IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

147 FIRST APPEAL NO. 2313 OF 2021

SUMANBAI NAGNATH KANCHITWAD AND ANR
….Appellants

VERSUS

MANISHKUMAR PRAKASHCHAND JAIN AND ANR
…..Respondents

Mr. S. N. Janakwade, Advocate for the appellants
Mr. S. V. Kulkarni, Advocate for the respondent No.2

CORAM : KISHORE C. SANT, J.
DATE : 03rd OCTOBER, 2024

P. C.

1. The present appeal arises out of the judgment and order passed by the learned Member, MACT, Nanded dated 12-02-2021 in MACP No. 210/2012. The learned President of the Tribunal allowed the claim petition. Respondents are directed to pay the compensation of Rs.13,74,160/- to the present applicants towards no fault liability @ Rs.9 p.a from the date of filing of the petition. The claimants are aggrieved by the amount of compensation. This appeal is therefore filed for enhancement in the amount of compensation.

2. The facts in short that the deceased Nagnath was coming to home by a bus. He alighted from the bus and while walking towards his house near Maharana Pratap Chowk to Dattanagar one truck bearing No. MH-26-H-5823 came in high speed in rash and negligent manner and gave dash to the deceased. He was immediately taken to the private hospital on 02-09-2009. Thereafter because of medical condition he was required to be admitted to the civil hospital, Nanded on 22-09-2009 where he unfortunately died on the same day. The claimants therefore approached the tribunal by filing MACP No.210/2012.

3. It is the case of the claimants that the deceased was working as Agriculture Officer in Agriculture department. His salary was Rs.19,040/-. When he died he was 50 years of age. Compensation was prayed considering his salary, future prospects etc.

4. Before the learned MACT claimants laid the evidence and also produced salary certificate Exh.74 and other evidence. On going through the evidence, material on record and the arguments the learned trial court considered the income of the deceased to be Rs.11,400/- per month and came to the conclusion that the annual loss was Rs.91,200/-. It further added 10% future prospects Rs.9120/-. By applying multiplier of 13 the learned court awarded mount of Rs.13,04,160/-. By adding the amount towards consortium, loss of estate and towards funeral expenses the learned court granted total Rs.13,74,160/-.

5. The learned advocate for the appellants vehemently argued that the learned tribunal has erred in taking the income of the deceased Rs.11,400/- when salary certificate shows the income of Rs.19,040/- per month. The court further committed an error by taking future prospects only 10% instead of 15%. Towards consortium the learned court ought to have granted amount to both the claimants i.e. total Rs.80,000/-. He further

submits that even medical expenses are not given by the learned tribunal. He submits that amount of compensation thus, needs to be enhanced.

6. The learned advocate for the respondents vehemently opposed the appeal. He submits that the learned tribunal has considered the evidence and has rightly awarded the amount. No interference is called for.

7. By considering the above, this court has to see whether the learned tribunal has rightly considered the points as follows; (1) whether the income of the deceased is rightly taken to be Rs.11,400/- per month, (2) whether future prospects are rightly awarded @ Rs.10% instead of 15%. (3) whether the court has committed error in not awarding the consortium to both the appellants, (4) whether the learned trial court has committed error in not granting medical expenses of Rs.1,11,000/-.

8. So far as first point is concerned the appellants have produced on record salary certificate Exh.74. As per said certificate basic pay shows Rs.11,410/-. Gross salary is shown to be Rs.19,040/- including the DA, HRA, transfer allowance and grade-pay. The leaned trial court thus committed an error in taking the income only as per basic pay. The learned court ought to have considered the income to be Rs.19040/-. While considering the deductions the learned tribunal considered all other deductions with compulsory deductions. From the salary certificate it is seen that compulsory deductions is only one heae i.e. professional tax Rs.200/-. Considering deduction only of Rs.200/- amount of salary comes to Rs.18,840/-. Said amount needs to be multiplied by 12. The annual income would come to Rs.2,26,080/-. After deducting 1/3rd, the amount would come to Rs.1,50,720/-. In view of judgment in the case of *National Insurance Co. Ltd. Vs Pranay Sethi and others reported in (2017) 16 SCC 680* future prospects would be 15% as the deceased was salaried person. Thus by adding 15% the amount comes to Rs.1,50,720+22,608= Rs.1,73,328/-. By applying

multiplier of 13, the amount would come to Rs.22,75,872/-. Thus the awarded amount of Rs.13,74,160/- needs to be enhanced. So far as the loss of consortium is concerned, the learned court ought to have considered the consortium towards love and affection for both the claimants amount to be Rs.80,000/-.

9. So far as medical expenses are concerned, the learned advocate for the appellant submits that the appellants had produced on record copies of medical bills, discharge card, receipts towards purchase of medicine etc. The said bills are proved through the evidence of PW-2-Dilip Pagare. Exh.44 is the report of examination of abdomen through ultra sound machine. Exh.46 shows the bill of Rs.49,643/- of the medicine/surgical. Further bills of Rs.40,700/- issued by private hospital. Thus the medical expenses comes to Rs.90,343/-. There are 2-3 other bills of small amounts which need not be considered. This court finds that the bills are found from 06-09-2009 to 22-09-2009 towards medicine and other bills issued by M/s Hemant Medical

and General Stores. Thus all these ought to have been taken into consideration by the learned Tribunal.

10. Thus considering overall evidence and the arguments this court finds the amount ought to be as sper following calculations:

Sr. No.	**Particulars**	**Amount**
1.	Annual Income 18840 x 12 = Rs.2,26,080/-	Rs.2,26,080/-
2.	1/3 deduction i.e. Rs.75,360/- Rs.2,26,080-75360=Rs.150,720/-	Rs.1,50,720/-
3.	15% future prospects Rs.1,50,720+22608	Rs.1,73,328/-
4.	Rs.13x1,73,328= Rs.22,53,264/-	Rs.22,53,264/-
5.	Loss of Consortium	Rs.80,000/-
6.	Loss of Estate	Rs.15,000/-
7.	Funeral Expenses	Rs.15,000/-
8.	Medical expenses	Rs.90343/-
	Total	**24,53,607/-**

11. In view of above following order is passed:

ORDER

a] The appeal is partly allowed.

b] The appellants are held entitled to receive total Rs. 24,53,607/-alongwith interest @ 7.5% from the date of filing of the petition. Remaining amount be depoisted in the office of this court wihtin twelve weeks. After amount is deposited the appellants are entitled to withdraw the same without requiring any formal application.

c] The amount stands modified accordingly.

d] With this, appeal stands disposed off.

[KISHORE C. SANT, J.]

VishalK/147fa2313.21