

**Meena and Others Vs. Alka Sandeep Ingale and Another**

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**Court :** Mumbai Nagpur

**Decided On :** Feb-25-2014

**Judge :** S.B. Shukre

**Appeal No. :** First Appeal No. 222 of 2011

**Appellant :** Meena and Others

**Respondent :** Alka Sandeep Ingale and Another

**Advocate for Def. :** Shri. Kalwaghe

**Judgement :**

Oral Judgment:

1. This appeal is preferred against the the judgment and Award passed on 16.9.2010 in Claim Petition No. 354 of 2006 delivered by the Motor Accident Claims Tribunal, Buldana.

2. Appellants are the original claimants who had filed a petition under Section 166 of the Motor Vehicles Act against the respondents claiming compensation of Rs.15,00,000/- for the loss caused to them by the death of Ganesh. Appellant no.1 is the widow of Ganesh and appellants 2 to 4 are his children and appellant no. 5, who is a party in person, is his mother. According to the appellants, deceased Ganesh, working as Head Constable and posted at police headquarters Buldana, was discharging his official function of distributing letters and parcels by driving a

police van. While he was travelling by a police van along with others on 17.5.2006, the police party took a halt at Nandura, keeping the police van parked by the side of the road. Deceased then got himself engaged in cleaning the window screen of the vehicle while waiting for the tea to be served to him. It was midnight of 17.5.2006. At that time, one vehicle called æTrax Cruiser? bearing registration No. MH-28/C-3376 came from another direction of the road and it hit deceased Ganesh. Ganesh sustained injuries. He was hospitalised at Akola, and while taking treatment there, he succumbed to the injuries. The appellants maintained that this accident occurred due to rash and negligent driving of the said vehicle by its driver and at that time it was owned by respondent no. 1 and insured with respondent no. 2. The appellants submitted that they were dependent upon the income of the deceased and, therefore, they claimed compensation from both the respondents.

3. The petition was resisted by respondent no. 1 who submitted that the accident occurred only due to rashness and negligence on the part of deceased Ganesh, although she admitted ownership and insurance of the vehicle.

4. Respondent no. 2 also resisted the petition and raising same contentions as the owner of the said Trax Cruiser, urged that this petition be dismissed.

5. The learned Chairman, after considering the evidence available on record and hearing the rival parties, partly allowed the petition holding both the respondents as jointly and severally liable to pay compensation, and directing them to pay compensation of Rs.5,71,440/- together with interest. Not satisfied with the quantum of compensation so granted by the Tribunal, the appellants are now before this Court in this first appeal.

6. I have heard Shri Kalwaghe, learned counsel for respondents 1 to 4. Appellant no. 5 has not submitted any arguments, as she was absent. However, considering the fact that this appeal has been filed by her together with remaining appellants, she could be taken as heard in terms of the grounds taken in this appeal and arguments canvassed on behalf of appellants no.1 to 4. Nobody appeared for both the respondents, though duly served on merits of the matter. Now, the following points arise for my determination:

(i) Whether the compensation granted by the Tribunal is just and proper in the facts and circumstances of the case?

(ii) What order?

7. The main thrust of the arguments advanced on behalf of the appellants no.1 to 4 is that the learned Chairman has wrongly considered the basic pay of the salary drawn by deceased Ganesh. According to them, the gross salary of the deceased ought to have been taken into account for considering the income of the deceased at the time of accident and for calculating the total dependency of the appellants on deceased Ganesh. It is also submitted on behalf of the appellants that future prospects as well as medical expenses incurred by the appellants for the medical treatment of deceased Ganesh have not been considered at all by the Tribunal. They submitted that if these factors are considered, the amount of compensation to which the appellants could be entitled, would rise substantially.

8. On going through the impugned judgment and award, I am of the view that the appellants are right when they submit that the factors such as future increments in salary and consideration of the amount of gross salary and the medical expenses ought to have been taken into consideration by the Tribunal in fixing the quantum of compensation payable to the appellants.

9. The learned Chairman has placed reliance upon the salary certificate of deceased Ganesh for the month of April, 2006 vide Ex.52. However, while calculating the amount of compensation, the Tribunal took into account only basic salary of the deceased which was Rs.4,700/- in stead of gross salary minus statutory deductions. There is no dispute about the last drawn salary of the deceased as indicated by the salary certificate (Ex.52) and, therefore, reliance can be placed upon this certificate. It shows that the gross salary of the deceased at the time of his accident was Rs.8,851/- and with the statutory deduction of professional tax of Rs.175/-, his gross salary came to Rs.8,676/- per month. This amount, as per the settled law, ought to have been considered by the Tribunal while fixing the amount of compensation. Then, as held by Supreme Court in the case of **Sarla Verma and ors. v. Delhi Transport Corporation and anr . “ 2009(5) Mh.L.J. 775**, the Tribunal should also have taken into account the future

increments in the monthly income of the deceased and since the age of the deceased was 43 years at the time of accident, this future increment should have been taken at 30% of the monthly income of the deceased at the time of the accident. The amount of 30% of monthly income comes to Rs.2,689/- and by adding it to the monthly income of the deceased, the monthly income of the deceased which ought to have been considered for the purpose of determining loss of dependency should have been of Rs.11,278/-.

10. From the said monthly income of the deceased, the amount on account of personal and living expenses would have to be deducted and after this deduction what comes is the amount Rs.8,459/-. This amount is monthly dependency of the appellants upon the deceased. The annual dependency could be arrived at by multiplying the amount of Rs.8459 x 12 and the total dependency could be arrived at by selecting an appropriate multiplier, which should be 14 in the instant case, considering the fact that the deceased was in the age group of 40-45 at the time of the accident. Thus, the total dependency of the appellants on deceased Ganesh would be  $8459 \times 12 \times 14 = 14,21,112$ . The amount of Rs.14,21,112 is the amount of total dependency of the appellants upon the deceased. However, the Tribunal has computed the same to be at Rs.5,63,940/- quite wrongly and by erroneously considering only the basic pay of the deceased. The finding recorded by the Tribunal in this regard, therefore, needs to be quashed and set aside.

11. The Tribunal has also not considered the grant of reasonable medical expenses for the treatment that was given to deceased Ganesh during the period he remained hospitalized. The evidence on record shows that he was hospitalized for a period of three days at Akola. It is nobody's case that the appellants did not incur a single pie on account of medical expenses of deceased Ganesh. When a person is hospitalized, some amount of expenses are bound to be incurred for giving treatment to that person. In the instant case, the deceased had suffered serious head injuries and, therefore, the appellants must have been required to purchase some medicines on emergency basis. Having regard to the period of hospitalization and the nature of injuries, for which medical treatment was given to the deceased, the amount of medical expenses that may have been incurred by the appellants, and in the absence of any specific evidence having been adduced

by them in the instant case, can be visualised as at Rs.10,000/- and this amount could be found liable to be paid to the appellants.

12. Thus, adding medical expenses of Rs.10,000/- to the total amount of dependency of the appellants, the total amount of compensation payable to the appellants comes to Rs.14,31,112/-. The Tribunal has already granted an amount of Rs.5,71,440/- to the appellants as compensation, and thus the additional amount of compensation to which the appellants are entitled comes to Rs.8,49,672/-. This additional amount of compensation would be liable to be paid to the appellants jointly and severally by both the respondents together with interest at 7.5% per annum, as already granted by the Tribunal, on the compensation amount fixed by it, from the date of petition till the date of final payment.

13. Accordingly, point no. (i) is answered as in the negative and point no. (ii) is answered in terms that respondents 1 and 2 are jointly and severally liable to pay an amount of Rs.8,59,672/- together with interest at 7.5% per annum from the date of petition till realisation in addition to the amount of compensation already granted by the Tribunal by its judgment and award dated 15.9.2010. Each of the appellants would be entitled to receive the compensation in equal shares and the 50% amount falling to the shares of appellants 2 and 3 shall be invested in fixed deposit account with any nationalized bank for a period of five years and the 50% amount of compensation falling to the share of appellant no. 4 shall be invested in a fixed deposit in any nationalized bank for a period of 7 years. The impugned judgment and award are thus modified in these terms.

14. The appeal is allowed in above terms with costs. Decree be drawn up accordingly.

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