(2022) 10 BOM CK 0067

In the Bombay High Court

Case No : First Appeal No. 3332 Of 2018

Zakiyabi Taher Ali Shah And Others — APPELLANT

Vs

Shaikh Asad Shaikh Hanif And Others — RESPONDENT

Date of Decision : 11-10-2022

Acts Referred:

Citation : (2022) 10 BOM CK 0067

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

Bench : Single Bench

Advocate : S.S. Shaikh, A.S. Usmanpurkar, A.D. Wange

Final Decision : Allowed/Disposed Of

Judgement

S.G. Dige, J

1. This appeal is preferred by the appellants - original claimants for enhancement of compensation.

2. It is contention of learned Counsel for appellants that, the Motor Accident Claims Tribunal (for short 'the Tribunal') has not appreciated and considered the oral and documentary evidence on record for calculating total salary of the deceased Mazhar Shah Taher Ali Shah. The Tribunal has wrongly assumed the income of deceased and has considered at Rs.6,000/- monthly income instead of Rs.27,000/- per month. The deceased was skilled worker / self employed and doing various private jobs. Hence, requested to allow the appeal.

3. It is contention of learned Counsel for respondents that, no evidence was produced before the Tribunal to prove that, deceased was earning Rs.27,000/- per month. The witness examined by the appellants to prove the income of deceased has stated that, deceased was earning Rs.12,000/- per month but no document produced on record to show that, deceased was working in the shop of witness Devidas Gawande. On the basis of evidence produced before the Tribunal, the Tribunal has rightly considered the notional income of deceased

amount of Rs.6000/- per month.

4. Learned Counsel further submits that, the Tribunal has awarded 50% future prospects, however as per view of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi and Others reported in (2017) 16 SCC 680, it should be 40%.

5. I have heard all the learned Counsel. Perused the judgment and order passed by the Tribunal.

6. The issue involved in this appeal is income of the deceased. The Tribunal has considered Rs.6,000/- monthly income of the deceased. The Tribunal has deducted Rs.1,000/- for fve Sunday so, the Tribunal has considered net monthly income of Rs.5,000/-. According to the appellants their son was earning Rs.27,000/- per month. To prove the income of deceased, the appellants have examined PW-2 Devidas Gawande. He states that, he is owner of Chakara Electricals and in his shop deceased was working. He was paying salary of Rs.12,000/- per month to the deceased. He has issued certifcate in that regard. In cross-examination this witness admits that, except certifcate (Exh.46) he has no document to show that, deceased was working in his shop.

7. To prove the income of deceased appellants examined PW-3 Imran Pathan. He runs a computer shop wherein the deceased was working and he was paying salary of Rs.6,000/- to him. In his cross-examination this witness admits that, he used to pay income tax and in that record he showed that, he pays salary to two employees but in those names name of deceased Mazhar is not mentioned. From the evidence of these witnesses, it appears that they have prepared record to show that, deceased was working with them. Appellants also examined their son Parwej. He has stated that, on 01.08.2013 he had executed a document in favour of Mazhar and had handed over his business of xerox to Mazhar and he was paying Rs.6000/-per month and Rs.100/- as travelling charges to the deceased.

8. The Tribunal has observed that, the appellants to grab excessive compensation from the respondents seems to have prepared the document (Exh.50) in collussion with Awal Karkun, Tahsil ofce, Gangapur.

9. It appears from record that, PW-4 Parwez who was just 18 years of age on 1st August, 2013 might have doing any business and had delivered the business to deceased - his elder brother that too on monthly salary. Hence, the Tribunal has considered daily income of deceased of Rs.200/- per day.

10. In my view, the Tribunal has considered Rs.5000/- net monthly income of deceased it should be Rs.6000/-. Hence, I am considering Rs.6000/- as notional monthly income of the deceased. The Tribunal has awarded additional future prospects 50% to the deceased. As per view taken by the Hon'ble Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi and Others reported in (2017) 16 SCC 680, it should be 40%. As deceased was below 40

years of age and he was self employed. He was no permanent salaried person.

11. In view of the above calculations, the appellants are entitle for following compensation.

Sr. No

Head

Compensation awarded

1

Notional Income

Rs.6000/-

2

Future Prospectus

Rs.2400/- (i.e. 40% of the income)

3

Yearly income

Rs.8400/- x 12 = Rs.100800/-

4

Deduction towards Personal expenditure (1/2)

Rs.50400/- (i.e.Rs.100800/- - Rs.50400/-)

5

Multiplier (18)

Rs.907200/- (i.e Rs.50400 x 18)

6

Consortium amount (Rs.40000/- each payable to 2 dependents)

Rs.80000/-

7

Funeral expenses

Rs.15000/-

8

Total

Rs.1002200/-

12. The Tribunal has awarded Rs.8,50,000/- as compensation. Considering above calculations appellants are entitle for enhanced compensation of Rs.1,52,200/- i.e. Rs.10,02,200/- - Rs.8,50,000/- = Rs.1,52,200/-. In view of the above, I pass the following order :-

ORDER

(a) Appeal is allowed.

(b) Appellants are entitle for enhanced compensation of Rs.1,52,200/- @ 6% from the date of fling claim petition till realisation of amount.

(c) Respondents shall deposit enhanced amount before this Court within six (06) weeks.

(d) Rest of Award is maintained as it is.

(e) Appeal is disposed of in above terms.

