



(This order is corrected pursuant to order dated 06.12.2024)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

78 FIRST APPEAL NO. 1834 OF 2021

DAKSHABEN GIRISHKUMAR GADHVI AND ORS
VERSUS
TEJAS ASHOK SHIRSATH AND ANR

Mr.Umakant U. Wagh, Advocate for the appellants.

Mr.S.S. Patil h/f. Mr. R.H. Dahat, Advocate for respondent No.2.

CORAM : KISHORE C. SANT, J.
DATED : 23.07.2024

PC :-

01. Heard learned Advocates for the parties and gone through the record and proceedings.

02. This appeal is filed by the original petitioner No.1,2 and 4 in MACT No. 588 of 2011 decided by the learned Member, Motor Accident Claims Tribunal, Ahmednagar, by order dated 2nd February, 2018. During the trial, appellant-claimant No.3 Karanidhan Gadhvi son of Dhirajben Gadhvi died. It is reported that appellant Dhirajben also died during pending this appeal.

03. The facts in short are that deceased Girishkumar, 43 years of age met with an accident on 18.05.2011. He was driving a vehicle – tempo trax bearing registration No. GJ-9H-2812 from Ahmednagar to Pune. His vehicle was dashed by a tempo bearing registration No. MH-15-BJ-6405, which was coming in opposite direction. In the said accident, he received injuries. He was immediately shifted to hospital for treatment. However, during the treatment, he unfortunately died on 28.05.2011. On a complaint an offence came to be registered against the offending vehicle.

04. The claimants approached the learned Tribunal for compensation. It is case of the appellants that the deceased was of 43 years of age at the time of accident. He was earning salary of Rs.8000/- per month and was getting Rs. 100/- per day towards Bhatta. He was the only earning member of the family. The learned Tribunal on going through the evidence and considering the judgment in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi and Ors., reported in 2017 (16) SCC 680** awarded compensation considering loss of dependency of Rs.4,20,000/-, towards loss of estate, consortium and funeral expenses Rs.70,000/- and towards medical expenses Rs.2,06,000/-.

Thus, total amount of Rs.6,96,000/- along with 'no fault liability' was awarded. Apportionment was made as appellant No.1 40% and other appellants were granted 20% of the amount each.

05. The learned Advocate for the appellants canvassed three points that the learned Tribunal has considered monthly income of Rs.3000/-, which is too meager. Considering that the deceased was a skilled driver, at least Rs.8000/- ought to have been considered. Secondly that the Court has deducted 1/3rd amount towards personal expenses instead of 1/4th and thirdly that the amount of Rs.40,000/- towards consortium is not paid to three persons as total amount awarded is Rs.70,000/-. He relies on a copy of driving licence to show that the deceased was a skilled worker. Thus, he prays that the amount ought to have been calculated considering the above three submissions.

06. The learned Advocate for the respondent Mr. Patil opposes the appeal submitting that on record there is no evidence to show that the deceased was working as a driver or was employed as a driver. Mere production of licence would not prove that he was employed. Considering

that the deceased was having transport licence he can be at the most considered as skilled worker and he would be entitled at the most to Rs.4500/- per month. So far as second and third submissions are concerned in respect of deduction of personal expenses and consortium, he has not strongly opposed these two points.

07. Considering these aspects, this Court finds that the income ought to have been considered Rs.4500/- per month. The learned Tribunal has failed in considering that the deceased was a skillful worker. It further erred in deducting 1/3rd amount towards personal expenses instead of 1/4th. He further erred by not awarding consortium to all the appellants. It is now reported that appellant No.3 is no more. Considering all these above aspects, this Court modifies award as below :-

Income per month	4500.00
Add : 25% future prospectus	1125.00
Total monthly income	6525.00
Annual income	67500.00
Amount after applying 14 multiplier	945000.00
Less : 1/4th deduction towards personal expenses	708750.00
Add : towards consortium	160000.00
Add : towards funeral expenses	30000.00
Add : medical expenses	206000.00
Total amount of compensation	1104750.00

Less : Amount awarded by Tribunal	696000.00
Difference in the amount of compensation	408750.00

08. Thus, the respondents are directed to pay jointly and severally an amount of Rs.4,08,750/- with interest @ 9% p.a. from the date of filing of the petition till realization. The modified apportionment would be appellant No.1 – 40%, appellant No.2 – 60%.

09. The award be modified accordingly. The difference amount be deposited in this Court within 12 weeks from today. After the amount is deposited, the office shall allow the appellants to withdraw the said amount without requiring any formal application.

10. The appeal is accordingly allowed partly and is disposed off.

[KISHORE C. SANT, J.]