

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD**

FIRST APPEAL NO. 465 OF 2013

Jayshree Jeevan Gawali and Ors.

... Appellants

VERSUS

Sambhaji Sitaram Darekar & Anr.

... Respondents

.....
Mr N. V. Gaware, Advocate for the appellants
Mr A. P. Avhad, Advocate for respondent No. 1
Mr Deshpande, Advocate for respondent No. 2
.....

CORAM : **S. V. GANGAPURWALA, J.**
DATE : **3RD SEPTEMBER, 2015.**

PER COURT:

. The present appellants had filed the petition u/s 166 of the Motors Vehicle Act, for compensation on account of death of the deceased – Jivan, who died in an accident. The said claim petition is partly allowed. The claimants have filed the present appeal for enhancement of compensation.

2. Mr Gaware, learned Counsel for the appellant, submits that the deceased was running business of grocery, STD booth and xerox machine and earning about Rs. 40,000/- p.a. but, the Court has considered the monthly income to be Rs. 1500/- to 1800/- p.a. only. Learned Counsel submits that, even in absence of proof of income,

Rs. 3,000/- ought to have been considered. According to him, the deceased was doing business, the future prospects has also not been considered by the Tribunal. Considering the age of the deceased, future prospects ought to have been considered to the extent of 50%. He further submits that, towards non-pecuniary damages also, only paltry sum of Rs. 30,000/- has been awarded. The each claimant may be awarded Rs. 1,00,000/- towards the non-pecuniary damages i.e. on account of love and affection.

3. Mr Deshpande, learned Counsel for respondent No. 2 submits that, it was a small village where the deceased was allegedly running his business. Considering the same and there was no proof of income produced, the Court has granted reasonable amount of Rs. 1,800/- per month as his income. Considering the accident of the year 2006, the non-pecuniary damages are also rightly awarded.

4. I have considered the submissions. The Court has not disbelieved that the deceased was doing grocery business and running STD booth. Considering the above, there was no impediment to consider the income as Rs. 3,000/- per month as is held by Hon'ble Apex Court in catena of judgments. 1/3rd amount requires to

be deducted towards personal expenses. The multiplier of 17 is applicable. The loss of dependency would be Rs. 24,000/- per annum. As such, towards the loss of dependency, the appellants would be entitled for an amount of Rs. 4,08,000/-. As far as the future prospects is considered, no record is placed as far as the income is concerned and as far as the manner of business being conducted. As such, I am not inclined to grant any amount towards the future prospects. It is also not clear as to whether there was a permanent source of income.

5. As far as the non-pecuniary damages are concerned, considering the time lag that has lapsed and the year of accident, I am inclined to allow Rs. 50,000/- to each claimant on account of loss of love and affection. The medical expenses are given at Rs. 15,000/-.

6. Considering the compensation under all the heads, the claimants should be entitled for an amount of Rs. 5,73,000/-.

7. In the result, I pass the following order.

ORDER

- (i) The opponents/respondents No. 1 and 2 shall jointly and severally pay total compensation of Rs. 5,73,000/- to the

claimants with interest at the rate of 7.5% from the date of petition till the realization of total amount.

- (ii) The amount paid by the opponents/respondents shall be adjusted as on the date the payment is made.
- (iii) On realization of the amount, 50% of the amount awarded be paid to the claimant No. 1 and the 25% share each of claimants No. 2 and 3 be fixed in any Nationalized Bank till they attain the age of majority.
- (iv) The claimants shall pay the additional court fees on the enhanced amount of compensation.

First Appeal accordingly stands allowed and disposed of as such.

[S. V. GANGAPURWALA, J.]

sgp