



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3521 OF 2016

1. Yadav Joma Dhule
Age: 65 years, Occ.: Labour,
 2. Sow. Shantabai W/o Yadav Dhule,
Age : 60 years, Occ.: Household,
Both R/o. Vidul, Tq. Umarkhed,
At present Maganpura, Nanded
District-Nanded.
- ... Appellants

VERSUS

1. Govind Ramrao Munde,
Age: Major, Occ.: Business & owner
Truck bearing No.MH-26/H-7325
R/o. Bodhadi, Tq. Kinwat,
District-Nanded
 2. The Manager,
Reliance Insurance Company Ltd.,
2nd Floor, C-9 and C-10, ABC Complex,
Radhamohan Colony, Khokadpura,
Aurangabad, Maharashtra – 431 001.
- ... Respondents

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Mr. G.N. Chincholkar, Advocate for Appellants
Ms. M.V. Manal, Advocate for Respondent No.1
Mr. A.S. Usmanpurkar, Advocate for Respondent No.2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 25th JULY, 2024

ORAL JUDGMENT :

1. Admit. Heard finally by the consent of the parties.
2. This first appeal filed by the original claimants under section 173 of the Motor Vehicle Act, challenges the judgment and award passed by Motor Accident Claims Tribunal, Nanded in M.A.C.P. No.508 of 2011.

3. Son of claimants Arun Yadav (deceased) was working as cleaner on the truck of respondent no.1-owner and was getting monthly salary of Rs.4,500/-. On 30.04.2011, he was proceeding by the truck bearing no. MH-26/H-7325 loaded with Soybean seeds along with driver Janardhan Kondiba Madaswad, from Adilabad to Tarnum. The truck was unloaded at GS Oil Mill, Adilabad. When the truck stopped near Tarnum Shivar, driver of the truck asked cleaner to come down from the truck, when cleaner came down, driver started the truck and moved forward. The deceased fell down and came under the tyre of the truck and died by sustaining multiple injuries. Crime No.36/2011 was registered against the driver under sections 304-A, 201 of the Indian Penal Code. The deceased was 25 years of age at the time of accident. Claimants filed claim petition claiming compensation of Rs.10,00,000/- from the owner of the truck and the insurer of the truck.

4. Owner of the truck opposed the claim petition by filing written statement. He admitted that deceased was doing service with him as cleaner on the truck. However, he denied that deceased was getting Rs.4,500/- p.m. He claimed that at the time of accident the truck was insured with insurance company.

5. The insurance company opposed the claim by filing written statement contending that driver of the truck was not holding valid licence at the time of accident, and therefore, there was breach of policy and hence insurance company is not liable to pay compensation.

6. Tribunal after considering the material on record, partly allowed the claim and directed insurance company to pay compensation of Rs.3,41,000/- with simple interest @ 7.5% from the date of application till realization of the amount and directed it to recover from the owner. Claimants have filed the present appeal seeking enhancement of compensation.

7. Heard learned advocate for claimants, learned advocate for owner and learned advocate for insurance company. Perused the record.

8. Learned advocate for appellants/claimants submitted that Tribunal has erred in computing notional income of deceased at Rs.3,000/- p.m. He submits that as per minimum wages Act, Rs.6,000/- p.m. should have been held as notional income. Tribunal has also failed to award compensation towards future prospects and loss of consortium to each claimant. In support of his submissions, he relied on ***Magma***

General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and Others, (2018) 18 SCC 130.

9. Learned advocates for insurance company and owner supported the impugned judgment and award.

10. It appears from the record that though the owner has admitted that the deceased was serving as a cleaner with him, he has denied that he was paying salary of Rs.4,500/- p.m. probably because the driver was not holding valid driving licence. Taking into consideration the fact that deceased was admittedly doing the job as a cleaner and the accident is taken place in the year 2011, in view of notification published by Ministry of Labour and Employment under section 4(1B) of the Employee's Compensation Act, 1923, in Gazette of India on 31.05.2010, the Central Government has specified minimum monthly wages of unskilled workers at Rs.8,000/- p.m. The Tribunal ought to have held notional income of deceased at Rs.8,000/- per month.

11. Tribunal has failed to award compensation towards future prospectus, without assigning any reason. In terms of ratio in ***National Insurance Company Limited vs. Pranay Sethi and others 2017 (16) SCC 680***, considering that the age of deceased at the time of accident was 29 years, 40% needs to

be awarded towards future prospectus. Tribunal has also failed to award loss of consortium and loss of estate. In the light of *Magma General Insurance Co. Ltd.* (supra), amount of Rs.40,000/- needs to be awarded to each claimant, however, the Tribunal has awarded inadequate amount of Rs.25,000/- under this head. Rupees 15,000/- is to be awarded towards loss of estate and funeral expenses of Rs.15,000/- are liable to be awarded as per ratio in *Magma General Insurance Co. Ltd.* (supra).

12. In view of the aforestated discussion, claimants are entitled for following compensation:-

Sr. No.	Heads	Amount (Rs.)
1.	Monthly Income Rs.8,000 - 1/2 Deduction towards personal expenditure of deceased = Rs. 4000/- Annual Income (Rs.4,000 x 12 = Rs.48,000) + Future prospects @ 40% of computed income (i.e. 19,200/-)	Rs. 67,200/-
2.	Annual dependency multiplied by multiplier (67,200 x 17)	Rs. 11,42,400/-
3.	Non-pecuniary Losses:- Loss consortium 40,000 to each claimants(Rs.40,000x2)= Rs.80000/- Loss of Estate = Rs.15000/- Funeral Expenses = Rs.15000/-	Rs.1,10,000/-
7.	Total compensation needs to be awarded	Rs. 12,52,400/-
8.	Compensation awarded by the Tribunal	Rs.3,41,000/-
9.	Enhanced compensation (Rs.12,52,400 - Rs.3,41,000)	Rs.9,11,400/-

13. In the result, following order:-

ORDER

- (i) First Appeal is partly allowed with proportionate costs.
- (ii) Respondent No.2-insurance company to pay enhanced compensation of Rs.9,11,400/- to claimants within 12 weeks from today along with interest @ 6% per annum from the date of claim petition till realization of the amount.
- (iii) Rest of the award is confirmed.

**[NITIN B. SURYAWANSHI]
JUDGE**