2025:BHC-AUG:6978

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 125 OF 2023

1. Bharatbai Balaji Zokdare
   Age : 37 years, Occ. : Household,

2. Hanmant s/o. Balaji Zokdare,
   Age : 20 years, Occ. : Education,

3. Madhav s/o. Balaji Zokdare,
   Age : 17 years, Occ. : Education,
   Minor U/G. of Mother Bharatbai Zokdare
   Claimant No.1

4. Girjabai w/o. Kalba Zokdare,
   Age : 65 years, Occ. : Household,

All R/o : Achegaon, Tq. Degloor,
Dist. Nanded **... APPLICANTS**
(Original Claimants)

VERSUS

1. Mr. Kazi Abdul Wahid Saifuddin,
   Age : Major, Occ. : Business, owner of
   Jeep No. MH-26-V-0056,
   R/o : Hanegaon, Tq. Degloor,
   Dist. : Nanded

2. The New India Assurance Company Ltd.,
   Through its Divisional Manager, Divisional Office
   at Lahoti Complex, Vazirabad,
   Nanded Tq. & Dist. Nanded **... RESPONDENTS**
   (Ori. Resp. No. 1 and 2)

Shri B. N. Gadegaonkar, Advocate for Appellants
Shri M. R. Deshmukh, Advocate for Respondent No. 2

CORUM : ROHIT W. JOSHI, J.

DATE : 25th FEBRUARY, 2025

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. The original claim petitioners are aggrieved by the amount of compensation awarded by learned Member, Motor Accident Claims Tribunal, Nanded in M.A.C.P. No. 380 of 2013. Deceased Balaji Zokdare had expired in a road accident on 01.06.2013. The respondent No. 1 is owner of the offending vehicle, which was insured with the respondent No.2/The New India Assurance Company Ltd. as on the date of accident. The deceased is survived by four dependents, namely his widow, two minor children and mother. The appellants original petitioners claimed that he was earning Rs. 10,000/- per month, however, an appointment order showing his income as Rs. 8000/- per month was placed on record. It needs to be mentioned that the author of document was not examined and therefore, learned Tribunal has not considered the said appointment order. The learned Tribunal proceeded to compute compensation taking notional income of Rs. 5000/- per month. The post-mortem report shows his age as 40 years and the learned Tribunal has considered the age tentatively between 41 to 45 years and has applied multiplier of 14 by making 1/4th deduction for personal expenses. Learned Tribunal has not considered the head of future prospects, while computing loss of financial dependency. Likewise, the learned Tribunal has also not awarded compensation towards loss of consortium to the children and mother. Learned counsel for appellants claims enhancement of compensation on the count that the consortium ought to have been awarded to the Appellant Nos. 2 to 4, future prospects ought to have been considered and multiplier of 15 should have been applied taking the age of deceased as 40 years, instead of multiplier of 14.

3. Per contra, the learned advocate for respondent No. 2/The New India Assurance Company Ltd. supports the award contending that all the dependents are entitled to consolidated amount of Rs. 40,000/- towards loss of consortium and he further states that compensation on account of loss of financial dependency is also rightly computed.

4. Having heard the rival submissions following points arise for my consideration.

I. Is the amount of compensation granted towards the loss of financial dependency correctly computed?

II. Are the appellant Nos. 2 to 4 namely children and mother of the deceased individually entitled to compensation against the head of loss of consortium?

5. Point No. I - The appellants did not produce any documentary evidence in order to establish the age of the deceased. The post-mortem report indicated his tentative age as 40 years. In view of the above, resorting to guess work, the learned Tribunal has taken the age of deceased as somewhere between 41 to 45 years. The same cannot be faulted. The learned Tribunal has rightly not placed reliance on the alleged appointment order, since the author of document was not examined. The learned Tribunal has rightly considered notional income of Rs. 5000/- per month and has also correctly made deduction of $1/4^{th}$ amount towards personal expenses, since the deceased is survived by four dependents. To this extent, the judgment and award do not call for any interference. However, in my considered opinion, the learned Tribunal has erred in not taking into consideration the head of future prospects. Since the age of deceased is taken between 41 to 45 years and he was not having stable income, an addition of 25% should be made on account of loss of future prospects.

6. Point No. II - It is no longer in dispute that apart from the spouse, children and parents of deceased are also entitled to compensation against the head of loss of consortium individually. The learned Tribunal has erred in not awarding compensation to the children and mother of the deceased on this count. The compensation for loss of consortium therefore, requires to be increased by a sum of Rs. 1,20,000/-.

7. The computation of compensation is therefore, required to be made as under :

Income 25% Future Prospect	5000/- + 1250/-
$1/4^{th}$ Deduction	6250/- – 1562/- 4688/- 4688/- X 12
Annual Income Multiplier 14 Pecuniary Loss	56,256/- X 14 **7,87,584/-**
Consortium (40,000 each) Funeral Estate	1,60,000/- + 15,000/- + 15,000/-
Total	**1,90,000/-**
	7,87,584/- + 1,90,000/-
Already awarded	9,77,584/- – 7,00,000/-
Enhancement	**2,77,584/-**

8. In view of the aforesaid, the appeal is partly allowed by enhancing the compensation awarded by the learned Tribunal by a sum of Rs. 2,77,584/-.

9. At this stage the learned counsel for respondent No. 2 has drawn my attention to order dated 09.12.2022 passed by this Court on Civil Application No. 1459 of 2019 which is the application for condonation of delay in filing the present appeal. Clause (iv) of the operative portion in the said order states that the appellants will not be entitled to receive interest on the enhanced amount of compensation up to the date of filing of appeal, in the event, the appeal is allowed. Clause (iv) of the Operative Order is required to be read harmoniously along with paragraph 5 of the order condoning delay. Clause (iv) in the Operative Order when read and interpreted in the light of paragraph 5 would clearly indicate that what is intended is that, the respondent should not be penalized by fastening liability to pay interest for the period of delay. It is inconceivable that the Court has deprived the claimants of the right to receive interest for the prescribed period of limitation provided by law. The order needs to be interpreted in the right spirit. In view of the aforesaid, the appellants will be entitled to receive interest for enhanced amount of compensation at rate of 8% per annum from the date filing of the claim petition i.e. 29.07.2013 till the date of realization of the said amount excluding the period of 209 days.

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

ORDER

(i) The respondent Nos. 1 and 2 are jointly and severally liable to pay additional compensation of Rs. 2,77,584/- to the appellants along with interest at the rate of 8% per annum from 29.07.2013 till the date of realization of entire amount excluding period of 209 days over and above, compensation of Rs. 7,00,000/- awarded by learned Member, Motor Accident Claims Tribunal, Nanded in M.A.C.P. No. 380 of 2013.

(ii) Rule made absolute in above terms.

(iii) Parties to bear their own costs.

[ROHIT W. JOSHI]
JUDGE

Komal Kamble/