2024:BHC-AUG:21050

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1844 OF 2019

1. Shantabai w/o Prakash Bhikane
Age: 56 years, Occu: Household

2. Prakash s/o Namdeo Bhikane
Age: 61 years, Occu. Nill,

(Both resident of Kishor Smruti,
Bunglow No.13, Aditya Angan,
Desai Nagar, Ring Road, Latur,
Tq. & Dist. Latur) … Appellants
(Ori. Claimants)

Versus

1. Saidur Raheman s/o Mohamad Saheb,
Age- 37 years, Occu : Driver
R/o Sunshine Society, Room No.1/2,
Sector No.6, Kalamboli,
Tq. & Dist. Raigad.

2. Nilabai w/o Popat Markad,
Age: Major, Occu: Business, H.H.,
Resi. Of R.No.B/412, Ajinkya Tara CHS,
Plot No.6, Sector- 7, Kamothe,
Tq. Panvel, Dist. Raigad.

3. HDFC Ergo General Insurance Company,
Renuka Commercial Complex,
Nageshwarwadi, Aurangabad,
Maharashtra …Respondents
(Ori. Respondents)

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Mr. Vinod D. Godbharle, Advocate for Appellants
Mr. Mohit R. Deshmukh, Advocate for Respondent No.3

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 19th AUGUST, 2024
PRONOUNCED ON : 09th SEPTEMBER, 2024

JUDGMENT :

1. Heard.

2. Admit. Taken up for final hearing with the consent of parties.

3. Being aggrieved by the judgment and award dated 03/02/2018, passed by Motor Accident Claims Tribunal, Latur, in M.A.C.P. No.135/2013, appellants / claimants have preferred this appeal under Section 173 of the Motor Vehicles Act.

4. On 04/03/2012, at about 03:00 p.m. Kishor Bhikane, aged 24 years, was riding motorcycle bearing No.MH-24-Y-8885 on Latur – Barshi road near Sakhara Pati. A container bearing No.MH-46-H-3891 came from front side and by coming from wrong side in high speed gave dash to the motorcycle of Kishor. Pillion rider Abhilash was thrown away on the road. Kishor was dragged along with motorcycle and as his head came under the wheel of the container, he died on the spot. FIR was lodged with Gategaon Police Station and after completion of investigation charge-sheet was filed against driver of the container. Parents of Kishor i.e. appellants filed claim petition for compensation of Rs.1,11,57,000/-, contending that Kishor was cricket player who had played several matches on behalf of Maharashtra Cricket Association since the year 2002. He had played Ranji Trophy matches between 2009 to 2011 conducted by B.C.C.I. He was one of the members of Devgiri Emperors in Maharashtra Premier League 2009 to 2012 and was awarded ‘best Bowler’ in Maharashtra Premier League 2011. He was earning more

than Rs.6,00,000/- per annum. He was having very bright future and he would have been one of the players of B.C.C.I. and would have earned in crores of rupees in future. He was also appointed as Marketing Executive for Marathwada Region on 01/03/2012 and since then he was in service of Maharashtra Bio Fertilizers India Pvt. Ltd., on monthly salary of Rs.25,000/-.

5. Respondent No.1 driver of the container remained absent and the matter proceeded ex-parte against him. Respondent No.2 owner of the container contended that at the time of accident the container was insured with respondent No.3, hence, respondent No.3 Insurance Company is liable to pay the compensation amount. Respondent No.3 Insurance Company opposed the claim by filing written statement contending that accident occurred due to negligence of the deceased. It is also claimed that there was breach of terms and conditions of policy and exorbitant amount is claimed towards compensation. The Tribunal after recording evidence partly allowed the claim and awarded compensation of Rs.14,16,000/- with 7.5% interest per annum. Claimants are aggrieved by the inadequate compensation awarded by the Tribunal.

6. Heard learned advocate for appellants / claimants and learned advocate for respondent No.3 Insurance Company. Though served, none appears for respondent Nos.1 and 2 i.e. driver and owner of the offending vehicle.

7. Learned advocate for appellants / claimants assailed the impugned judgment and award contending that though there is positive evidence on record to show that deceased was earning monthly salary of Rs.25,000/-, the same is erroneously ignored by the Tribunal while assessing the compensation. He submits that Tribunal has applied multiplier of 11 by taking into consideration the age of appellants/claimants, which is wrong in view of decision in ***Smt. Sarla Verma and Others v. Delhi Transport Corporation and Another, [AIR 2009 SC 3104],*** and the correct multiplier applicable to the present case is 18. Tribunal has refused to award compensation towards future prospects on the ground that deceased had no established income. In view of ratio in ***National Insurance Co. Ltd. v. Pranay Sethi and Others, [2017 (16) SCC 680],*** appellants/claimants are entitled for 50% future prospects. He, therefore, submits that Tribunal has failed to award just and fair compensation. Hence, the compensation needs to be enhanced. In support of his submissions, learned advocate for appellants has also relied on ***Smt. Anjali and Others Vs. Lokendra Rathod and Others, [2022 LiveLaw(SC) 1012]*** and ***Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram and Others, [(2018) 11 SCR 664]***.

