

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 591 OF 1997

MRS. NASREENBANO SAYED SALEEM HAIDER & OTHERS.

VERSUS

SHIVSHANKAR JEEVRAJ TRIVEDI & OTHERS.

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Advocate for Appellant : Mr. V S Bedre

Advocate for Respondent No.3 : Mr. D. S. Kulkarni h/for Mr. S. L. Kulkarni

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CORAM5 : S. V. GANGAPURWALA, J.

DATE : 1st September, 2015

PER COURT :

1. Being aggrieved by an inadequate compensation granted to the claimants by the Motor Accident Claim Tribunal, the appellants-claimants have filed the present appeal.

2. Mr. Bedre, the learned counsel for the appellants submits that the factum of accident is not disputed. Deceased was earning Rs.3,000/- per month. The said fact is proved, however, the tribunal has failed to consider the said evidence on record. On hypothetical consideration, only Rs.1000/- per month is considered as income. The learned counsel submits that the deceased was doing business of metal cutting in partnership. The said evidence ought to have been considered. The learned counsel submits that towards personal expenses, 1/3 amount is deducted. The same ought to be 1/5 as there are five dependents. Learned counsel submits that under the non pecuniary damages also no amount has been awarded. The learned counsel claims an amount of non

pecuniary damages to the extent of Rs.1 lac each on account of love and affection and Rs.25,000/- towards funeral expenses.

3. Mr. Kulkarni, learned counsel appearing for respondent No.3 Insurance Company submits that there is no evidence brought on record about the income of the deceased. The tribunal has rightly considered the said aspect. The learned counsel submits that even the time lag is required to be considered. The accident is of the year 1991. As such, the applicant is not entitled for non pecuniary damages.

4. I have considered the submissions. In absence of any proof of income, the tribunal ought to have considered the income as Rs.3,000/- per month as is laid down by the Apex Court in catena of judgments. There was no impediment for the tribunal to consider the income of Rs.3,000/- per month of the deceased. The deceased was aged 35 years. As such, multiplier of 15 would be applicable. Towards deduction for personal expenses 1/5 of the income ought to be deducted as there are five dependents.

5. Considering the above, the applicants would be entitled to Rs.4,05,000/- on account of loss of dependency. No amount is awarded towards non pecuniary damages. Considering the fact that the accident is of the year 1991, it would be inappropriate to consider the case for award of non pecuniary damages at the rates claimed by the applicants. However, Rs.25,000/- each are given to the applicants towards loss of

love and affection and Rs.20,000/- towards funeral expenses, i.e. Rs.1,45,000/- for non pecuniary damages. As such the claimants would be entitled for compensation of Rs.5,40,000/- on account of death of deceased Sayed Saleem Haider. In the result, the order passed by the tribunal is modified and I pass following order:

ORDER

- i. The respondents 1 to 3 shall jointly and severally pay to the claimants an amount of Rs.4,57,000/- (i.e. excluding an amount of Rs.83,000/- paid by the insurance company to the claimants) with interest @ 8% per annum from the date of petition till realization of the amount.
- ii. The appellants shall pay court fees on the additional compensation granted to them.
- iii. The first appeal is accordingly disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC