

(2014) 03 BOM CK 0113

Bombay High Court (Aurangabad Bench)

Case No: First Appeal No. 131 of 2000 with Civil Application No. 2675 of 2000 in F.A. 131 of 2000

The Chief Executive Officer, The Executive Engineer, The Deputy Engineer and Lahu

APPELLANT

Vs

Smt. Mangal

RESPONDENT

Date of Decision: March 6, 2014

Citation: (2015) 2 ALLMR 723 : (2014) 5 BomCR 368 : (2014) 4 MhLJ 673

Hon'ble Judges: M.T. Joshi, J

Bench: Single Bench

Advocate: R.T. Nagargoje, for the Appellant; Sachin Deshmukh, Advocate instructed by . Mr. Manoj Shelke, Advocate, Mr. A.V. Patil, Advocate for Respondent No. 4 and Mr. D.S. Kulkarni, Advocate instructed by . Mr. S.L. Kulkarni, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

M.T. Joshi, J.

The appeal is already admitted. Heard both sides. Aggrieved by the direction to pay compensation of Rs. 1,35,000/- to the legal representatives of deceased Ashok Puri, i.e. present respondent nos. 1 to 3, the present Appeal is preferred by the owner of the jeep.

2. Respondent nos. 1 to 3 came before the Tribunal with a case that while deceased was travelling by jeep bearing no. MXV-7982 owned by the original respondent no. 5 and insured with original respondent no. 6 i.e. present respondent nos. 4 and 5, at that time, the jeep bearing no. MXV-7593 owned by the Zilla Parishad i.e. by the present appellant came from the opposite side. Driver thereof i.e. original respondent no. 4/appellant no. 4-Lahu drove the said vehicle of the Zilla Parishad in a rash and negligent manner and dashed to the opposite jeep. In the accident, deceased has died and, therefore, the compensation is claimed.

3. As regards the quantum of compensation, it was submitted that the deceased was 25 years old. He was earning Rs. 2,000/- per month at the time of accident from cultivation of his agricultural land at village Chincholi. Further, he was also selling milk at Kaij and in the circumstances, the total compensation of Rs. 3 Lakhs was claimed.

4. The present appellants denied that appellant no. 4 was rash and negligent in driving the jeep. Further, all the adverse allegations regarding the financial condition of the deceased were denied.

5. In the Tribunal, respondent no. 1-Mangal i.e. the widow of the deceased examined herself, followed by evidence of eye witness, namely, Ganesh Kate. Certified copy of the FIR, panchanama of spot of occurrence, death certificate at exhibit 44 and documents regarding the vehicles were also placed on record.

6. From the side of the present appellants, appellant no. 4-Lahu, the driver of the jeep was examined. The learned Tribunal came to the conclusion that the accident has occurred solely due to the rash and negligent driving of the appellant no. 4. Therefore, the present appellants were directed to pay the compensation. As regards the compensation, the learned Tribunal held that the compensation claimed at Rs. 3 Lakhs is exorbitant. No documentary evidence regarding the occupation of the deceased, as detailed supra were filed. Therefore, as the respondent no. 1 i.e. the widow in her evidence stated that income of the deceased was around Rs. 2000/- to Rs. 2500/- per month as a labour, the learned Tribunal held that in those relevant days, income of the deceased could not have been more than Rs. 900/- per month, being a labour, by giving deduction towards the personal expenses at 1/4th, the multiplicand was arrived at Rs. 750/- per month and, thus, holding his yearly income at Rs. 9,000/- and applying multiplier of 15, total compensation of Rs. 1,35,000/- was awarded.

7. Mr. Nagargoje, learned counsel for the appellants submits that in fact appellant no. 4-Lahu was acquitted in the criminal case filed by the appellants regarding the said accident. He further submitted that in fact the jeep driver of the opposite jeep was rash and negligent and, in the circumstances, he wanted that the Appeal be allowed.

8. Mr. Deshmukh i/b. Mr. Shelke for respondent nos. 1 to 3 supports the reasoning of the learned Tribunal and submits that this is a case where further enhancement can be granted on the basis of the evidence. It was further submitted that even no amount towards the non-pecuniary damages is granted.

9. On the basis of this material, following points arise for my determination:-

(i) Whether the accident has occurred due to the rash and negligent driving of the appellant no. 4?

(ii) If yes, whether the compensation granted by the learned Tribunal is just?

(iii) What order?

My answer to the point no. (i) is in the affirmative, to the point no. (ii) is No. The compensation, therefore, is required to be enhanced.

10. In the result, the Appeal is dismissed. However, enhancement in the compensation is hereby granted for the reasons to follow.

REASONS

11. It should be noted that before the learned Member of the Tribunal, eye witness, as detailed supra was examined. He deposed that the accident had occurred due to the rash and negligent driving of the appellant no. 4. Pleadings in the Motor Accident Claim Petition and the documents on record would show that 20-25 persons were travelling by the jeep and the deceased was sitting by the right side of the driver. However, only these two factors cannot be considered for arriving at the conclusion. Definite independent evidence was led by the respondents i.e. original applicants and, therefore, the findings cannot be disturbed.

12. As regards the compensation, the learned Tribunal rightly came to the conclusion that on the own showing of the respondent no. 1, i.e. the widow of the deceased, the deceased was a labour. Finding that the accident has occurred in the year 1991, the estimate of the learned Tribunal that at that time the deceased might have been earning Rs. 900/- per month, as a labour, cannot be interfered.

13. Mr. Deshmukh, i/b. Mr. Shelke for respondent nos. 1 to 3 further submitted that applying multiplier of 15 by the learned Member was wrong. He submits that as the age of the deceased was 25 years, the proper multiplier would have been 17. He further submits that towards the non-pecuniary damages, no compensation was granted.

14. Though, in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, it has been held that in such a case, the proper multiplier would be 17, in the case of Leela Gupta & others V. State of Uttar Pradesh & others 2010 AIR SCW 5601, it has been later-on held by the Supreme Court that after a long period of time, such an issue need not be raised again. Therefore, the issue of application of proper multiplier would remain no more.

15. It is however clear from the order of the learned Member of the Tribunal that no non-pecuniary damages were granted. The deceased has left behind him young widow and minor children, who were three years and nine months respectively, at the time of filing of the appeal. In the circumstances, towards loss of consortium and loss of support, conventional amount of Rs. 15,000/- ought to have been granted. Towards the funeral expenses, compensation of Rs. 2000/- would be just. In the result, the following order:-

I) The Appeal is hereby dismissed without any order as to costs.

II) On the other hand, the appellants are jointly and severally directed to pay additional compensation of Rs. 17,000/- to the respondent nos. 1 to 3, upon their deposit of the necessary Court fees in this Court, within a period of four weeks from the date of this order.

III) Consequently, Civil Application no. 2675 of 2000 seeking stay to the impugned judgment of the Member, Motor Accident Claims Tribunal, does not survive and stands disposed of.