8. On the other hand, learned advocate for respondent No.3 Insurance Company supported the impugned judgment and

award passed by the Tribunal. He submits that Tribunal has rightly ignored the evidence on record which shows that just before three days of the accident deceased had joined service. He submits that the amount of three days' salary of Rs.3,000/- is not reflected in the income tax returns of the deceased. Therefore, the same is rightly not taken into consideration while assessing income of the deceased. He submits that Tribunal has passed well reasoned judgment, which is not liable to be interfered with. In support of his submissions, he has relied on ***Malarvizhi and Others Vs. United India Insurance Company Ltd. and Another, [(2020) 4 SCC 228].***

9. Heard learned advocate for appellants/claimants and learned advocate for respondent No.3/Insurance Company at length. Perused the record.

10. Accidental death of the deceased is not in dispute. The dispute is on the point of income of the deceased. Claimants have examined witness No.2 Kamlesh Thakkar, Vice-President of Maharashtra Cricket Association, to prove that deceased has played for Maharashtra Cricket Association, who has produced various certificates on record which shows that deceased was playing for Maharashtra Cricket Association.

Witness No.3 Sudarshan Subhash Dongare, Licensing Officer with Maharashtra Bio Fertilizers India Pvt. Ltd., is also examined, who stated that deceased was appointed as Marketing Executive for Marathawada region and he joined service on 01/03/2012. The Company issued three days' experience certificate and three days payment in the sum of Rs.3,000/-. In cross-examination he admitted that they maintain Inward and Outward register and appointment letter dated 01/03/2012 does not bear outward number. He further admitted that Kamlesh Thakkar (witness No.2) is brother of their Managing Director Nilesh Thakkar. He has not brought voucher of payment of three days' salary and muster showing the attendance of deceased.

11. In view of these admissions, Tribunal has rightly refused to rely upon the evidence of witness No.3 and appointment letter at Exhibit-134, offer letter at Exhibit-135 and experience certificate at Exhibit-136. Considering the relation of witness No.2 with Managing Director of Maharashtra Bio Fertilizers India Pvt. Ltd., Tribunal is justified in holding that no reliance can be placed on the evidence of witness No.3 and the appointment of deceased in the said Company.

12. Income tax returns of the deceased for assessment years 2010-2011 and 2012-2013 are brought on record by claimants, in which gross income of the deceased is mentioned as Rs.2,75,676/-. After deducting professional tax of Rs.2,400/- it comes to Rs.2,73,276/-. In this assessment year TDS of Rs.63,595/- is deducted, hence, there is no tax liability. Therefore, his notional

income needs to be assessed at rs.2,73,276/-, however, the tribunal has wrongly assessed it at Rs.2,52,000/-.

Since deceased was bachelor and the claim is filed by his parents, 50% of the income needs to be deducted towards his personal and living expenses. Hence, the annual loss comes to Rs.2,73,276 – Rs.1,36,638 (50%) = Rs.1,36,638/-.

13. Tribunal has further committed error in applying multiplier of 11 by taking into consideration age of claimants/ parents of the deceased. In terms of ratio in ***Smt. Sarla Verma*** (supra) multiplier of 18 is to be applied in the present case. Also, in view of ratio in ***Pranay Sethi*** (supra), 40% future prospects needs to be awarded, which the Tribunal has failed to award.

14. Tribunal has also not awarded compensation towards loss of consortium. As per the ratio in ***Magma General Insurance Co. Ltd.*** (supra), claimants are entitled for consortium of Rs.40,000/- each. In ***Pranay Sethi*** (supra), in respect of non-pecuniary damages, it is held that,

> *"61. In view of the aforesaid analysis, we proceed to record our conclusions:-*
> *(i) ....*
> *(ii) ....*
> *.*
> *.*
> *(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."*

In view of above observation, since accident has taken place on 04/03/2012 and the Tribunal has passed award on 03/02/2018, 20% enhancement needs to be added in the compensation awarded towards non-pecuniary damages. Therefore, compensation towards loss of estate and funeral expenses would be Rs.15,000 + 20% (Rs.3,000) = Rs.18,000/- each and compensation towards loss of consortium would be Rs.40,000 + 20% (Rs.8,000) = 48,000/- to each claimant.

15. In the light of foregoing reasons, claimants are entitled for following compensation:-

Sr. No.	Particulars	Amount (Rs.)
1	Income as per IT returns	2,73,276/-
2	1/2 Deduction towards personal expenses (2,73,276 – 1,36,638)	1,36,638/-
3	Addition of 40% Future Prospects (1,36,638 + 54,655)	1,91,293/-
4	Annual dependency multiplied by multiplier (1,91,293 x 18)	34,43,274/-
5	Non-pecuniary Losses:- Loss of consortium Rs.48,000 to each claimant (40,000 x 2) = 96,000/- Loss of Estate = 18,000/- Funeral Expenses = 18,000/-	1,32,000/-
6	Total compensation to be awarded (34,43,274 + 1,32,000)	35,75,274/-
7	Compensation awarded by Tribunal	14,16,000/-
	Total Enhanced Compensation (35,75,274 - 14,16,000)	**Rs.21,59,274/-**

16. In view of the aforestated reasons, following order:

ORDER

(I) First appeal is partly allowed with proportionate costs.

(II) Claimants are held entitled for enhanced compensation of Rs.21,59,274/- along with interest @ 7.5% per annum from the date of filing of petition till it's realisation. The impugned judgment and award is modified to the above effect. Rest of the award is maintained.

(III) Insurance Company to deposit the enhanced compensation in the Tribunal within 12 weeks from the date of up-loading of this judgment.

(IV) Claimants to pay additional Court fees, if any.

(NITIN B. SURYAWANSHI, J.)