2024:BHC-AUG:16436

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 148 OF 2014
WITH CIVIL APPLICATION NO. 3405 OF 2019
WITH CIVIL APPLICATION NO. 9352 OF 2019

CHANDRASHEELA RAMCHANDRA SHIRSAT AND OTHERS

VERSUS

BABASAHEB KADUBA SHETE AND OTHERS

Mr. J. M. Murkute, Advocate for the appellants
Mr. M. R. Deshmukh, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.
DATE : 30th JULY, 2024

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.

2. At the outset Civil Application No. 9352 of 2019 is heard. This application is for seeking leave to produce additional evidence. Considering the fact that the evidence sought to be led is relevant for determination of the appeal, it is allowed.

3. This appeal is filed for enhancement of compensation granted in M.A.C.P. No. 144/2009. It is the grievance of the claimants that the learned Tribunal has failed to take into consideration the pension of Rs.10,500/- received by the deceased and has wrongly calculated the

compensation payable to the defendants on the basis of notional income.

4. Learned counsel for the claimants drew attention of this Court to the observations of the Tribunal in paragraph 12 of the impugned award wherein it is specifically stated that from the evidence of the claimants it appears that the deceased was given pension of Rs.10,500/- per month. However, in the next breath, it is held that there was no independent income of the deceased Ramchandra. Thus, according to him it is misinterpretation of the facts and hence deserves interference. It is also submitted that the claimants are required to be treated as defendants for the purpose of calculation of compensation and accordingly the enhance be granted.

5. The learned counsel for the insurer opposed the said submission by pointing out that the facts that the deceased was aged about 60 years and except for his widow no other claimants would be treated as defendant on his income. It is his further submissions that no documentary evidence were produced before Tribunal to prove income of deceased. Hence no interference is caused in impugned award.

6. As far as the other aspects such as the occurrence of accident, age of the deceased and relationship of deceased with claimants are not in dispute. Only dispute in this appeal is about the

income of the deceased considered by the Tribunal. The observations made by the Tribunal clearly shows that the claimants led evidence in order to indicate that the deceased was receiving pension of Rs.10,500/- per month. This claim of the claimants was also accepted by the Tribunal. However, the notional income of Rs.3000/- is considered for want of any documentary evidence with regard to the income of deceased.

7. The claimants have filed document on record along with Civil Application No. 3405 of 2019 indicating that the deceased was a retired Tahsildar. The documents also indicate that his case for the pension was processed. In absence of anything contrary shown, it needs to be accepted that a Tahsildar in his superannuation would be entitled to receive pension. Considering documents placed on record, coupled with observations made by the Tribunal with regard to the pension of Rs.10,500/-, it is fit case wherein interference deserves in the impugned award to the extent of computation of income and compensation payable to the claimants.

8. In view of the oral evidence before the Trial Court and documentary evidence place on record before this Court it is held that the deceased was earned Rs.10,500/- per month by way of pension. As far as the dependency is concerned, this Court finds substance in the contention of the learned counsel for the insurer that the major son and

his children cannot be considered as dependents on the income of the deceased and hence his widow is considered as sole dependent on deceased. Hence, 1/3 amount is deducted towards his personal expenses of deceased. The amount available for calculation of compensation would be Rs.7,000/- per month. Owing to the age of the deceased multiplier of 8 is applied. The mathematical calculations show that the claimants are entitled for compensation of Rs.6,72,000/- towards pecuniary damages.

9. As far as the consortium is concerned, in view of the judgment of Hon'ble Supreme Court in case of ***National Insurance Co. Ltd Vs. Pranay Sethi & Ltd, 2017 SCC OnLine SC 1270*** and ***Magma General Insurance Company LimRamcjhandited Vs. Nanu Ram Alias Chuhru Ram and Others, (2018) 18 SCC 130,*** Rs.40000/- each is payable to widow and four sons of the deceased. Hence, the total amount of compensation is payable to the claimants Rs. 9,02,000/-.

10. With regard to the rate of interest is needs to be observed that the learned Tribunal has not recorded any reason in order to allow interest at the rate of 9% per annum. Considering the fact that, the rate of interest on fixed deposit during relevant period hardly exceeded 6% per cent, award needs modification to that effect.

11. In view of the above discussion, Appeal is partly allowed in

following terms.

(a) Clause No.2 of operative part of order impugned stands modified:-

(i) Respondent Nos.1 and 2 are jointly and severally directed to pay total compensation of Rs.9,02,000/- to the claimants along with interest at the rate of 6% per annum from the date of filing claim before Tribunal.

(ii) Additional Court fee be paid for enhanced compensation.

(iii) Rest of the order shall remain unchanged.

(iv) Insurer to deposit the balance amount of compensation within 8 weeks with liberty to recover the same from the owner as ordered by the Tribunal in clause 7 of operative part of the order.

(v) Appellants are permitted to withdraw the amount so deposited with accrued interest.

12. Pending civil applications, if any, stand disposed off.

(R. M. JOSHI, J.)

ssp