



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

946 FIRST APPEAL NO. 2653 OF 2023

1. Smt. Jyoti Ambadas Nikam
Age 29 years, Occ. Household
R/o Plot No.54, Namdeo Mandir Galli,
Jaibhavani Nagar, Aurangabad
2. Sainath Ambadas Nikam
Age:04 years, Occ. Nil
(Minor under guardianship of
his real mother appellant No.1)
3. Akshay Ambadas Nikam,
Age 11 years, Occ. Education
(Minor under guardianship of
his real mother appellant No.1)
4. Sou. Sumanbai Ankush Nikam
Age : 54 years, Occ. Household,
R/o Plot No.54, Namdeo Mandir Galli,
Jaibhavani Nagar, Aurangabad
5. Ankush Ramaji Nikam
Age : 62 years, Occ. Retired,
R/o Plot No.54, Namdeo Mandir Galli,
Jaibhavani Nagar, Aurangabad

...Appellants
(Original Claimant No.1 to 5)

Versus

1. Vijay Mhatarji Gaikwad,
Age : major, Occ. Driver in M.S.R.T.C.
R/o At post Makarandpur, Tq. Kannad,
Dist.Aurangabad
2. M.S.R.T.C.
Through its Divisional Manageer
Divisional Office, At Central Bus Stand Road,
Regional Transport Corporation, Maljipura,
Bus Stand to Railway Station Road, in front
of Employment Office, At Aurangabad

...Respondents

...
Advocate for Appellant : Mr. Pande Shashikant R.
Advocate for Respondent No.2 : Mr. Reddy Ranjana D.
...

CORAM : ROHIT W. JOSHI, J.
DATE : 26th FEBRUARY, 2025

ORAL JUDGMENT :-

1. With consent of the parties the matter is heard finally at the admission stage without record and proceeding.

2. Present appeal is filed under Section 173 of the Motor Vehicles Act, 1988. Appellant No.1 is widow, appellant Nos.2 and 3 are children and appellant Nos. 4 and 5 are the parents of the deceased.

3. The learned Advocate for the appellants makes a statement that appellant Nos.4 and 5 have expired. Their legal representatives need not be brought on record, since the matter pertains to motor accident claim and dependents and class-I legal heirs of the deceased namely, appellant Nos.1 to 3 are already on record.

4. The appellants filed a claim petition under Section 166 of the Motor Vehicles Act being Motor Accident Claim Petition No.357 of 2012. The learned Tribunal has awarded total compensation of Rs.8,35,564/-, Rs.8,18,064/- towards loss of financial dependence,

Rs.10,000/- towards loss of consortium, Rs. 5,000/- towards funeral expenses and Rs.2, 500/- towards loss of estate.

5. The learned Advocate for the appellants submits that the head of future prospects has skipped the attention of the learned Tribunal warranting enhancement of the compensation. He also contends that the compensation is not appropriately awarded under the conventional heads, namely consortium, funeral expenses and loss of estate.

6. Per contra the learned Advocate for respondent No.2 Maharashtra State Road Transport Corporation ('MSRTC') defends the judgement and award by contending that since the deceased was not in permanent employment, the appellant cannot claim compensation under the head of future prospects. She also points out that the age of deceased was 36 years as per the post mortem report and therefore multiplier of 15 should have been applied instead of multiplier of 16, which is adopted by the learned Tribunal.

7. Having heard the learned Advocates following point is arise for my consideration :-

(i) What should be appropriate amount of compensation to be awarded to the appellants ?

8. The learned Trial Court has computed the compensation under the head of loss of financial dependence considering the salary of the deceased Rs.5,681/- per month. There is no serious challenge to the said finding. The finding appears to be reasonable on perusal of the judgment. Since the deceased was 36 years old without any permanent employment, 40% amount needs to be added towards future prospects. On such addition being made his monthly salary comes to Rs.7,897/-. The deceased was survived by 5 dependents and therefore 1/4th deduction is required to be made from the gross salary. Therefore loss of monthly dependence comes to Rs.5,923/-. Accordingly, loss of annual dependence will come to Rs.71,076/-. The deceased was 36 years old on the date of his demise and therefore the learned Advocate for respondent No.2 is correct in contending that instead of multiplier of 16, multiplier of 15 was required to be adopted. Applying the multiplier of 15 the component of loss of financial dependence works out to Rs.10,66,140/-.

9. As regards the non conventional heads the deceased has left behind his widow, two children and parents. Each one of them is entitled to a sum of Rs.40,000/- on account of loss of consortium. The total amount payable under the said head, therefore comes to Rs. 2,00,000/-. In addition, a sum of Rs.15,000/ each is required to be paid

towards funeral expenses and loss of estate. The total amount payable under conventional heads comes to Rs.2,30,000/-.

10. In the light of above, the total compensation payable is computed at Rs.12,96,140/-. The learned Tribunal has awarded compensation of Rs.8,35,564/-. Upon deduction of the amount of compensation awarded, the enhanced amount of compensation works out to Rs.4,60,576/-. The appellants are entitled to receive the said amount with interest @ 8% per annum from the date of filing of the petition till recovery of the amount. In terms of the above discussion, the appeal is partly allowed as under:-

ORDER

(i) The appellants are entitled to receive enhanced compensation of Rs.4,60,576/- over and above compensation of Rs.8,35,564/- awarded by the learned member of Motor Accident Claims Tribunal and district Judge-4, Aurangabad in Motor Accident Claim Petition No.357 of 2012 along with interest @ 8% per annum from 05.05.2012 i.e. the date of filing of claim petition till the date of realization of the said amount.

(ii) The amount of compensation be apportioned *inter se*

between appellant Nos.1 to 3 as under:-

Appellant No.1 - 50% along with accrued interest,

Appellant No.2 - 25% along with accrued interest,

Appellant No.3 - 25% along with accrued interest.

(iii) Parties to bear their own costs for the present appeal.

11. Appeal is disposed of accordingly.

[ROHIT W. JOSHI J.]

Narwade/