



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

70 FIRST APPEAL NO. 742 OF 2020

Kalyani Prasad Hire

VERSUS

Mohd. Mujeebuddin Quazi Mohd. Mumatazuddin Quazi And Ors

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Advocate for Appellant : Mr. P.C. Mayure

Advocate for Respondent 2 : Mr. A.D. Wange

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CORAM : KISHORE C. SANT, J.

Dated : July 04, 2024

PER COURT :-

1. Heard the parties.
2. The appeal is directed against the judgment and order passed by the learned Member, Motor Accident Claim Tribunal, (MACT) Aurangabad dated 25.10.2018 in MACP No. 470/2018, whereby the respondents were directed to pay to the petitioners amount of Rs.35,07,200/- inclusive of no fault liability amount with interest at the rate of 9% from the date of application.
3. The appeal is filed mainly on the ground that the learned Court below has wrongly considered the income of the deceased as Rs.28,000/- p.m. Secondly, the future prospects has to be considered at the rate of 50% and thirdly, the learned Member has made wrong calculation causing difference of Rs.19,34,136/-.
4. In support of the submissions as regard the income, the learned advocate submits that though on the date of accident salary of the

deceased was Rs.28,000/-, however, he was given offer by one another hotel, offering salary of Rs. 35,000/- p.m. and the deceased was about to join the said hotel as he was having qualification in hotel management.

5. So far as second ground is concerned, the learned advocate submits that the deceased was hardly of 27 years old and future prospects ought to have been considered at 50% which is wrongly calculated at 40% by the MACT.

6. So far as third ground is concerned, it is pointed out from the calculation chart in the impugned judgment that 40% future prospects are rightly calculated to be Rs.11,200/-, however, while making calculation the Court, instead of adding the amount of Rs.11,200/- in the income of the deceased, has deducted the said amount from the income and thus, difference appears to be of Rs. 19,34,136/-.

7. The learned advocate for the respondents vehemently opposes on the point of income. He submits that what needs to be considered is the salary earned by the deceased on the date of accident. The offer letter by some other employer cannot be considered while calculating the income of the person, suffering the accident. So far as future prospects is concerned, the Trial Court has rightly calculated it at the rate of 40% as the deceased was not in permanent job.

8. So far as deduction is concerned, he fairly conceded that the learned Tribunal has committed error while calculating the amount of compensation

by deducting the amount of Rs. 11,200/- p.m. instead of adding the said amount to the income of the deceased.

9. This Court has considered the submissions and has also seen the chart in the judgment. It does appear in column No. 2 that the Court has rightly considered the amount of future prospects to be of Rs.11,200/-. However, in column No. 3, the Court while deducting 1/3rd personal expenses has also deducted amount of Rs.11,200/- from the salary. The miscalculation has made the total compensation to Rs. 35,07,200/- instead of Rs. 54,41,336/-. This Court, therefore, finds that the award needs to be modified by enhancing the amount of Rs. 19,94,136/- along with interest at the rate of 9% p.a. from the date of filing of the claim petition in the Trial Court.

10. The award is modified accordingly. With this the appeal stands disposed of as partly allowed.

11. While calculating the interest, the applicant shall not be entitled to receive the interest for the delay period of 322 days caused in filing the present appeal.

(KISHORE C. SANT, J.)

ssc/