

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

FIRST APPEAL NO. 1842 OF 2012

United India Insurance Co. Ltd. .. Appellant

Versus

Sushilabai Banwarilal Jaat and others .. Respondents

Shri M. S. Deshmukh, Advocate for the Appellant.

Shri Shrikant S. Deshmukh, Advocate for Respondent Nos. 1 to 4.

CORAM : S. V. GANGAPURWALA, J.

DATE : 14TH OCTOBER, 2015.

PER COURT :

. The present respondent Nos. 1 to 4/claimants had filed application U/Sec. 166 of the Motor Vehicles Act (for short "M. V. Act") on account of the death of deceased Banwarilal, who died in an accident. The claim is allowed by the Tribunal. The Insurance Company has assailed the same in the present first appeal.

2. Mr. Deshmukh, the learned counsel for the appellant strenuously contends that, the Tribunal has considered monthly income of the deceased as Rs. 8,000/- per month. The learned counsel submits that, there is absolutely no evidence on record to substantiate said fact. Though it is suggested that, the deceased

was a contractor, no license of the deceased entitling to do the business of contractor is produced on record. The learned counsel submits that, if Rs. 8,000/- per month income is considered, then some documentary evidence should have been produced to substantiate the said fact. The diaries produced by the claimant No. 4 would be of no assistance, as it is only referring about the workers and does not give any inside about the income of the deceased. According to the learned counsel, contents of the diary also not proved. The learned counsel submits that, in absence of the same, the notional income of Rs. 3,000/- per month should have been considered.

3. Mr. Patil, the learned counsel for respondents/claimants submits that, the Tribunal has awarded less compensation amount. The deceased was doing the business of contractor. The Deputy Engineering has been examined who has substantiated the said fact. Even the diaries maintained by the deceased while he was doing business about the workers and payment made is produced on record. All this would substantiate the fact of deceased doing business of contractor. There is no contra evidence produced on record. The learned counsel submits that, no amount has been awarded towards future prospectus. A paltry sum is awarded towards non pecuniary damages.

4. With the assistance of learned counsel I have gone through

the judgment, so also record and proceedings.

5. The deceased was aged about 27 years. The case of the claimants is that, the deceased was a contractor. To prove the said factum, the Deputy Engineer of the concerned department is examined by claimants who has stated about the details of the works being allotted to the deceased. Even the claimant No. 4 who is father of the deceased has produced on record the diaries maintained in regular course of business by the deceased to show that he was doing business of contractor and the workers were employed by him. The Tribunal has considered the income of the deceased as Rs. 8,000/- per month. Certainly said income of Rs. 8,000/- per month is not within the taxable limits also.

6. Upon perusal of the judgment, it is manifest that the Tribunal has not awarded any amount towards future prospectus. Even in respect of self employed person for deceased aged 27 years 50% amount towards future prospectus can be awarded. Even if it assumed that, income of Rs. 8,000/- per month is not proved, still the same can be adjusted in the future prospectus which is not awarded by the Tribunal. So also towards non pecuniary damages a paltry sum is awarded, which is certainly much less than the amounts to be given under non pecuniary head as is held by the Apex Court in the case of **Asha Verman and others Vs. Maharaj Singh and others**

reported in **2015 All SLR 1476**.

7. In the light of the above, taking the case either way, the compensation awarded would be reasonable compensation. As such, no case for interference, the first appeal is dismissed. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Oct. 15