

(2022) 08 BOM CK 0072

In the Bombay High Court

Case No : First Appeal No. 2195 Of 2021

Dhondyabai And Others

APPELLANT

Vs

Mansoor KhanAnd Others

RESPONDENT

Date of Decision : 24-08-2022

Acts Referred:

Citation : (2022) 08 BOM CK 0072

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

Bench : Single Bench

Advocate : V.D. Patnoorkar, Mohit R. Deshmukh

Final Decision : Allowed

Judgement

S.G.Dige, J

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

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

On 13th December, 2016 in the morning Dhondiba Gomaji Daware (deceased) along with other villagers had been to village Sarsum for doing labour work. After completion of the labour work, they stopped at village Sarsum on main road. At that time one Mahindra Mexico Jeep No.MH-26-AF-2470 was passing from the said road, therefore, all of them including deceased boarded in the said vehicle for going to their native place Walkyachiwadi. When they reached near D.P. i.e. near the field of one Kishan Punjaram, at that time, the driver of the said vehicle who was driving the said vehicle in a high speed lost control over the vehicle and vehicle turned turtled due to which the deceased and others were sustained severe injuries. The deceased was initially taken to Primary Health Center Sarsum and thereafter shifted at Dr. Shankarrao Chavan Government Medical College, Nanded for further treatment, but unfortunately during treatment he

died in the hospital. The crime was registered against the driver of the offending vehicle-Jeep.

3. The appellants (orig. claimants) filed claim petition before the Member, Motor Accident Claims Tribunal, Bhokar (for short, "the Tribunal") for getting compensation. After considering the evidence on record and hearing the parties, the Tribunal has awarded the compensation. Against the said order, this appeal.

4. It is the contention of the learned counsel for the appellants that the Tribunal has failed to appreciate the age of the deceased while passing the award and wrongly believed the age, which is mentioned by the concerned Officer on the post mortem report, but actually the age of the deceased was 28 years. Without considering the same, the Tribunal has applied wrong multiplier and passed the award of meagre amount. The Tribunal has not awarded future prospects. The learned counsel further submits that the Tribunal ought to have considered the notional income of the deceased as Rs.7000/- per month, however, it has considered notional income only Rs.5000/- per month. The Tribunal has also failed to properly grant the interest component, hence requested to allow the appeal.

5. It is the contention of the learned counsel for respondent no.3 that the appellants did not produce any evidence in respect of income of the deceased before the Tribunal. Hence, the notional income considered by the Tribunal is proper and correct. The Tribunal has granted adequate compensation to the appellants by considering the future prospects, consortium to children, wife and mother as well as general expenses. The judgment and order of the Tribunal is legal and valid.

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

7. The issue involved in this appeal is of proper income of the deceased is not considered by the Tribunal and future prospects are not awarded.

8. In respect of the income of the deceased, it has come on record that the deceased was working in the field of one Ramdas Walke of village Walkyachiwadi, from which he was getting Rs.1,20,000/- annually. He was working as "Salgadi". The Tribunal has considered the notional income of Rs.5,000/- per month as no evidence of "Salgadi" or income of Rs.1,20,000/- was produced before the Tribunal. In my view, "Salgadi" is appointed only on oral terms and conditions for the agricultural work by the land owner. So no question of documentary evidence arises. It has mentioned in the first information report that after doing labour work and after completion of work all the persons including deceased boarded in the offending vehicle and then accident was occurred. It shows that the deceased was working in the agricultural field. Hence, I consider the notional income of the deceased of Rs.6000/- per month.

10. The Tribunal has awarded paternal consortium to children of Rs.25,000/-

each, the spousal consortium to wife of Rs.25,000/- and the filial consortium to mother is awarded of Rs.25,000/-. The Hon'ble Apex Court in the case of Magma General Insurance Co. Ltd. Vs. Nanu Ram reported in 2018 SCC Online SC 1546 has held that in legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation." Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

. Hence, in view of the law laid down by the Hon'ble Apex Court in the case of Magma General Insurance Co. Ltd., (supra), I consider the paternal consortium to children of Rs.40,000/- each, the spousal consortium to wife of Rs.40,000/- and the filial consortium to mother is awarded of Rs.40,000/-. The funeral expenses is awarded by the Tribunal of Rs.15,000/-, which is proper.

11. Though the learned counsel for the appellant contends that the deceased was 28 years old but no documentary evidence produced on record in support of their contention. The Tribunal has considered age 32 of the deceased on the basis of the age mentioned in postmortem report. In my view, in absence of any evidence age considered by the Tribunal is correct.

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

Sr. No

Head

Compensation awarded

1.

Notional income

Rs.6000/- per month

2.

Future prospects (40%)

Rs.2,400/-

3.

Monthly income

Rs.8,400/-

4.

After 1/4th deduction towards personal expenses (Rs.8,400 – Rs.2100/-)

Rs.6,300/-

5.

Annual income (Rs.6,300 X 12)

Rs.75,600/-

6.

As the age of deceased was 32 years, hence multiplier is to be applied of 16 (Rs.75,600/- X 16)

Rs.12,00,000/-

Paternal Consortium to children

Rs. 80,000/-

Rs.40,000/- each

Spousal consortium to wife

Rs. 40,000/-

Filial consortium to mother

Rs. 40,000/-

Funeral expenses

Rs. 15,000/-

6.

Total

Rs.13,75,000/-

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

ORDER

(i) The appeal is allowed.

(ii) The amount of compensation is enhanced from Rs.8,35,000/- to Rs.13,75,000/-. The appellants are entitled to enhanced amount of Rs.5,40,000/- @ 7% from the date of filing claim petition till realization of amount.

(iii) The appeal stands disposed of accordingly.