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FA 1410.03R.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1410 OF 2003

1] Smt. Laxmibai W/o. Sudhakar Jadhav
Age 53 years, Occ. Household,

2] Kailash Sudhakar Jadhav
Age 29 years, Occ. Nil.

3] Sanjay Sudhakar Jadhav
Age 23 years, Occ. Nil.

All residents of Ambedkar Chowk
Nandurbar.

.. APPELLANT

VERSUS

1] Shaikh Bhaiya Shaikh Lal Pinjari,
Age 52 years, Occ. Bus Driver,
G.T. Depot, Nandurbar.

2] The Maharashtra State Road
Transport Corporation
Summons to be served on the
Divisional Controller, Dhule.

.. RESPONDENTS.

Mr. J.R. Shah, Advocate for the appellant,
Mr. D.S. Bagul, Advocate for respondent No.2.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 13TH FEBRUARY, 2024.
PRONOUNCED ON : 21ST FEBRUARY, 2024.

JUDGMENT :-

The appellants/original claimants have approached this Court under Section 173 of the Motor Vehicles Act, 1988, impugning the

judgment and award dated 1.7.2003 passed in MACP No. 14 of 2002 by the M.A.C.T. Nandurbar.

2. For sake of convenience, parties are hereinafter referred to, as per the their original status.

3. The claimants had approached the Tribunal under Section 166 of the Motor Vehicles Act raising a claim for compensation of Rs. 2 Lakhs on account of accidental death of Vilas Sudhakar Jadhav, i.e. son of claimant No.1 and brother of the claimant Nos.2 and 3. On 15.12.2001, while Vilas was dashed by S.T. Bus bearing Registration No. MH-11/T-9117. In the said accident, Vilas suffered fatal injuries.

4. The claimants contend that Vilas was serving with M/s. Jibhahu Harchand Mahajan at the market yard and getting monthly salary of Rs. 2,500. He was also working as a milkman and adding monthly income of Rs. 1,000/- from sale of milk. The claimants were dependent on his income. The accident occurred due to the fault on the part of S.T. Driver. Hence, they are entitled for compensation as claimed.

5. The respondents refuted the claim petition and pleaded self negligence of the deceased as such denied liability to pay compensation. The Tribunal, after framing the issues and recording evidence, passed award of Rs. 94,400/- in favour of the claimants and directed the respondent Nos. 1 and 2 to jointly and severally pay compensation amount alongwith interest @ 6 % p.a from date of award. However, the claimants are aggrieved by the assessment of compensation. Hence this

appeal.

6. Mr. J.R. Shah, learned advocate for the appellant would submit that although there is sufficient evidence indicating income of the deceased, the Tribunal assessed meager notional income @ Rs. 1,200/- p.m. Nothing is granted towards future prospects. A paltry sum is awarded towards the non-pecuniary heads and interest on compensation amount is restricted from the date of award, instead from the date of filing the claim petition. He would, therefore, submit that just award needs to be passed.

7. Mr. D.S. Bagul, appearing for the respondent justifies the award. He would submit in absence of evidence, notional income of Rs. 1,200/- is rightly adopted. Since, the accident took place in year 2001, assessed notional income is just and proper.

8. Having considered the submissions advanced, it can be gathered that the controversy in the present appeal is only in respect of assessment of compensation. The deceased alleged to have served with M/s. Jibhau Mahajan and earning Rs. 2,500/- p.m. However, no documentary evidence is placed on record. PW-2 Jibhau deposed that previously, he was paying salary of Rs. 1600/- p.m to deceased. however, at the time of death, salary was increased to Rs. 2,500/- p.m. Although claimants are coming with the case that deceased was generating additional income of Rs. 1000/- p.m. from milk business, no evidence is tendered to justify the same.

Pertinently, so far as employment of the deceased, there is no reason to

discard the testimony of PW-2. Considering the nature of job as a Commission Agent, there is no difficulty to hold that the deceased must be earning at least Rs. 2,000/- p.m. However, in absence of evidence, claim of income from milk business cannot be accepted. The deceased was aged about 25 years and he was a bachelor. Therefore, 50% dependency of claimant No.1 can be considered. However, claimant Nos. 2 and 3 being major, cannot be considered as dependent of deceased in absence evidence indicating their incapacity to earn. Considering age of the deceased, 40% amount can be added towards his future prospects and Multiplier of 18 needs to be applied. Therefore, compensation can be reassessed as under : -

Sr. No.	Particulars	Amount
1.	Salary Rs. 2,000/- p.m. x 12 = 24,000/- Add 40% towards future prospects Rs. 9,600 + 24,000 = Rs. 33600/- Deduct 50% towards personal expenses = Rs. 16,800/- Apply Multiplier of 18 : 16,800 x 18 = 3,02,400	Rs. 3,02,400/-
	Add Rs. 25,000 towards non pecuniary heads	Rs. 25,400/-
	Total	Rs. 3,27,400/-

9. Section 171 of the Motor Vehicles Act provides for grant of interest on the amount of compensation. In the present case, the Tribunal awarded interest from the date of order. However, no reasons are given for not granting interest from the date of filing of the claim petition. In absence of such reasons, it is apparent that the Tribunal fell in error while restricting interest from the date of award, instead of following normal rule of granting interest from the date of petition. Therefore, the claimant would be entitled to receive interest @ 6% p.a.

from the date of petition till realization of the amount.

10. Resultantly, the appeal succeeds. Hence the following order :-

O R D E R

- [I] The First appeal is partly allowed with proportionate costs.
- [ii] Respondents Nos. 1 and 2 shall jointly and severally pay compensation of Rs.3,27,400/- to appellant No.1, together with interest @ 6% p.a. from the date of filing of claim petition.
- [iii] On deposit of the compensation amount, same be disbursed to the claimants.
- [iv] Award be drawn accordingly after deposit of deficit court fees.
- [v] Compensation amount, if any, paid/deposited in terms of the award passed by the Tribunal, be appropriated.

**[S.G. CHAPALGAONKAR]
JUDGE**

grt/-