IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.3455 OF 2018

1. Smt. Ranjanabai Rajendra Patil
Age- 32 Years, Occu. Household

2. Govinda Rajendra Patil
Age-16 Years, Occu. Education

3. Vijay Rajendra Patil
Age-13 Years, Occu. Education

Appellant No.2 and 3 are minor u/g of their mother i.e. Appellant No.1

4. Sau. Kamlabai Babulal Patil
Age- 62 Years, Occu. Household

5. 5. Babulal Mahasingh Patil
Age- 67 Years, Occu. Nil.

All R/o. Umarda, Tq. Erandol,
Dist. Jalgaon. ..Appellants
(Orig. Claimants)

Versus

The Divisional Controller,
M.S.R.T.C, Jalgaon Division,
Jalgaon, Tq. and Dist. Jalgaon. ..Respondent
(Orig. Respondent)

...

Mr. R. P. Adgaonkar h/f Mr. V. B. Patil, Advocate for the Appellants.
Mr. Manoj Shinde h/f Mr. M. K. Goyanka, Advocate for Respondent.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 18th APRIL, 2024.

JUDGMENT:-

1. Admit.

2. The learned Advocates appearing for the respondent waives notice. With the consent of the parties, matter is taken up for final hearing.

3. The appellants / original claimants have filed this appeal under Section 173 of the Motor Vehicle Act, impugning judgment and award dated 06.04.2017 passed by the Motor Accident Claim Tribunal at Jalgaon in M.A.C.P. No.180/2014.

4. Mr. Adgaonkar, learned Advocate appearing for the appellants submits that the Tribunal awarded compensation of Rs.7,25,000/- towards accidental death of Rajendra Babulal Patil, who died in accident dated 20.04.2014 on account of rash and negligent driving of the S.T. Bus bearing Registration No.MH-20-BL-0904. Late Rajendra was aged about 35 years and left behind five dependents. He was generating income from agricultural land of his ownership ad-measuring 1H 41R. He, himself was cultivating land and maintaining large family out of such income. His earning was not less than Rs.12,000/- per month. However, Tribunal erroneously assumed his notional income @ Rs.5000/- per month. Mr. Adgaonkar, learned Advocate would further submit that Tribunal awarded paltry sum towards non-pecuniary damages. Nothing is added towards future prospects. As such, he urges to pass just and proper award.

5. Mr. Shinde, learned Advocate with Mr. Goyanka, learned Advocate appearing for the respondent-MSRTC justifies the award. He would submit that the accident occurred in the year 2014. No proof as regards to the actual earning of the deceased is placed on record. Except oral evidence of the claimant and 7/12 extract depicting agricultural land mutated in the name of the deceased, no evidence is adduced depicting income of deceased. He would submit that CW-1 admitted in her cross-examination that she could not produce the evidence of actual income of the deceased. The agricultural land is still with the family and claimants are

generating income out of the same. Therefore, the Tribunal has rightly considered the loss of supervision on account of death of the deceased.

6. Having considered submissions advanced and after going through the pleadings, evidence and reasoning adopted by the Tribunal, it is apparent that the MSRTC has satisfied the award as passed by the Tribunal. The claimants are before this Court seeking enhancement of the compensation. The issue as regards to the quantification of the just and proper compensation is raised in this appeal. Apparently, the deceased was an agriculturist. Although, the claimants had pleaded that the deceased was getting monthly income of Rs.10,000/- out of agriculture and milk business, no specific evidence is brought on record. However, the fact remains that the agricultural land bearing Gut No.324/2 admeasuring 1H 41R was mutated in the name of the deceased. If the deceased himself was cultivating his agricultural land, the loss of earning to the family on account of his untimely death would be not be limited to loss of supervision, but also count for his own labour that he was investing for cultivation of the land. In such cases, family suffers composite loss of labour and supervision. In that view of the matter, this Court holds that the Tribunal ought to have considered the notional income of deceased @ Rs.6000/- per month.

7. The deceased was aged about 35 years. In such case, in light of the legal position espoused in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors.***[1] the addition of 40% of the income towards future prospects is admissible. Similarly, the claimants / dependents are entitle to be compensated for various non-pecuniary heads. The reasoning recorded in the

1 **(2017) 16 SCC 680.**

impugned judgment shows that the Tribunal awarded lump-sum compensation of Rs.50,000/- towards non-pecuniary heads which needs to be appropriately corrected. The Tribunal adopted appropriate multiplier of '15', which need not be disturbed. In view of the aforesaid observations the award passed by the Tribunal needs to be appropriately modified in tune with the principles of law espoused in case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors.*** (supra).

8. In light of the aforesaid observations, the compensation amount can be reassessed as under: -

Sr. No.	**Heads**	**Amount (Rs.)**
1	Annual Income (Rs.6000 x 12)	Rs.72,000/-
2	Addition of 40% towards future prospects (Rs.72,000/- + Rs.28,800/-) =	Rs.1,00,800/-
3	1/4th deduction towards personal and living expenses. Rs. 1,00,800 / 4 = Rs.25,200/- 1,00,800 – 25,200/-	Rs.75,600/-
4	Applying multiplier of '15' (Rs. 75,600 x 15)	**Rs.11,34,000/-**
5	Rs.40,000/- each towards loss of consortium (Rs.40,000/- x 5)	**Rs.2,00,000/-**
6	Rs.25,000/- towards funeral expenses	**Rs.25,000/-**
7	Rs.15,000/- towards loss of estate	**Rs.15,000/-**
TOTAL		**Rs.13,74,000/-**

9. In that view of the matter, the appeal deserves to be allowed. Hence, following order: -

ORDER

i. The Appeal is partly allowed.

ii. The judgment and award dated 06.04.2017 passed by the Motor Accident Claim Tribunal at Jalgaon in M.A.C.P. No.180/2014 is modified.

iii. The respondent is held liable to pay total compensation of Rs.13,74,000/- (Rs. Thirteen Lakhs Seventy Four Thousand only) to the claimants (inclusive of amount of 'NFL') u/s 166 of M.V. Act along with the interest @ 6% p.a. from the date of filing of the claim petition till realization of the amount. The amount, if any, already paid, disbursed as per award of Tribunal shall be appropriated.

iv. The compensation amount be apportioned among the claimants in proportion as indicated in Clause 3 of the Award dated 06.04.2017, passed by Tribunal.

v. On deposit of the enhanced compensation amount in terms of modified Award, it be disbursed to the claimants as per apportionment indicated above.

vi. Award be drawn up on payment of deficit court fees, if any.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2024