IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4966 OF 2017

ASMITA OMPRAKASH PANDIT AND ANR
VERSUS
MAHESH NAYANKUMAR NAVANDAR AND ORS

Mr. S. V. Mundhe, Advocate for the appellants
Mr. A. N. Sikchi, Advocate for respondent Nos. 1 and 2.
Mr. Swapnil Patil, Advocate h/f Mr. R. H. Dahat, Advocate for respondent No.3.

CORAM : R. M. JOSHI, J.
DATE : 25th JANUARY, 2024

P.C. :-

1. This Appeal is filed under Section 173 of the Motor Vehicles Act by the claimants for enhancement granted by the Tribunal in MACP No. 178/2012 by judgment and award dated 20/11/2015.

2. Parties are referred to as claimants, owner, driver and insurer for the sake of convenience.

3. As per the case of the claimants deceased Omprakash was proceeding along with Mahesh on 19/03/2012 from Osmanabad to Latur in car bearing No. MH-24-V-4698. When the said vehicle reached to the spot of the accident, driver of the car lost control over the same and

gave forceful dash to the tree. In the said accident, deceased sustained serious injuries and died on the spot. Claimants contended that the deceased was aged about 40 years and was working as Manager at Nawcon Infrastructure Construction Ct. Ltd on monthly salary of Rs. 15,000/-. Claim was resisted by the owner and driver of the vehicle by filing written statement at Exh. 29 denying the allegations of rash and negligent driver of the driver of the car. It is claimed that the vehicle was insured with insurer.

4. The insurer filed written statement Exh. 23 denying age, occupation and income of the deceased. Though no dispute is made with regard to the insurance in respect of offending vehicle but it is claimed that there was a breach of terms and conditions of the insurance policy as the driver of the car was not holding valid and effective driving license. On this count, liability was denied by the insurer.

5. Issues were framed at Exh. 31. Claimant No. 1 Asmita, wife of the deceased, examined herself at Exh. 36 and placed documentary evidence i.e. complaint Exh. 38, FIR (Exh. 39), Spot Panchnama (Exh. 40), PM report (Exh. 41), insurance policy (Exh. 42), RC Book (Exh. 43). Driving license of driver of the car was filed at Exh. 44. Claimants in order to prove the factum of accident has not examined any eye witness but

relied relied on police papers. Nothing is brought on record to take exception to the genuineness of the said documents. The spot panchnama shows that the vehicle went to the extreme right side and gave dash against tree. No other vehicle is involved in the accident in order to seek negligence on the part of any other person in the occurrence of the accident. From FIR as well as other material placed on record in the charge-sheet it is clear that the accident in question has occurred due to the negligence of the driver of the car.

6. The owner and driver were not able to bring on record that the accident has occurred on account of any mechanical fault or that the driver was not responsible for the same in any manner whatsoever. The Tribunal has held that the driver of the car was negligent. The said finding does not deserve interference for want of challenge thereto.

7. Learned counsel for the claimants has sought to convince this Court that the Tribunal committed error in discarding evidence of PW-2 Nitin (Exhibit 51). According to him the law is settled on the point that merely because there is no documentary evidence on record indicating the income of the deceased, the testimony of the employer cannot be discarded and in case claimed of deceased cannot be ignored.

8. Though there cannot be any dispute made with regard to the proposition sought to be canvassed in this regard however the same would have to be applied by taking into consideration facts and circumstances of each case. Since the burden is on claimants to prove income of deceased at the outset it must be established that he was employed or doing occupational vocation. Needless to say that such claim must be genuine and not concocted for the sake of seeking additional compensation. On one side it is duty of the Court to determine just compensation payable and at the same time there is obligation to ensure that there is no undeserving / unmerited enrichment.

9. In the instant case the claimants do not state in their application since when the deceased was working with PW-2 Nitin. It is vaguely stated that he is working as a Manager with him. As against this Nitin in his evidence does not claims as to the capacity in which he was employed. Evidence of this witness is as vague as possible. It is pertinent to note that the salary certificate is dated 01/03/2012 that is when the deceased was alive. There is no explanation of whatsoever nature as to what purpose that certificate was issued. In the light of the fact that this witness is close relative of owner of vehicle in which deceased was travelling, his evidence becomes absolutely doubtful. In cross-examination he admits to have not informed to the concerned authorities

names of employees or maintenance of statutory record. In that circumstances, this Court concurs with the findings recorded by the Tribunal that the evidence led by the claimants with regard to the employment of the deceased is doubtful. This Court finds it appropriate to add that on the face of it is the case of creation of record and evidence by the claimants to seek more compensation. Tribunal therefore has rightly refused to accept the said evidence.

10. Learned counsel for the claimants have also attempted to convince this Court on the point that the notional income considered by the Tribunal at rate of Rs.4000/- which is inadequate and it should have been Rs.9000/- per month. To support his submission he placed reliance on the judgment of this case in case of ***Sushila wd/o Subhash Mendhe Vs. National Insurance Company Limited, Through its Branch Manager, 2019(1) ALL MR 658*** wherein on the basis of oral evidence the income of the deceased was held to be Rs.9000/- per month As far as present case is concerned, as observed hereinabove in this case there is clearcut attempt on the part of the claimants to create record in respect of the employment of the deceased. This Court therefore finds no reason for justification to concede to the arguments advanced on behalf of the claimants for the enhancement of notional income. In order to hold that the deceased is entitled by way notional income something in addition to

what has been decided by the Tribunal, there might to have been evidence as to what was the occupation or in what capacity he is working. In absence of any such evidence on record it would not be permissible for the Court to even apply the minimum wages for the particular period applicable to the skilled workers. In the light of these facts, there was no other option for the Court only to apply the minimum wages of unskilled workers at the relevant time, but instead Tribunal has held notional income @ Rs.6,000/- per month. There is no reason to cause any interference therein.

11. However since future prospects was not considered by Tribunal, in view of ***National Insurance Company Limited Versus Pranay Sethi and Others, (2017) 16 SCC 680*** having regard to the age of deceased 25% of additional income towards further prospects needs to be added.

12. Similarly this Courts also finds no impediment in enhancing the compensation on other heads by adding a sum of Rs.40,000/- each towards loss of filial consortium for claimants which comes to Rs.80000/-, Rs. 15000/- wards funeral expenses and Rs.40,000/- towards loss of estate. Since rate of interest granted by Tribunal is maintained from the date of claim even for the enhanced

compensation, no other addition is considered thereto. Hence the order:

ORDER

(i) Appeal stands partly allowed.

(ii) The impugned judgment and award stands modified as under:

Sr. No.	Heads	Rs.
1.	Annual Income Rs.32000/- + 25% = Rs. 40 000/- Rs.40000/- x 14 multiplier	5,60,000/-
2.	Loss of love and affection	30,000/-
3.	Loss of consortium Rs.80,000	80,000/-
4.	Loss of estate	15,000/-
5.	Funeral Expenses	15,000/-
	Total compensation	**7,00,000/-**

(iii) Rest of the judgment and award to remain unchanged.

(iv) Claimants to pay Court fees on enhanced compensation as per rules.

(v) Amount deposited (along with accrued interest) by respondents is permitted to be withdrawn by claimants.

(vi) The difference of compensation be deposited within a period of six weeks.

(vii) No order as to costs.

(R. M. JOSHI, J.)

ssp