(2022) 09 BOM CK 0025

In the Bombay High Court

Case No : First Appeal No. 813 Of 2011

Babarao Vithoba Muthal APPELLANT

Vs

Abdul Raheman Abdul Sattar And Others RESPONDENT

Date of Decision : 08-09-2022

Acts Referred:

Citation : (2022) 09 BOM CK 0025

Hon'ble Judges : S.G.Dige, J

Bench : Single Bench

Advocate : Abhijit S. More, S.N. Pagare

Final Decision : Partly Allowed

Judgement

S.G.Dige, J

1. Being aggrieved and dissatisfied with the judgment and award passed by the Member, Motor Accident Claims Tribunal, Osmanabad, the appellants – original claimants have preferred this appeal for enhancement of amount.

2. Brief facts of the case are as under :-

On 14th July, 2006, the son of the appellants viz. Chandrakant died due to an accident. While he was proceeding from Brahmanchiwadi to Osmanabad on motorcycle, the offending truck gave dash to motorcycle of the deceased.

3. The appellants filed claim petition for getting compensation before the Motor Accident Claims Tribunal, Osmanabad (For short, "the Tribunal"). Considering the evidence on record and after hearing the parties, the Tribunal has awarded compensation. Against the said judgment and order this appeal.

4. It is the contention of the learned counsel for the appellants that the Tribunal has not properly considered the income of the deceased. The deceased was contractor and he was earning Rs.15,000/- per month, therefore, the compensation should have been granted by considering his income, but less

income of Rs.5000/- is considered as monthly income of deceased, which is very less. The learned counsel further submits that the Tribunal has applied multiplier of age of appellants who are parents of the deceased, it should be age of deceased. The learned counsel submits that the Tribunal has erroneously deducted 50% of the total awarded amount as personal expenses of the deceased. The compensation under head of future prospectus, consortium is not granted. Hence requested to allow the appeal.

5. The learned counsel for the appellants relied upon the judgments in the cases of Sube Singh and another Vs Shyam Singh reported in 2018(5) Mh.L.J. 581, National Insurance Company Vs. Pranay Sethi reported in 2017 AIR SC 5157, Kurvan Ansari Vs. Shyam Kishor reported in 2022(1)SCC 317 and Oriental Insurance Co. Ltd. Vs. Deo Patodi and others reported in 2009(13)SCC 123.

6. It is contention of the learned counsel for the respondent no.2 that while awarding the compensation, the Tribunal has considered all the aspects and accordingly the compensation is awarded. The judgment and order passed by the Tribunal is legal and valid.

7. I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal.

8. The issues involved in this appeal are income of the deceased and deduction of the amount of the deceased as personal expenses.

9. The issue in respect of income of the deceased is concerned, the Tribunal has considered Rs.5,000/- per month as income of the deceased. It has come on record that at the time of accident the age of the deceased was 26 years, he was Civil Engineer and Government Contractor. The Tribunal has observed that there is no proof of income of monthly earning of the deceased. He was not paying income tax, therefore, the Tribunal has considered Rs.5,000/- as monthly income of the deceased. It has come in the evidence of PW-1 – Shri Babarao Muthal at Exhibit-53 that deceased was Civil Engineer, he was doing contractorship and was earning Rs.15,000/- per month. In cross-examination nothing elicited to disbelieve evidence of this witness. In my view, when it has come on record that the deceased was Civil Engineer and he was doing contractorship then he must have earning the amount more than Rs.5,000/-. Considering his educational qualification as Civil Engineer and he was Contractor, I am considering income of the deceased as Rs.8,000/- per month. The Tribunal has not awarded future prospects. As per view of the Hon’ble Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in (2017) 16 SCC 680, the appellants are entitle for 40% additional amount as future prospects

10. The issue in respect of the deduction of personal expenses, the Tribunal has deducted 50% amount as personal expenses. The deceased was bachelor, hence 50% amount of income is rightly deducted by the Tribunal. The Tribunal has applied the multiplier of parents of the deceased, it should be as per the age of

the deceased. At the time of accident, the deceased was 26 years. Hence multiplier 18 is applicable. The Tribunal has not awarded the consortium amount. The appellants are parents of the deceased. As per the view of the Hon'ble Apex Court in the case of Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others reported in (2018) 18 SCC 130, the appellants are entitle for Rs.40,000/- each as consortium. The appellants are also entitle for Rs.30,000/- amount for funeral expenses and loss of estate. The appellants are entitle for 6% interest on the enhanced amount.

11. Considering the above calculations, the appellants are entitle for following compensation :-

Sr. No.	Head	Compensation awarded
1.	Monthly income	Rs.8000/- per month
2.	Annual income	Rs.96,000/-
3.	40% future prospects (Rs.38,400/-)	Rs.96,000 + Rs.38,400/- = Rs.1,34,000/-
4.	1/2 deduction (Rs.1,34,000- Rs.67,000/-)	Rs.67,000/-
5.	Multiplier 18 (Rs.1,26,000 X 18)	Rs.10,05,000/-
6.	Consortium Rs.40,000/- each (2 dependents)	Rs.80,000/-

7.

Funeral expenses and loss of estate

Rs.30,000/-

8.

Total Compensation

Rs.11,15,000/-

12. The Tribunal has granted Rs.2,42,000/- as compensation. As per above calculations appellants are entitle for enhanced compensation of Rs.8,73,000/- i.e. Rs.2,42,000/- - Rs.11,15,000/- = Rs.8,73,000/-.

13. In view of the above, I pass the following order:-

ORDER

(i) The appeal is partly allowed.

(ii) The amount of compensation is enhanced from Rs.2,42,000/- to Rs.11,15,000/-. The appellants are entitled to enhanced amount of Rs.8,73,000/- @ 6% from the date of filing claim petition till realization of amount.

(iii) Appellants are permitted to withdraw the enhanced amount.

(iv) Appeal is disposed of in above terms.