



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

62 FIRST APPEAL NO. 2866 OF 2021

SANGITA BABASAHEB KHEDKAR AND ORS
VERSUS
DEPUTY FOREST CONSERVATOR, FOREST DEPARTMENT, AHMEDNAGAR,
AND ANR

...
Advocate for Appellant : Mr. R.L. Kute
AGP for Respondent 1 : Mr. A.M. Phule
Advocate for Respondent 2 : Mr. D.A. Bide
...

CORAM : KISHORE C. SANT, J.
Dated : July 16, 2024

PER COURT :-

1. Heard the parties. Perused the R. & P.
2. In this appeal, the appellant challenges the impugned judgment and award dated 4.4.2013 passed by the learned Member, Motor Accident Claims Tribunal, Sangamner in MACP No. 199/2008 so far as not allowing the claim of the appellant in it's entirety and for enhancement in the amount of compensation.
3. The facts, in short, giving rise to the present appeal are that one Babasaheb Khedkar, husband of appellant No. 1, father of appellant Nos. 2 and 3, and son of appellant Nos. 4 and 5 died in an accident on 21.3.2008. The deceased was travelling in the vehicle, Omni bus of respondent No. 1 bearing No. MH-16/C-1130. While he was in the bus, the bus was driven by respondent No. 2 in high speed. The respondent No. 2 lost control of the bus. The bus therefore dashed one tree on the side of the road near

Khadgaon Phata. The deceased was brought to the hospital, however, he was declared dead.

4. The present appellants filed claim petition against respondents, seeking compensation. In support of the claim, the appellant No. 1 got herself examined. She deposed in the Court that the deceased was licenced electrician. He also used to take electrical work contracts and was earning approximately Rs.15,000/- p.m. She produced on record a copy of license to work as electrician. She also produced PAN card, income tax returns for the year 2004-2005, 2005-2006 and 2006-2007. The date of birth of deceased was stated to be 1.9.1970. However, she could not prove PAN card and income tax return and those were not exhibited.

5. In the cross examination, nothing is brought on the record to disbelieve the evidence. Only suggestions were given to show that the deceased was not earning the income as stated in the evidence. In her evidence, the FIR is also proved at Exh. 33. The said FIR was lodged by one Anil Sampatrao Rahane about the accident in which he has stated that the deceased was travelling in the Omni bus of respondent which met with an accident. The electrician's license is at Exh. 42.

6. The respondents did not examine any witness. Thus, the fact of accident and other things have gone unchallenged.

7. The learned Member, MACT, Sangamner accepted the evidence except the income of the deceased as there was no proof of income produced by

the appellant No. 1. The learned Member considered the notional income to be of Rs. 15,000/- per year. The loss of dependents was considered only Rs.10,000/-. By applying multiplier of 16, the learned Member came to the conclusion that loss of future income is Rs.1,60,000/-. The learned Member granted Rs.2,000/- per head towards loss of consortium i.e. Rs.10,000/- and Rs.5,000/- towards funeral and other expenses. Thus, the total amount of Rs.1,75,000/- is granted including no fault liability.

8. The learned advocate for the appellant vehemently argued that considering the date of accident to be 21.3.2008, the notional income of the deceased ought to have been considered to be Rs.15,000/- p.m. as the deceased was having license to work as electrician. He further submits that amount of Rs.40,000/- ought to have been granted towards consortium, Rs.15,000/- ought to have been granted towards funeral expenses and Rs. 15,000/- towards expenses for bringing the body etc. The learned advocate placed reliance on the judgments in the cases of **Chameli Devi Vs. Jivrail Mian** reported in **AIR ONLINE 2019 SC 1220** and **National Insurance Company Limited Vs. Pranay Sethi and Ors.** reported in **(2017) 16 SCC 680**.

9. The learned AGP and the learned advocate Mr. Bide opposed the appeal, stating that the appellants have failed to prove the income of the deceased. The Court had no option, but to consider the notional income, which is rightly considered. It is also argued that there is no evidence to show that the deceased was working as electrician. Further, there was no negligence on the part of respondent No. 2. It is also not proved that the deceased was travelling in the Omni bus of respondent No. 1.

10. Considering the submissions, this Court finds that the respondents have not challenged the impugned judgment and award and even findings recorded by the Tribunal. In absence of challenge to the impugned judgment and award by the respondents, their argument can only be considered to the extent of income of the deceased.

11. While deciding the appeal, this Court has to consider the notional income of the deceased. Taking the notional income at the rate of Rs.15,000/- per year in the year 2008 is certainly much less than the average notional income. The said income only comes to Rs.1250/- per month. There is clear evidence to show that the deceased was working as electrician. Any person having skill would certainly earn atleast Rs.300/- per day in his job. Thus, the income would be not less than Rs.10,000/- per month. In the case of **Chameli Devi** (supra), the Apex Court has considered the notional income to be Rs.7,000/- p.m. In that case, it was claimed that the deceased was working as carpenter and no proof was given to show that the deceased was working as carpenter. The Court held that no such proof can be given when a person is working as a carpenter. Still in that case, the notional income was considered to be Rs.7,000/- p.m. and compensation was granted accordingly.

12. In the present case, the deceased was having license of working as electrician. It is also seen that he had infact gone for the work of respondents only and while returning, he met with an accident. Considering the date of accident in the year 2008, the income ought to have been taken

Rs. 9,000/- p.m. Thus, this Court holds that the notional income of the deceased was Rs.9,000/- p.m. Coming to the aspect of future prospects, the Apex Court in the case of **Pranay Sethi** (supra) has clearly given guidelines for awarding compensation even on count of future prospects. Considering that, this Court holds that towards consortium Rs.40,000/- per head i.e. Rs. 2,00,000/-, Rs.15,000/- towards funeral expenses and Rs. 15,000/- towards travelling expenses of dead body etc. should have been granted by the learned Member.

13. Thus, considering above, this Court has calculated the amount as below.

If the income is taken to be Rs.9,000/- per month, considering the family of 6 to 7 persons, the said amount needs to be deducted by 1/5th towards personal expenses of the deceased. The amount would come to Rs.7,200/- p.m. i.e. Rs. 86,400/- per year. The age of the deceased was 37 years at the time of accident. The multiplier would be of 16, has rightly applied by the learned Tribunal. Considering that the figure comes to Rs.13,82,000/- + 40% towards loss of future earning. Thus, the total compensation comes to Rs. 19,34,800/- towards loss of dependency. The total number of dependents are five. This Court holds that consortium amount would come to Rs.2,00,000/-, amount towards funeral expenses would come to Rs.15,000/-, amount towards travelling expenses of dead body would come to Rs. 15,000/-. Thus, this Court holds that total amount ought to have been granted is Rs. 21,64,800/-. In view of the discussion made above, the impugned judgment and award is modified accordingly. Hence, the following order.

ORDER

- (i) Appeal is partly allowed.
- (ii) Respondent Nos. 1 and 2 do jointly and severally pay amount of Rs. 21,64,800/- to the appellants including no fault liability. The amount should carry interest at the rate of 7.5 % p.a. from the date of filing of the claim petition i.e. 13.10.2008 till actual realization of the amount. The amount to be deposited within 18 weeks from today in the office of this Court.

The appeal stands disposed of.

(KISHORE C. SANT, J.)

ssc/