



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 120 OF 2023

Radhabai Ramchandra Bhagure
VERSUS
Bhausahab Mohan Shinde And Another

Shri R. V. Gore, Advocate for Appellant
Shri A. G. Choudhari, Advocate for Respondent No. 2

CORUM : ROHIT W. JOSHI, J.
Date : 25th FEBRUARY, 2025

PER COURT :

1. Heard finally with the consent of parties.
2. Since the rights of respondent No. 1 are not adversely affected, the appeal is taken up for hearing in the absence of counsel for respondent No. 1.
3. The son of the present appellant namely Bhikan Bhagure died in a road accident on 11.10.2017. He was married and was survived by only one Class-I legal heir and dependent, namely his mother, who is the appellant herein. The respondent No. 1 is owner of the offending vehicle, which was insured with the respondent No. 2/Cholamandalam M.S. General Insurance Co. Ltd. on the date of accident. The appellant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account

of demise of her son in a road accident. The claim petition came to be registered as M.A.C.P. No. 66 of 2018. The said petition came to be decided vide judgment and award dated 05.10.2018.

4. The learned tribunal has considered notional income of the deceased at Rs. 5000/- per month since proper evidence was not brought on record to establish his income. Apart from this, Rs. 15,000/- each is awarded towards loss of estate and funeral expenses. However, no amount is awarded towards consortium.

5. Dissatisfied with the amount of compensation awarded, the appellant has filed the present appeal under Section 173 of the Act. The learned advocate for the appellant placing reliance on judgment of the Hon'ble Supreme Court in the matter of *Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram and Others* reported in *2018 (18) SCC 130* contends that the notional income ought to have been taken at Rs. 6000/- per month. He also points out that as against amount of Rs. 40,000/- towards loss of consortium, no amount is awarded.

6. Shri A. G. Choudhari, learned advocate for respondent No. 2/Cholamandalam M.S. General Insurance Co. Ltd. opposes the appeal contending that determining notional income involves

certain guess work and the learned tribunal cannot be faulted for fixing the notional income as Rs. 5000/- per month. He therefore, contends that the appeal is without substance and liable to be dismissed.

7. Having heard the rival submissions, following point arises for my consideration.

‘What will be the adequate amount of compensation to be awarded to the appellant on account of demise of her son in a road accident?’

8. The deceased was 24 year old on the date of his demise. He was unmarried and is survived by only one dependent that is the appellant who is his mother.

9. I agree with the contention of the appellant that the notional income ought to have been fixed at Rs. 6000/- per month having regard to minimum wage for an unskilled worker at the relevant time, which has been considered by the Hon’ble Supreme Court in the judgment of *Magma General Insurance Company Limited* (supra). The appellant is also correct in the contention that 40% amount should be added towards the future prospects of the deceased.

10. The annual income of the deceased based on notional income comes to Rs. 72,000/-, to which a sum of Rs. 28,800/- is required to be added towards the future prospects. Thus, the total annual income for the purpose of computation of compensation comes to Rs. 1,00,800/- . Since the deceased was a bachelor 50% deduction will have to be to compute the loss of dependency. According to the calculation, loss of annual dependency comes to Rs. 50,400/-. The appropriate multiplier will be 18 since deceased was 24 years old on the date of his demise. The total compensation payable on account of loss of financial dependency thus comes to Rs. 9,07,200/-. Apart from this the learned tribunal has also erred in not awarding any compensation towards loss of consortium. An amount of 40,000/- needs to be added towards loss of consortium. Further addition of Rs. 30,000/- is required to be made towards future charges and loss of estate.

11. Accordingly the total compensation payable comes to Rs. 9,77,200/- as against Rs. 5,70,000/- awarded by the learned Tribunal.

12. In view of the above, the appeal is partly allowed in the following terms.

(a) The compensation of Rs. 5,70,000/- awarded by the learned Member, Motor Accident Claims Tribunal, Aurangabad by judgment and award dated 05.10.2018 in M.A.C.P No. 66 of 2018 vide judgment and award dated 05.10.2018 is further enhanced by a sum of Rs. 4,07,200/-.

(b) The appellant will be entitled to interest at the rate of 9% per annum on the enhanced amount of compensation from 27.12.2017 i.e. the date of filing of main petition till the date of realization of said amount.

(c) Parties to bear their own costs.

[ROHIT W. JOSHI]
JUDGE

KS_Kamble/