2025:BHC-AUG:3512

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO. 253 OF 2023
Amol Shahu Kamble And Ors
VERSUS
Feroj S/o Rajak Shekh And Anr

Mr. S. V. Kulkarni, Advocate for Appellants
Mr. R. H. Dahat, Advocate for Respondent No.2

CORAM : R. M. JOSHI, J.
DATE : 31st January, 2025

PER COURT :-

1. This appeal takes exception to the judgment and order dated 18.01.2022 passed in Motor Accident Claim No. 21/2018.

2. Parties are referred to as "claimants" and "insurer" for the sake of convenience. Relevant facts necessary for decision of this appeal are narrated as under:-

Original claimants are the sons and widow of deceased Shahu s/o Chagan Kamble, who died in an accident occurred on 14.09.2016. Admittedly, deceased was riding on motor cycle bearing registered No. MH-20-AM-8465. He was proceeding from Jalna to Aurangabad. When he came at the spot of accident, motor cycle of the deceased got dashed against the motor cycle driven by respondent No. 1. Further, admittedly, offence came to be registered and charge sheet is filed against the riders of both motor cycles for negligent driving. In this backdrop the claim petition to be filed before Motor Accident Claim Tribunal, Aurangabad. It is the case of the claimants that the deceased was working as a mason and was earning Rs. 12,000/- per month and the compensation is sought under various heads. Claim petition is opposed by respondents by filing written statement. Evidence was led before the Tribunal by impugned judgment and order. It is held that for want of evidence, the notional income of the deceased was considered at Rs. 6,000/- per month. Appropriate calculations were done by Tribunal in accordance with the judgment of ***National Insurance Co. Ltd. Vs. Pranay Sethi and others (2017) 16 SSC 680*** and award came to be passed granting total compensation of Rs. 4,67,000/- along with interest at the rate of 6% per annum.

3. Claimants have filed this appeal on two grounds i.e., that the tribunal has committed error in holding contributory negligence of the deceased to the extent of 50% and also committed error in not considering the notional income of a mason in the year 2018.

4. Learned counsel for the claimants submits that no evidence was led by the insurer in order to prove contributory negligence and as such the order passed by the Tribunal to that extent deserves interference. To support his submissions, he placed reliance on the judgment of Hon’ble Supreme Court in case of ***Dinesh Kumar J. @***

Dinesh J, Versus National Insurance Co. Ltd. And others 2018 (1) T.A.C. 337 (S.C.) and judgment of Chhattisgarh High Court in case of ***Vijay Singh Versus Jageshwar @ Jaggu Sahu and Others 2019 (3) T.A.C. 948 (Chhattis)***.

5. Learned counsel for insurer opposed the said contention by pointing out the fact that admittedly charge sheet has been filed against the deceased as well. Thus, there is evidence to hold that there is contributory negligence in the occurrence of the incident to the equal extent of both motor cyclists.

6. In case of Dinesh Kumar (supra), there was no evidence led to prove contributory negligence on the part of the appellant therein. Here, in this case, however, admittedly charge sheet is filed against the deceased as well for negligent driving. In view of the same, no errors seems to have been committed by the Tribunal to hold him responsible for the contributory negligence to the extent of 50%. In considered view of this Court, the said judgment (cited supra) does not apply to the present case.

7. On the point, enhancement of the compensation it is contended by the learned counsel for the claimants that on the basis of the minimum wages applicable to the mason in the year 2018, the

notional income of the deceased ought to have been considered at Rs. 8,000/-.

8. Learned counsel for the insurer opposed the said contention. However, he was unable to show any contrary material to hold that the minimum wages of a mason was not Rs. 8,000/- per month. It is, therefore, held that the deceased earned Rs. 8,000/- per month. Considering number of dependents on the deceased, 1/3rd income is deducted towards his personal and living expenses. After addition of 25% towards the future prospects as per judgment of Pranay Sethi and others (Cited supra) , the total income for computation of compensation is considered @ Rs. 6,667/-. Multiplier of 13 applies to present cases.

9. In view of the above, the order impugned deserves to the extent of the notional income considered by the Tribunal. Rest of the judgment being in accordance with the position of law does not deserve interference.

10. Appeal is allowed in following terms:-

Sr. No	**Heads**	**Compensation Awarded**
1	Monthly Income of deceased **Rs. 8,000/-**	
2	Less- deduction to the extent of 1/3rd of Rs. 8000/- amount out of the income of deceased towards personal and living expenses: Rs. 8000-2667=5,333/- **Rs. 2,667/-**	

3	25% Addition towards future prospects (i.e. 25% of Rs. 5,333+ Rs.1,333/-)=**Rs. 6667/-**	
4	Net monthly income of the deceased =**Rs.6667/-**	
5	Yearly loss of income to be considered for assessment (Rs. 6,667x 12)=**Rs. 80,004/-**	
6	Multiplier of 13 to be applied considering age of deceased as 43 years, (Rs. 80,004x13)=	Rs. 10,40,052/-
7	50% deduction towards contributory negligence Hence, Rs.10,40,052/2 =	Rs.5,20,026/-
8	Compensation under conventional heads such as loss of consortium, funeral expenses, loss of estate, etc. (Rs. 40,000+Rs.15,000+Rs. 15,000)=10% add towards matter is more than three years.	Rs. 77,000/-
9	Total compensation to be awarded	Rs.5,97,026/-
10	Appellants/or claimants would be entitled to receive a sum of Rs. 5,97,026/- along with interest at 6% per annum jointly and severally from the Respondent.	

(R. M. JOSHI, J.)

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