



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.997 OF 2002
WITH
CIVIL APPLICATION NO.7281 OF 2002
IN
FIRST APPEAL NO.997 OF 2002**

Prasanna S/o V. Rangappa, Died Through LR'S

1. B. Jayaratna w/o Prasannakumar Rangappa,
Age: 60Years, Occ.: Household,
R/o. 46-1, 5th Cross, 7th Block,
Jatanagar, west banglore- 82.
 2. V.P. Smita d/o Prasannakumar Rangappa,
Age: 30 Years, Occ.: Nil,
R/o As above.
 3. V.P. Sneha d/o Prasannakumar Rangappa,
Age: 28 Years, Occ.: Nil,
R/o As above.
 4. V.P. Shreyas S/o Prasannakumar Rangappa,
Age: 26 Years, Occ.: Nil,
R/o As above.
- ..Appellants

Versus

1. Narsimha s/o Guchayya,
Age 43 years, Occu. Driver
Secunderabad Depot.

(Deleted as per order below Exh.24, dt. 5/7/99,
passed by the M.A.C.T. Beed)

2. Depot Manager,
Andhra Pradesh State Road
Transport Corporation,
Secunderabad. (AP)
3. The General Manager,
Andhra Pradesh State Road
Transport Corporation,
Hyderabad (AP).

..Respondents
(Ori. Resps.1 to 3)

...
Mr. B. B. Kulkarni, Advocate for the Appellants.
Mr. P. K. Joshi, Advocate for Respondent No.2.
Mr. A. B. Dhongade, Advocate for Respondent No.3.

...
CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 18th APRIL, 2024.
PRONOUNCED ON : 29th APRIL, 2024.

JUDGMENT:-

1. Admit.
2. The learned Advocates appearing for respective respondents waives notice. With the consent of the parties, matter is taken up for final hearing.
3. The appellant / original claimant has filed this Appeal under Section 173 of the Motor Vehicle Act, impugning judgment and award dated 26.11.2001 passed by Motor Accident Claim Tribunal, Beed in M.A.C.P. No.74/1994.
4. On death of the original appellants-claimants, his legal heirs are pursuing this appeal.
5. Mr. Kulkarni, learned Advocate appearing for the appellant submits that on 29.07.1993 original claimant-Prasannakumar met with motor accident while he was traveling in the S.T. Bus. Because of the accident, he suffered multiple injuries to head, both legs, chest and spine. Although, he was treated at various hospitals, including Sancheti Hospital at Pune, he suffered permanent disablement to the extent of 25%. Therefore claim for compensation was raised by him before Tribunal invoking provisions of Section 166 of the Motor Vehicle Act. The Tribunal pleased to pass an award of Rs.1,35,686/- alongwith interest @ of

9% per annum in favour of the claimant. Aggrieved by the inadequacy of compensation, he approached this Court in present Appeal. During the pendency of this Appeal, Civil Application No.7281/2002 was filed seeking amendment in claim petition to bring on record, supervening events leading to pecuniary losses to claimant. Another Civil Application No.7279/2002 was filed seeking permission to adduce additional evidence. This Court vide order dated 05.03.2012 allowed the application and permitted the amendment in the original claim petition and relegated parties to Tribunal with limited direction to record the finding as to additional pleadings and remit back the case to this Court alongwith such findings.

6. In pursuance of the said directions amendment was carried in the original claim petition and documents were produced. The evidence of the witnesses was recorded. The Tribunal recorded its finding in pursuance of the additional pleadings and evidence and held that the claimants are entitled for additional compensation of Rs.4,94,639/-. Mr. Kulkarni, learned Advocate would further submit that the findings so recorded by the Tribunal under its order dated 10.07.2012 is not challenged by the respondents. As such it attained finality. He would, therefore, submit that the claim in this appeal to the extent of loss of earning to the claimant during the period of hospitalization has been redressed. However, the claimants would be entitled for the non-pecuniary losses as claimed by way of amendment in the petition.

7. Mr. Dhongade, learned Advocate appearing for respondent no.3 submits that the claimant has already received adequate compensation under the principal award and also held entitled for the additional compensation of Rs.4,94,639/- as per the findings

recorded under order dated 10.07.2012. There is no further scope to grant any enhancement to the appellants. He would submit that in view of the findings recorded by the Tribunal, no further enhancement needs to be granted.

8. Having considered submissions advanced by the learned Advocate appearing for the respective parties and on perusal of the pleadings and evidence tendered before us, it can be observed that in a principal award passed by the Tribunal, the compensation of Rs.1,35,686/- is awarded, which includes the compensation towards medical expenses and hospitalization, special diet and conveyance, economic loss of salary for the period of six months during the treatment period and compensation towards pains, sufferings, mental agonies and loss of enjoyment of life. After amendment of the claim petition, in pursuance to the order passed by this Court evidence has been recorded before the Tribunal and finding so arrived is transmitted to this Court which holds claimants are entitle for additional compensation of Rs.4,94,639/-. The enhancement is towards loss of salary suffered by claimant for the period from March 1997 to July 2000 i.e. for 41 months. The arrears are accounted towards implementation of 5th Pay Commission. The finding so recorded by the Tribunal is not assailed by the respondents by filing appeal or objection in this appeal. Although on last hearing matter was specifically adjourned to enable Mr. Dhongade, learned Advocate to take instructions from respondent no.3 as regards to any objection to the findings recorded by the Tribunal, he submits that no specific instructions in that regard are received to him. Accordingly, he made his submissions on the basis of the material available on record. In that view of the matter, the findings recorded by the

Tribunal post amendment of the petition will have to be treated as merged in the principal award dated 26.11.2001.

9. So far as the contentions of the claimants that the loss of future earning, future medical expenses, loss of amenities and loss of expectation in life is not independently considered, this court finds that the Tribunal has awarded Rs.30,000/- on that count. Further nothing is placed on record to demonstrate any medical expenses incurred by the claimant apart from those have been already considered by Tribunal. Pertinently, non-consideration of such additional claim raised by way of amendment is not independently assailed by incorporating additional grounds in the appeal memo. In that view of the matter, this Court finds that the claimants would be entitled for the additional compensation as quantified by the Tribunal as per findings recorded in the order dated 10.07.2012 and award needs to be modified by incorporating that amount in the principal award dated 26.11.2001. Hence, the following order:

ORDER

- a. First Appeal is partly allowed with proportionate cost.
- b. The judgment and award dated 26.11.2001 passed by the Motor Accident Claim Tribunal, Beed in M.A.C.P. No.74/1994 is modified as under:
 - (i) Respondent Nos.2 and 3 do pay the compensation of Rs.6,30,325/- alongwith interest @ 6% p.a. with proportionate cost to the appellants.
 - (ii) The amount of compensation already paid/disbursed as per award of Tribunal be appropriated against the modified award.

- (iii) The award be drawn accordingly on payment of deficit Court fees, if any.
- (iv) On deposit of the compensation amount in terms of the modified award, the same be disbursed to the appellants in equal proportion.
- c. In view of disposal of First Appeal, pending Civil Applications stand disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2024