
(2016) 04 BOM CK 0033
In the Bombay High Court
Case No : First Appeal No. 134 of 2000.

Bhagwat Gopalrao Bhausar and another	APPELLANT
Vs	
Bhagwan Budha Chambhar, Jalgaon and another	RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 1383

Hon'ble Judges : V.K. Jadhav, J.

Bench : Single Bench

Advocate : C.R. Deshpande, Advocate, for the Appellant; D.S. Bagul, Advocate, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jadhav, J. (Oral) - Being aggrieved by the judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Dhule dated 17.8.1995, in MACP NO.229 of 1991 along with connected claim petitions, the original claimant in MACP No.229 of 1991 preferred this appeal to the extent of quantum.

2. Brief facts giving rise to the present appeal, are as follows :-

a] The accident had taken place on 29.10.1991 at about 07.00 p.m. near Bhone Phata on Nandurbar Dhondaicha road. At that time, deceased Ramesh was driving auto-ckshaw bearing registration No.MH-18/8160 and one Umesh Mahale was travelling in the said auto as a passenger. On the way, one S.T. Bus bearing registration No.MTO8734 came from the opposite direction in high speed being driven by its driver in a rash and negligent manner and gave dash to the said autorickshaw In consequence of which, the said Ramesh as well as passenger Umesh sustained severe injuries. Deceased Ramesh succumbed to the injuries in the Hospital, whereas, said Umesh sustained injuries which resulted into permanent disability. The parents of deceased Ramesh preferred claim petition before the Tribunal, Dhule.

b] The Respondent M.S.R.T.C has strongly resisted the claim by filing the written statement. According to the respondent/M.S.R.T.C., the driver of the autorickshaw was responsible for the accident and there is no negligence on the part of the S.T. Driver. The learned Member of the tribunal has partly allowed the claim petition No.229 of 1991 and thereby held that the respondent MSRTC is liable to pay Rs.41,000/- as total compensation. Hence, this appeal.

3. The learned counsel for the appellants-original claimant submits that, the Tribunal has not considered the income of the deceased Ramesh. Learned counsel submits that, deceased Ramesh was driving the auto-rickshaw and earning Rs.70/- to Rs.80/- per day. Learned counsel submits that without assigning any reason, the Tribunal has considered the income of the deceased at Rs.30/- per day excluding the expenses of the auto-rickshaw. Learned counsel submits that, the Tribunal has committed mistake while applying the multiplier by considering the age of the claimants instead of considering the age of deceased Ramesh who met with an accident at the age of 26 years. Learned counsel submits that, the Tribunal should have applied multiplier "17" instead of "5". Learned counsel submits that, the tribunal has not awarded the compensation under non pecuniary heads.

4. Learned counsel for the respondent M.S.R.T.C. submits that, the claimant Bhagwat has admitted in his cross examination that there are no documents with him to show that deceased Ramesh was in fact carrying the occupation of driving auto-rickshaw. Learned counsel submits that, there is absolutely no evidence that deceased Ramesh was earning Rs.70/- to Rs.80/- per day excluding the expenses by driving the autorickshaw. Learned counsel submits that, the Tribunal has therefore rightly considered the income of deceased Ramesh as Rs.30/- per day. Learned counsel submits that the Tribunal has considered the age of the parents and accordingly applied the correct multiplier for calculation of the compensation. Learned counsel submits that the Tribunal has awarded compensation towards mental pain and agony. Learned counsel submits that, the Tribunal has awarded just and reasonable compensation. Learned counsel further submits that, the Tribunal has deduced 3rd amount of the income as personal expenses erroneously. Learned counsel submits that the Tribunal should have considered the legal position and deducted 1/3 of the amount towards personal expenses since deceased Ramesh was unmarried at the time of his death. There is no need to interfere in the impugned judgment and award and the appeal is liable to be dismissed.

5. So far as finding recorded by the Tribunal that the accident had taken place on account of the rash and negligent driving of the driver of the S.T. Bus is concerned, same is not disputed in this appeal. The appellant-original claimants have preferred this appeal to the extent of quantum.

6. Death of Ramesh had taken place while he was driving autorickshaw at the time of accident. It is true that, there is no evidence of his income, however, the Tribunal without assigning any reason has considered his income at Rs.30/- per

day by excluding the expenses of rickshaw. In absence of any income proof, the Tribunal should have considered his notional income. Both the learned counsel agreed that, at the time of accident, i.e. in the year 1991 rates of daily wages were Rs.40/- per day and not more than that.

7. In view of the above submissions, if notional income of the deceased Ramesh is considered as Rs.40/- per day, then his monthly income comes to Rs.40 x 30 = Rs.1,200/-. In view of the law laid down in case of Sarla Verma (Smt) and others v. Delhi Transport Corporation and another reported in (2009) 6 Supreme Court Cases 121, the age of the deceased at the time of his accidental death is required to be considered and not the age of the claimants. It is not disputed that, deceased Ramesh was 26 years of age at the time of his accidental death. In view of this, for the age group of 2630 relevant multiplier is "17". Thus, Rs.600/- is taken as monthly income of deceased Ramesh. After deducting his 1/2 personal expenses, his yearly income comes to Rs.600 x 12 = Rs.7,200/-. If same is multiplied by multiplier "17" (7,200 x 17) it comes to Rs.1,22,400/-. It appears from the impugned judgment and award that, the Tribunal has not awarded the compensation under the non pecuniary heads such as loss of estate, loss of love and affection, funeral expenses, etc. Deceased Ramesh was the earning member of the family and the parents were depending on his income. In view of this, the claimants are entitled for amount of Rs.10,000/- towards loss of estate, the claimants are old aged parents, are entitled to Rs.10,000/- each for loss of love and affection and Rs.5,000/- as funeral expenses. Thus, the break up of compensation can be categorized as under :-

1. Loss of income/dependency Rs.1,22,400/-

2. Loss of Estate Rs. 10,000/-

3. Loss of Love and Affection Rs. 20,000/-

4. Funeral expenses Rs. 5,000/-

Rs.1,57,400/-

Thus, the claimants are entitled for the total compensation of Rs.1,57,400/- (Rs. One lac fifty seven thousand four hundred only).

8. The claimants have restricted their claim to the extent of Rs.50,000/-(Rs. Fifty Thousand). The claimant can be directed to pay deficit court fees for the amount as worked out herein above. Hence, I proceed to pass the following order.

ORDER

I. First appeal is hereby allowed with costs.

II. The Judgment and Award dated 17.8.1995 passed by the Member, Motor Accident Claims Tribunal, Dhule in MACP No.229 of 1991 is modified as under :-

"The Respondents shall pay Rs.1,57,400/- (Rs. One lac fifty seven thousand four hundred only) including the "No Fault Liability" amount with proportionate costs

along with interest @ 9% p.a. from the date of filing of the application till the realisation of the amount."

III. The appellant-claimant shall pay the deficit court fees within a period of one month from the date of this order.

IV. Rest of the judgment and award stands confirmed.

V. Award be drawn up accordingly.

VI. Appeal is accordingly disposed of.