of Rs.5,01,800/- @ of 7.5% from the date of the filing of the Application till realization of the amount, out of this amount Rs.2,64,000/- is consortium amount. The Claimants are entitled at 7.5% interest on this amount from 1 October 2017 till realization of the amount.
- (iii) The Respondents are directed to deposit enhanced amount along with accrued interest thereon within six weeks after the receipt of this order.
- (iv) The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- (v) All pending Civil Applications, if any, are disposed of.

(S.G. DIGE, J.)