IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4162 OF 2016

1. Madhukar Chudaman Jadhav
age 64 years, occ. Pensioner

2. Durgadas (Pradeep) Madhukar Jadhav
age 33 years, occ. Private Service

3. Dr. Prashant (Sudhir) Madhukar Jadhav
age 30 years, occ. Medical Practitioner

4. Sumati Madhukar Jadhav
age 18 years, occ. Education

All r/o Plot No. 27, Mauli nagar
Behind Hotel Premier, Vikas Colony
Jamner Road, Bhusawal, Tq. Bhusawal
Dist. Jalgaon. .. Appellants

Versus

1. Sunil Waman Pawar
age 31 years, occ. Driver
r/o Pimprisekam, Dipnagar
Tq Bhusawal, Dist. Jalgaon

2. Nareshkumar & Co. Pvt. Ltd.
R/o Super D, 12/5, B.T.P.S. Colony
Dipnagar
Tq. Bhusawal, Dist. Jalgaon

3. The National Insurance Co. Ltd.
299, Bairam Peth, Behind Sai Baba Market
Jalgaon, Tq. & Dist. Jalgaon. .. Respondents

Mr. V. B. Patil, Advocate for appellants.
Mr. A. B. Gatne, Advocate for respondent No. 3.

CORAM : R. M. JOSHI, J.
DATE : 24th JANUARY, 2024.

JUDGMENT :

1. This appeal is filed under Section 173 of Motor Vehicles Act taking exception to the judgment and award passed in MACP No. 236/2011 on 13th July, 2016.

2. A very short point involved in the present appeal is as to whether the Tribunal was justified in deducting any other amount from the gross salary except professional tax and income tax and whether the impugned award deserves modification by granting future prospects and consortium.

3. The facts in the case are not disputed. Deceased Hemalata was proceeding on her scooty on 6th May, 2011. When she came to the spot of incident, a tanker bearing registration No. MH 19 Z 3292 came in rash and negligent manner and gave forceful dash to the vehicle of the deceased. As a result of the said accident, deceased sustained serious injuries and died on the spot.

4. The claim was resisted by insurer whereas the owner and driver of the offending vehicle failed to contest the claim. Claimants were able to prove negligence on the part of the driver of offending vehicle in causing said accident. Claimants examined Gajanan Wankhede, Education Officer serving with Panchayat Samiti, Bodwad. This witness produced salary certificate of the deceased for the month of February, 2011, paid in March 2011 up till June 2011 (Exhibits 46 to 49).

5. As per the documentary evidence on record, the deceased was drawing gross salary of Rs. 28,965/- and after deduction of professional tax, income tax, LIC, GPF, insurance etc. to the tune of Rs. 11,450/-, the net salary of deceased was Rs. 17,515/-. It is settled law that except for statutory deductions i.e. income tax and professional tax, no other deductions could have been done from the salary of the deceased. The evidence on record indicates that professional tax and income tax per month was Rs. 400/-. Thus, only amount of Rs. 400/- was permitted to be deducted from the gross salary of the deceased. Thus, deducting amount of Rs. 400/- from the gross salary of the deceased, the amount comes to Rs. 28,565/-. The deceased was aged about 55 years and hence

multiplier of 11 shall apply. There is no evidence on record to indicate that except claimant No. 1, who is retired person, other claimants were dependant on the income of the deceased. The learned Tribunal, therefore, deducted ½ amount from net salary towards personal expenditure of deceased. In the facts and circumstances of the case, said deduction is fond appropriate. After deducting ½ amount towards personal expenditure, dependency on loss of income comes to Rs. 14,282/-. Applying the multiplier of 11, the amount comes to Rs. 18,85,224/- (14,282 x 12 x 11). The Tribunal has further held notional income at Rs. 3,000/- per month for remaining three years period. The said finding recorded by the Tribunal is inconsistent with the settled position of law. As per the judgment of Hon'ble Apex Court in case of <u>National Insurance Co. Ltd. v. Pranay Sethi and others</u>, **2017 SCC OnLine SC 1270**, a salaried person above age of 50 years would be entitled for additional 15% towards future prospects. The same is not considered by the Tribunal and hence, it needs to be treated as income of the deceased. Thus, the total income after adding 15% towards future prospects comes to Rs. 21,68,000/-.

6. The Tribunal has also not granted consortium to the claimants. Irrespective of the age of claimants, loss by death of deceased as wife and mother deserves to be considered and filial consortium becomes payable and hence all claimants are entitled to compensation of Rs. 40,000/- each. They are also entitled to funeral expenses at Rs. 15,000/- and loss of estate at Rs. 40,000/-. Thus, the total amount of compensation payable to claimants is Rs. 23,83,000/-. (21,68,000 + 1,60,000 + 15,000 + 40,000).

7. In view of above discussion, appeal is partly allowed to the extent of enhancement of compensation as above. Rest of the judgment and decree to remain unchanged.

8. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb