2024:BHC-AUG:16040

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

67 FIRST APPEAL NO. 4021 OF 2023

Kanta Shankarrao Desai,
Age 48 yrs, Occu. Household,
R/o. Handargudi, Tal. Udgir,
Dist. Latur. ...Appellant

VERSUS

Maharashtra State Road Transport
Corporation, Through its Divisional
Controller, S.T. Depot, Latur. ...Non-applicants
(Original Respondent)

...

Advocate for Appellant : Mr. Fayaz K. Patel
Advocate for Respondent : Mr. A.V. Wange

...

CORAM : KISHORE C. SANT, J.
Dated : July 10, 2024

JUDGMENT :-

1) The appeal is filed by the original claimant, mainly on the three grounds i.e. on notional income of the deceased is considered only Rs.5000/- p.m. though the deceased was working as a driver. Secondly, the deductions is taken to 1/2 instead of 1/3. Thirdly, consortium was granted only Rs.25,000/- and funeral expenses were also granted only Rs. 10,000/- instead of Rs.15,000/-.

2) Heard the parties and gone through the record and proceedings.

3) The present appellant is the wife of deceaed Shankarrao Desai, who died in an accident on 11.3.2020 near the saw mill where the deceased was working. The deceased was crossing the road in front of the saw mill when

the S.T. bus No. MH-20/BL-1525 dashed the deceased. The deceased died on 12.3.2020 during the treatment in the rural hospital. The age of the deceased was claimed to be 55 years. The salary was claimed to be Rs.9,000/- p.m. The total claim was thus of Rs. 8,92,000/-.

4) The learned Motor Accident Claim Tribunal, Udgir on recording evidence and after hearing the parties, awarded Rs. 25,000/- towards consortium, Rs. 10,000/- towards funeral expenses, Rs. 10,000/- towards carrying of the dead body and towards the loss of dependency the Court awarded amount of Rs. 2,10,000/-. Thus, the total amount of compensation including no fault liability was Rs. 2,55,000/-.

5) The learned advocate for the appellant/claimant vehemently argued the appeal, stating that the learned Court has considered the notional income of the deceased Rs.5,000/- p.m. only which is too meager. The income ought to have been considered as Rs. 9,000/- p.m. He submits that even the claimant has clearly deposed that the deceased was working as a driver in a saw mill and was receiving Rs.9,000/- p.m. The same is not considered by the Court. The claimant in her evidence has stated that the age of the deceased was 55 years at the time of accident. The Court has however considered the age of the deceased to be 65 years. He, thus, submits that even on the ground of age, the Court has committed a wrong. He, thus, prays for enhancement of the compensation in the awarded amount.

6) The learned advocate for the M.S.R.T.C. vehemently opposes the

appeal, stating that there is no proof of income of the deceased produced on the record. The same is the case with the age of the deceased. No evidence is given by the claimant on both these aspects. He submits that the Court has, therefore, rightly considered the age to be 65 years of the deceased based on the P.M. notes wherein the age of the deceased was shown as 65 years. He submits that considering that the accident took place in the year 2020, the Court has rightly taken the notional income to be Rs.5000/-. The deceased was of 65 years of age and there was no proof of his service with the saw mill. Even the driving license is not produced on the record. Under such circumstances, the Court has rightly considered all the aspects and thus, has rightly passed the judgment and award.

7) After hearing the parties, this Court is mainly considering the notional income of the deceased. For considering the notional income, the Court has considered the date of accident which is 11.3.2020. Considering the income even of Rs.300/- per day, which is minimum i.e. to the unskilled person, the monthly income comes to Rs.9,000/-. This minimum income needs to be considered as there is no proof that the deceased was working as a driver. The learned Court below has deducted 1/2 amount. This Court finds that the deceased was married. The claimant is his wife. Considering that the deduction can only be 1/3 of the total income. Thus, the income of the deceased would come to Rs.6,000/- p.m. and the calculation ought to have been done for considering the loss of dependency on the basis of income of Rs.6,000/-.

8) While considering the consortium, the Court ought to have granted

amount of Rs.40,000/-, for loss of estate the expenses ought to have been Rs.15,000/-, for funeral expenses also, the amount ought to have been Rs.15,000/- in view of the judgment in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and others reported in 2017 AIR (SC) 5157.** Thus, Rs.70,000/- needs to be added under the above three heads towards the amount of loss of dependency. The Court has rightly applied multiplier of seven.

9) In view of the judgment in the case of **Pranaya Sethi** cited supra, the amount needs to be raised 10% per three years. Considering that consortium should be Rs.44,000/-, then loss of estate should be Rs.16,500/- and funeral expenses should be Rs.16,500/-. So that would come to Rs. 44000+16500+16500 = 77000. Considering the income towards loss of dependency Rs.6000/- p.m. would come to Rs.72,000/- per year. By applying multiplier of 7 the amount would come to Rs.5,81,000/-.

10) While filing the appeal, there is delay of **185** days caused in filing the appeal. In view of the same, the appellant is not entitled to receive the interest for the delay period on the amount. In view of the above discussion, this Court is inclined to modify the award as below. Hence, the following order :-

ORDER

(i) Respondent is directed to pay to the appellant an amount of Rs. 5,81,000/- along with interest at the rate of 9% p.a. from the date of filing of the claim petition before the Tribunal i.e. from 13.10.2020. The impugned judgment and award is modified accordingly. With this the appeal stands allowed and disposed of accordingly.

(ii) The amount already granted by the Tribunal be deducted from amount of Rs.5,81,000/-.

(iii) Respondents to deposit remaining amount in this Court within six weeks from today. After the amount is deposited, the appellant shall be entitled to withdraw the said amount without requiring formal application.

(iv) The appellant is not entitled to receive an interest on the enhanced amount for the delay period of **185** days caused in filing the appeal.

(KISHORE C. SANT, J.)

ssc/