
(2017) 07 BOM CK 0180
In the Bombay High Court
Case No : 765 of 2016

Mangala wd/o Gajanan Kale, & Ors.

APPELLANT

Vs

Mahadeo s/o Ashok Gawane, & Ors.

RESPONDENT

Date of Decision : 06-07-2017

Acts Referred:

Citation : (2017) 07 BOM CK 0180

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : S. D. Chopde, S. N. Dhangare

Final Decision : Allowed

Judgement

1. This appeal is preferred by the original claimants against the Judgment and Order passed by the Chairman, Motor Accident Claims Tribunal, Akola in M.A.C.P. No. 47/2012 on 14.10.2015. The only question raised for consideration is whether the compensation awarded by the Tribunal is just, fair and adequate or whether it needs to be enhanced?

2. Though notice of the appeal was duly served on respondents for final disposal, respondent nos. 1 and 2 remained absent. Respondent no.3 appeared through counsel, Shri. Dhanagare. However, learned counsel for respondent no.3 absent consistently and as the issue involved in the appeal is very short one, on the submissions advanced by learned counsel for appellants and after going through the Judgment of the Tribunal it is being decided.

3. Deceased Gajanan was the husband of appellant no.1 and the father of appellant nos. 2 and 3. He has succumbed to death in the vehicular accident on 15.2.2012, when he was proceeding on his motorcycle and the TATA Indica Car MH-44/ B-0449 coming from opposite direction, gave dash to him. Respondent no.1 was driver, respondent no.2 was the owner of TATA India Car and respondent no.3 was the insurer. Appellants, therefore, filed claim petition seeking compensation of Rs.10,00,000/for the untimely death of Gajanan.

4. Respondents appeared before the trial Court and resisted the petition. After appreciation of the evidence on record. The Tribunal was pleased to hold that the cause of accident was rash and negligent driving of the car and respondent nos. 1 to 3 were therefore, jointly and severally liable to pay compensation of Rs.6,64,000/to the appellants with interest @ 6% per annum thereon from 4.3.2014 till realization.

5. Respondents have not challenged this impugned Judgment and Order of the Tribunal. However, appellants are aggrieved on account of inadequate amount of compensation awarded by the Tribunal.

6. As per the facts on record, deceased was working as Choukidar in Mahabeej and drawing salary of Rs.16,000/per month. However, the finding of the tribunal in paragraph11 shows that as per the pay sheet, his salary was found to be Rs.11,263/. Hence, after deductions of the taxes, the Tribunal considered his salary to be Rs.10,000/per month. Learned counsel for appellants has not disputed about the net income of the deceased as Rs.10,000/per month. However, his grievance is to the extent that the Tribunal has deduced only 1/3rd of the said amount towards personal expenses of the deceased and arrived at figure of Rs.6500/per month towards loss of dependency. According to learned counsel for appellants, the Tribunal has not considered the dependency of the appellants and refused to consider dependency of the sons on the count that sons have become major. In my considered opinion, as claimant nos. 4 and 5 in the petition who were the parents of deceased were already dead, hence, their names were also deleted, the question of their dependency does not arise. Even if dependency of sons is now considered, 1/3rd of the gross income of the deceased is rightly deducted by the Tribunal towards personal expenses of the deceased and correctly held that the loss of dependency comes to Rs.6,500/per month, which is Rs.78,000/per year.

7. The grievance of learned counsel for appellant is also in respect of multiplier applied. It is submitted that as the deceased was of 55 years, the multiplier would be 11. However, Tribunal has applied multiplier of "8". The evidence on record proves that on the date of accident which took place on 15.2.2012, the deceased has crossed the age of 55 years, as his birth date is proved to be 19.5.1956. Hence, in view of the judgment of the Hon"ble Apex Court in the case of "Sarla Verma Vs. DTC, (2009) 6 SCC 121", the appropriate multiplier would be "9". Hence, the total loss of dependency comes to Rs.78,000/. If it is multiplied by "9" it comes to Rs.7,20,000/in place of Rs.6,24,000/as arrived by the Tribunal.

8. There also appears some substance in the grievance, raised by learned counsel for appellants in respect of the amount which is awarded by the Tribunal towards the additional heads of compensation. The Tribunal has awarded the amount of Rs.15,000/towards loss of consortium, Rs.10,000/for the loss of estate and love and affection and Rs.15,000/towards funeral charges. However, now in view of the recent judgment of Hon"ble Apex Court in the case of "Rajesh and others Vs. Rajbir Singh and others, (2013) 9 Supreme Court Cases 54", this

amount needs to be enhanced to Rs.1,00,000/towards loss of consortium, to appellant no.1, Rs,10,000/towards loss of estate and love and affection to respondent nos.2 and 3, Rs.25,000/towards funeral expenses. Thus, total amount of compensation to which the appellants become entitled to is Rs.8,37,000/.

9. The appellants are also having grievance about the award of interest from 4.3.2014 only. It is submitted that it should have been from the date of filing of the petition, which was 31.3.2012. However, the Tribunal in its judgment in paragraph12 has given the detail reasons as to how the matter was delayed on account of the appellants not paying the court fees and also not taking the steps in time for deleting the name of claimants nos. 4 and 5 in filing amended copy of the Tribunal. Therefore, as the matter was delayed till 4.3.2014, the appellants were held not entitled for interest for the period for which delay was caused by them. Having regard to these facts on record no fault can be found in the impugned judgment of the Tribunal on that score.

10. In the result, the appeal is partly allowed. The impugned Judgment and Order of the Tribunal is modified to the extent that appellants are held entitled for compensation of Rs.8,37,000/inclusive of N.F.L. amount, with interest, as awarded by the Tribunal. Rest of the judgment of the Tribunal is confirmed.

The appeal is disposed of in above terms, with no order as to costs.