(2017) 02 BOM CK 0075

In the Bombay High Court

Case No : First Appeal No. 363 Of 2006

Shalini — APPELLANT

Vs

Jagdeo Sukhdeo Kurhade — RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2017) 2 TAC 81

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : Shri Bharat Vora, Advocate, for the Appellant; Shri A.H. Patil, Advocate, for the Respondents No. 3; Shri S.N. Dhanagare, Advocate, for the Respondents No. 6

Final Decision : Allowed

Judgement

A.S.Chandurkar, J.—By this appeal filed under Section 173 of the Motor Vehicles Act, 1988, the claimants seek enhancement in the amount of compensation as awarded by the Motor Accident Claims Tribunal, Akola in MACP No.25/2001.

One Vitthal Sardar, husband of appellant No.1 and father of appellant Nos.2 to 4 on 13/11/2000 was travelling in a jeep towards Akola. During the course of journey, a truck coming from opposite side gave a dash to the jeep. In said accident Vitthal sustained injuries and died on the spot. The appellants therefore filed proceedings under Section 166 of the said Act for grant of compensation. This claim was filed against the insurer of the truck-respondent No.3, its owner and driver as well as insurer of the jeep-respondent No.6 and its driver. After considering the evidence on record, the Claims Tribunal granted compensation of an amount of Rs.1,59,500/- including no fault liability by holding both the vehicles equally responsible for causing the accident.

2. Shri Bharat Vora, the learned counsel for the appellants submitted that

considering the evidence on record the Claims Tribunal ought to have awarded higher compensation. It was submitted that the income of the deceased was taken on lower side which ultimately resulted in grant of lessor compensation. It was further urged that compensation under various conventional heads was also not granted resulting in prejudice to the case of the appellants. In support of the prayer for enhancement the learned counsel placed reliance upon judgment of the Honourable Supreme Court in Savita v. Bindar Singh and ors. (2014) 4 Supreme Court Cases 505 and judgments of this Court in Nitadevi wd/o Liladhar Sarda and ors v. National Insurance Company 2016(1) ALL MR 818 and First Appeal No.197 of 2007 (Gajanan Mahadeo Gulhane v. Bharat Trading Company and ors.) decided on 13/04/2016.

3. The aforesaid submissions were opposed by Shri A. H. Patil, learned counsel for respondent No.3 and Shri S. N. Dhanagare, learned counsel for respondent No.6. It was submitted that on proper appreciation of the evidence on record, the Claims Tribunal had rightly awarded fair compensation to the appellants. In absence of any evidence with regard to the income earned by the deceased, the figures applied by the Tribunal were justified not warranting any interference in the appeal. Shri A. H. Patil, learned counsel placed reliance on judgment of Honourable Supreme Court in Bijoy Kumar Dugar v. Bidyadhar Dutta and ors. 2006(4) ALL MR (SC) 92.

4. I have heard the respective counsel for the parties at length and I have perused records of the case. The following point arises for determination :

" Whether the appellants have made out a case for enhancement in the amount of compensation? "

5. In support of the prayer for compensation, the appellant had filed her affidavit in which it was stated that her husband was plying an auto rickshaw thereby earning Rs.4500/- per month. He was also having 56 buffallows and was selling milk. The total income was therefore Rs.6000/- per month. In her cross-examination it was however stated that no accounts were available to indicate exact income being earned by her husband. Considering the nature of activities undertaken by the deceased and in absence of any documentary evidence of the actual income earned, the notional income of Rs.3000/- per month would have to be taken into consideration. By considering an amount of Rs.100/- per day as the income earned, monthly earnings would be taken at the rate of Rs.3000/-.

The Claims Tribunal misdirected itself when it took the annual income of the deceased at Rs.15,000/- only. His income ought to have been determined on notional basis.

6. As regards increase in the income on account of future prospects, the Honourable Supreme Court in its decision in Savita (supra) has taken into consideration 30% increase towards future prospects when notional income of Rs.3,000/- per month was taken. Hence in the present case 30% increase can be taken into consideration towards future prospects. Said amount would be

Rs.3,900/- per month. The annual earnings of the deceased were therefore would be Rs.3,900 x 12 = 46,800/-. From the aforesaid amount ?rd deduction has to be made towards personal expenses. The said figure comes to Rs.15,600/-. The annual loss of dependency would be Rs.31,200/- Considering the material on record, the ratio of the decision in Bijoy Kumar Dugar cannot be made applicable tot he facts of the present case. The deceased was aged about 40 years when the accident took place and therefore multiplier of 15 can be applied. This figure would therefore be Rs.4,68,000/-. Under conventional heads the appellants would be entitled for sum of Rs.1 lakh for loss of consortium, Rs.1 lakh for loss of love and affection and Rs.25,000/- towards funeral expenses. This would make the total amount of compensation to Rs.6,93,000/- which can be rounded off to Rs.7,00,000/- .

7. The Claims Tribunal has granted interest @ 6% per annum from the date of filing of the petition which is 25/01/2001. Considering the ratio of decision in Nitadevi (supra), the amount of interest liable to be paid is @ 9% per annum. The point as framed is answered accordingly by holding that the appellants are entitled for higher compensation.

8. In view of aforesaid, the following order is passed :

(i) The judgment of the Claims Tribunal dated 14/06/2005 in MACP No.25/2001 is partly modified. The total amount of compensation payable including no fault liability is Rs.7,00,000/- which is payable with interest @ 9% per annum from the date of filing of the proceedings till realization.

(ii) Respondent Nos.1 to 3 on one part and respondent Nos.4 to 6 on the other part are jointly and severally liable to pay the amount of compensation.

(iii) The amount of enhanced compensation be paid to the appellants within period of three months from today.

(iv) Appeal is allowed in aforesaid terms with no order as to costs.

