

(2017) 05 BOM CK 0077
In the Bombay High Court
Case No : 801 of 2006

Shri Prabhakar S/o Sitaram Joshi, & Ors.	APPELLANT
Vs	
Shri Arunkumar Singh S/o Ramraksha Singh, & Ors.	RESPONDENT

Date of Decision : 22-05-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 166](#),
[Section 166](#) - Application for compensation

Citation : (2017) 05 BOM CK 0077

Hon'ble Judges : B.P. Dharmadhikari

Bench : SINGLE BENCH

Advocate : Deepali Sapkal, A.S. Kilor

Final Decision : Allowed

Judgement

1. Matters are being heard finally in summer vacation after due notification and calling for objections, if any. Registry has informed that only those matters in which counsel representing the respective parties did not object to listing of matters for final hearing are placed on board. In the present matter nobody has objected and accordingly this matter is placed for final hearing. It was called out in first half and again in second half.

2. I have heard Advocate Deepali Sapkal who appears for appellants. Nobody appears for respondents. Respondent No.3 is the Insurance Company while respondent Nos.4 and 5 are original claimants.

3. The present appeal is by parents, brother and sister of deceased. This Court has admitted the matter for final hearing on 18th January, 2007 without any interim orders. It is, therefore, apparent that entire amount of compensation as awarded by Motor Accident Claims Tribunal is received by claimants i.e. Respondent Nos.4 and 5 in this appeal.

4. The respondent No.4 who was petitioner No.1 while respondent No.5 (son of deceased) was petitioner No.2 in Claim Petition No.575/1995. The accidental

death of her husband Ashok s/o Prabhakar Joshi on 31st May, 1995 is not in dispute.

5. Preliminary grievance raised by Advocate Sapkal is about not awarding full compensation to parents, brother and sister of deceased who were dependent upon deceased namely Ashok Prabhakar Joshi. She has invited attention to evidence of claimant Smt. Apurva as also to evidence of father of deceased namely Prabhakar to urge that dependency and extent thereof has been established on record. She further states that in impugned judgment dated 5th July, 2006 Tribunal has awarded total compensation of Rs.6,37,000/-. Out of that amount, amount of Rs.75,000/each has been given to parents while balance amount has been made over to Smt. Apurva. She points out that rate of interest awarded is only 7.5% from the date of registration of proceedings before Motor Accident Claims Tribunal.

6. She claims that when trial Court has found parents dependent upon deceased Ashok, number of dependents exceeded four and, therefore, deduction of 1/3rd amount from monthly earning to calculate dependency is unwarranted. It is urged that deceased was in employment therefore, loss of future potential / prospects calculated at 30% be also needed to be added and, therefore, the dependency could have been worked out by placing reliance upon the judgment given in the case of Asha Verman and others V/s. Maharaj Singh and others reported at 2015 A.C.J. 1286. She submits that loss of consortium to widow should have been awarded at Rs.1,00,000/, child also needed to be given amount of Rs.1,00,000/for loss of love and affection, funeral expenses needed to be awarded at Rs.25,000/and hence award needs to be modified.

7. She has also invited attention to Schedule I of Hindu Succession Act to urge that mother of Ashok is Class I heir and, therefore, entitled to equal share in compensation to be awarded. She submits that quantification of compensation at Rs.75,000/each for parents is arbitrary and without any basis.

8. I have perused impugned judgment and records with her assistance. Section 166 of the Motor Vehicles Act permits a legal representative to file proceedings to recover claim on account of death. The arguments advanced supra when perused in the backdrop of Schedule I of Hindu Succession Act do not show brother or sister or then father as legal representatives of Ashok. If mother is the legal representative and was not dependent upon her husband namely Prabhakar, in the scheme of Section 166 of Motor Vehicles Act, 1988 read with Schedule I of Hindu Succession Act, 1955 quantum of assistance received from Ashok by her may not be decisive. The evidence on record shows joint stay with Ashok by all and the assertion by Prabhakar that his son was paying Rs.2,000/per month has remained unrebutted.

9. The judgments of Hon''ble Apex Court mentioned supra lay down a standard compensation of Rs.1,00,000/each to be awarded to widow towards loss of consortium, the amount of Rs.1,00,000/to each child for loss of love and

affection and amount of Rs.25,000/towards funeral expenses. Here as already noted supra the amount awarded under these heads is much less. It needs to be mentioned here that original claimants namely Apurva and Ajinkya have not approached this Court seeking any enhancement. Not only this, they have also not challenged the grant of amount of Rs.75,000/each to parents of Ashok. The parents of Ashok along with other appellants have not questioned the amount of Rs.8,000/awarded as compensation towards medical treatment. Moreover, Hon"ble Apex Court has observed that interest to be awarded in such situation has to be 9% from the date of petition and here interest awarded is only 7.5%.

10. In the light of observations supra as the Insurance Company and other respondents have chosen not to appear and assist this Court, I find that interest of justice can be met with by remanding the matter back to Motor Accident Claims Tribunal for its fresh consideration in accordance with law. The arguments raised by Advocate Sapkal and noted by this Court supra can then be examined by Motor Accident Claims Tribunal as per law and the grant of compensation can be modified on higher side. This will result in grant of more / better compensation to the legal representatives of deceased Ashok. Hence leaving all these issues and questions open and only to find out possibility of such higher computation sought for the benefit of legal representatives of deceased, judgment dated 5th July, 2006 in Claim Petition No.575/1995 is quashed and set aside. Claim petition is restored back to the file of Motor Accident Claims Tribunal, Nagpur for its fresh consideration as per law after giving parties necessary opportunity.

11. Motor Accident Claims Tribunal shall attempt to decide the matter afresh within next one year.

12. Appeal is thus partly allowed with no order as to costs.