



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 FIRST APPEAL NO.563 OF 2024

Sarlabai Suresh Gavade
Age 56 years, Occu Housework.
R/o.Bambrud budruk, Tal. Bhadgaon
District Jalgaon.

..Appellant..
Orig claimant.

Versus

- 1) Pramod Julal Rokade
Age Major, Occu Business,
R/o. Plot No.17, Ramdas Thackeray
Nagar, Pudgaon road, Pachora,
District Jalgaon.
- 2) TATA AIG General Insurance Company Ltd.
Address : Second floor, Gujrathi lane,
District Jalgaon.

Local Address :-

Kandi Tower, 2nd Floor, "C" Wing, Kandi Tower,
Jalna Road, Chhatrapati Sambhaji Nagar
(Old - Aurangabad, Maharashtr,
Pin – 431001

..Respondents..

...
Advocate for Appellant : Mr. M.M. Bhokarikar
Advocate for Respondent 2 : Mr. S.S. Patil
...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 23, 2025

ORDER :-

1. The present appeal is filed seeking enhancement
of the compensation, thereby partially impugning the judgment

and award dated 21.9.2023 passed by the M.A.C.T. Jalgaon in M.A.C.P no.10 of 2019.

2. The appellant is original claimant in M.A.C.P no.10 of 2019. She instituted a claim under section 166 of the Motor Vehicles Act for compensation towards accidental death of her son Dinanath Suresh Gavade, who lost his life in motorvehicular accident dated 13.10.2018. It is contention of the claimant that accident occurred due to rash and negligent driving on part of driver of offending vehicle i.e. Maruti Van bearing registration no.MH-19/BU-9882 which was insured with respondent no.2 at the time of the accident. Claimant's son was aged about 26 years and employed as security guard. He was getting monthly salary of Rs.15,000/-. Due to his sudden death, claimant lost her support. Eventually, she raised claim seeking compensation of Rs.25.00 Lakhs against owner and insurer of the offending Maruti Van.

3. Respondent contested claim mainly on the ground of quantum and negligence, however, after evolution of the evidence, Tribunal passed an award of Rs.15,05,000/- alongwith interest @ 7% p.a. in favour of the claimant.

4. Aggrieved claimant filed this appeal seeking enhancement of the compensation contending that her son was earning Rs.15,000/- p.m. at the time of the accident. He was deployed at the site of Tata Motor (car plant) at Pune and his last drawn salary is proved to be Rs.13,470/-. However, Tribunal assessed compensation assuming his income as Rs.10,000/- p.m. and passed inadequate award.

5. Perusal of reasoning adopted by the Tribunal shows that PW-2 Ankit Joshi-representative of employer of the deceased deposed that deceased Dinanath worked in their company till 31.8.2018. As on date of accident, there is nothing to depict continuation of his employment. Mr. Bhokariker, learned counsel appearing for the claimant seeks to explain that he was on leave to look after her mother at the time of the accident. However, evidence on record does not support such version. The evidence depicts that Dinanath worked as security guard only from 1.6.2018 till 31.8.2018 and during the said period, he was paid salary @ Rs.13,470/-.

5. Even assuming that deceased Dinanath was not in service as on the date of accident, fact remains that he was suitable for employment as security guard and earned salary @

Rs.13,470/- till August, 2018 i.e. just two months prior to his death. It endorse his earning capacity and may be from 'Term Employment'. Hence, keeping in mind fact that deceased Dinanth was only son of claimant and his earning capacity as established through his employer, it would be just and proper to consider his income @ Rs.11,000/- p.m. as against Rs.10,000/- p.m. considered by the Tribunal. Consequently, award passed by Tribunal needs to be modified.

6. Learned counsel appearing for parties have submitted calculations by taking income of the deceased @ Rs.11,000/- p.m. by maintaining all other heads considered by the Tribunal. Thus, entitlement of claimant is re-assessed to Rs.16,47,800/- (Rs. Sixteen Lakh Forty Seven Thousand Eight Hundred only).

7. In that view of the matter, Respondent nos.1 and 2 are held jointly and severally liable to pay total compensation of Rs.16,47,800/- (Rs. Sixteen Lakh forty seven thousand eight hundred) to the claimant alongwith interest @ 7% p.a. from the date of petition till its realization.

ORDER

- (a) Appeal is partly allowed with proportionate costs.
- (b) Respondent nos.1 and 2 are directed jointly and severally to pay total compensation of Rs.16,47,800/- (Rs. Sixteen Lakh forty seven thousand eight hundred) to the claimant alongwith interest @ 7% p.a. from the date of petition till its realization by depositing the same in savings bank account of the Tribunal bearing No.40778937461, IFS Code No.SBIN0000393, MICR Code No.425002001.
- (c) Whatever compensation awarded and paid earlier be adjusted in the above said amount.
- (d) Out of deposited amount, Rs. 5,00,000 (Five Lakh) be kept in fixed deposit for the period of further five years, in the name of claimant, in any nationalized bank, and remaining amount be paid to the claimant on due verification/identification.
- (e) Modified Award be drawn accordingly.

(S. G. CHAPALGAONKAR)
Judge