



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 76 OF 2022

Smt. Asmita Yogesh Shinde and Ors. .. Appellants
Versus
Rajesh Ashok Zarekar & Ors. .. Respondents

Mr.Umakant U. Wagh, Advocate for the appellants.
Mr.A.B. Kadethankar, Advocate for respondent No.2.

CORAM : KISHORE C. SANT, J.
DATED : 19.06.2024

PC :-

01. Heard learned Advocates for the parties. Perused the record and proceedings.

02. This appeal arises out of the judgment and award dated 19.03.2021 in MACP No. 540 of 2016 passed by the learned Chairman, Motor Accident Claims Tribunal, Ahmednagar. By way of the impugned judgment and award, the learned Tribunal has awarded Rs.19,06,000/- towards compensation including the amount of 'no fault liability' along with interest @ 9% p.a. from the date of filing of the petition in March, 2020 and @ 7% p.a. thereafter till realization of entire amount. Apportionment among the parties is made. Out of said amount Rs.3 lakhs each is given to minor son and

daughter appellant Nos. 2 and 3. An amount of Rs.1 lakh each is given to appellant nos.4 and 5 i.e. parents of the deceased. Amount towards consortium is granted only to applicant No.1 wife.

03. The claimants have, therefore, approached this Court on three grounds (i) that the learned Tribunal has not granted future prospectus (ii) consortium is awarded only to appellant No.1 – wife and is not granted to son, daughter and parents, and (iii) the learned Tribunal while awarding interest has awarded interest @ 9% only till March, 2020 and thereafter it is granted only @7% p.m.

04. The brief facts are that deceased Yogesh Sambhaji Shinde was working as driver with Salasar Wear-housing Pvt. Ltd., Kharadi, Pune. While on duty on 10.05.2016, he was directed to go to Pune in the loaded Eicher Tempo bearing registration No. MH-12-CT-4640. After unloading the vehicle, he was returning to Supa. On return journey near Mhasne phata, he stopped his vehicle for having tea. After finishing tea, when he was standing near the vehicle, one pick-up van bearing registration No. MH-23-4307 dashed him. Because of the dash, the deceased received head injury, in which he died on

the spot. The appellants - dependents filed claim against the offending vehicle's driver, owner and the insurance company with whom the said vehicle was insured. The learned Tribunal found that the claimants are entitled to receive compensation from the respondents and passed the award.

05. During the course of arguments, the learned Advocate for the appellants vehemently submits that though the learned Tribunal has rightly arrived at the finding that the appellants are entitled to receive compensation, has not considered the future prospectus. At the time of accident the age of the deceased was 29 years and therefore future prospectus at 40% ought to have been considered while passing the award. He submits that the learned Tribunal also failed to pay consortium to all the applicants except to applicant No.1-wife. He further submits that while awarding the interest the learned Tribunal ought to have awarded interest at the uniform rate i.e. 9% p.a. without restricting the same only till March, 2020. He, thus, prays for allowing the appeal.

06. The learned Advocate for the respondent vehemently opposed the appeal. He submits that the learned Tribunal has rightly considered all the

aspects and has granted compensation. There is no dispute about the figure of monthly income considered by the learned Tribunal. The learned Tribunal has rightly awarded consortium to the wife as she lost the company of the husband. So far as interest is concerned, he invites attention to para No.22 of the judgment in support of his submission that the learned Tribunal has rightly considered the aspect of grant of interest and has justified the award. He, thus, prays for rejection of the appeal.

07. With the assistance of both the learned Counsel, this Court has gone through the record and has considered the submissions. Since the points involved are limited i.e. only three points, firstly award of future prospectus, secondly the consortium and thirdly the rate of interest, this Court is, therefore, considering only these three aspects.

08. So far as future prospectus is concerned, the learned Advocate for the appellant relied on the judgment in the case **National Insurance Co. Ltd. V/s. Pranay Sethi, AIR 2017 SUPREME COURT 5157**, to submit that the age of the driver was hardly 29 years at the time of accident, still the learned Tribunal has not considered the future prospectus. Now it is well settled that

there is always rise in the income or salary of a person. The Hon'ble Apex Court in the case of **Pranay Sethi (supra)** laid down guidelines for considering future prospectus. As per the said guidelines, the notional future prospectus should be considered @ 40% when the person died is between the age of 25 to 30 years. Thus, answer to the first question has to be in the affirmative. This Court holds that the learned Tribunal has failed to consider this aspect. The learned Tribunal ought to have considered and awarded future prospectus @ 40% of the income of the deceased.

09. Secondly, so far as consortium is concerned, the learned Tribunal ought to have considered that the appellant Nos. 2 and 3 are minor children of the deceased. They have lost company of their father in their childhood, who were hardly 3 years and 1 ½ years of age respectively, when the claim was filed. Appellant Nos. 4 and 5 happens to be parents. Thus, all the claimants are entitled to receive amount of consortium. On this count, the learned Tribunal has failed to award consortium to the claimants. This Court holds that all the appellants are entitled to receive consortium amount. Since appellant No.1 has already been granted consortium, this Court finds that same should be paid to appellant Nos. 2 to 5, which would be Rs.1,60,000/-.

10. So far as rate of interest part is concerned, the learned Tribunal in para 22 of the judgment considered that till March, 2020 the interest rate in the bank was around 9% p.a. Thereafter, the interest rate is dropped to almost 7% p.a. This Court does not find any perversity in the said reasoning. No case is made out to cause interference at the hands of this Court so far as awarding rate of interest is concerned.

11. Thus, in view of the above discussion, this Court finds that it is necessary to consider to award 40% amount towards future prospectus. The Tribunal has held income of the deceased @ Rs.12,000/- per month. If 40% future prospectus are considered, the amount comes to Rs.4800/-. Thus, the income per month comes to Rs.12,000/- + Rs. 4600 = Rs. 16,800/-. Since the family was of six persons, there would be $\frac{1}{4}$ th deduction towards personal expenses of the deceased. Thus, for the purpose of compensation, the monthly income should be Rs.16,800/- - 25% i.e. Rs.4,200/- = Rs.12,600/-. The annual income would be Rs.12,600 x 12 = Rs. 1,51,200/-. Applying the multiplier of 17, the amount would be Rs.1,51,200/- x 17 = Rs.25,70,400/-. The total amount of compensation would come to Rs.25,70,400/-. By adding

amount of consortium towards remaining four claimants, the figure would come as Rs.25,70,400/- + Rs.1,60,000/- = i.e. Rs. 27,30,400/-. Thus, the total compensation ought to have been Rs.27,30,400/-. Since the amount of Rs.19,06,000/- is already awarded by the learned Tribunal, the claimants would be entitled to Rs.8,24,400/- over the above the compensation awarded by the learned Tribunal. It is informed that the amount of Rs.19,06,000/- is already withdrawn by the claimants and there is no dispute about that. Now, the claimants would be entitled to receive Rs.8,24,400/- along with interest at the rate of 9% p.a. till March, 2020 and thereafter @ 7% p.a. Hence, the following order :-

ORDER

- i) The First Appeal is partly allowed.
- ii) The respondents shall jointly and severally pay the amount of Rs.8,24,400/- (Rupees Eight Lakhs Twenty Four Thousand Four Hundred Only) to the appellants/claimants within six weeks from today, with interest @ 9 % p.a. from the date of filing of the petition in the tribunal till March, 2020 and @ 7% from April, 2020 till realization of the amount.

iii) If the amount is deposited in this court, appellants shall be entitled to withdraw the said amount from the office of this court without requiring to file separate application for withdrawal.

iv) The award be modified accordingly.

[KISHORE C. SANT, J.]