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

First Appeal No. 469 of 2007

1. Shahnoorbee w/o. Shaikh Dawal,
   Age : 39 years,
   Occupation : Household,
   R/o. Pensionpura, Hingoli,
   Taluka & District : Parbhani.

2. Rashma D/o. Shaikh Dawal,
   Age : 14 years,
   Occupation : Education.

3. Shaikh Haji s/o. Shaikh Dawal,
   Age : 12 years,
   Occupation : Education,

   Appellant nos.2 and 3 U/G. of
   Appellant no.1.

4. Amirabee w/o. Shaikh Sandal,
   Age : 60 years,
   Occupation : Nil,
   R/o. Pensionpura, Hingoli,
   Taluka & District : Parbhani. .. Appellants.

versus

1. Govind s/o. Anandrao Katruwar,
   Age : Major, Occupation : Business,
   R/o. Katkar Colony, Main Road,
   Manwat, Taluka : Manwat,
   District : Parbhani.

2. The Oriental Insurance Company Ltd.,
   Through its Branch Manager,
   Shivaji Chowk, Parbhani,
   Taluka & District : Parbhani. .. Respondents.

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Ms. M.R. Jamdhade, Advocate, for appellants.

Mr. Vivek V. Bhavthankar, Advocate, for respondent no.1.

Mr. U.S. Malte, Advocate, for respondent no.2.

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CORAM : A.M. BADAR, J.

DATE : 10TH DECEMBER 2015

ORAL JUDGMENT :

1. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 **[For short, hereinafter referred to as "MV Act"]** by original claimants challenging the judgment and award dated 21st December 2006, passed by the learned Member of the Motor Accident Claims Tribunal, Parbhani, in M.A.C.P. No. 106/2006 between the parties. Respondent no.1 is the owner whereas respondent no.2 is the Insurance Company of the offending motor vehicle i.e. tanker bearing registration No. MH-22/1999. For the sake of convenience, parties shall be referred to in their original capacity.

2. Facts in nutshell giving rise to the present appeal are thus :-

(a) Alleging that they are dependent legal representatives of deceased Shaikh Dawal, claimants lodged a claim under Section 166 of the MV Act for awarding compensation of Rs. 5,00,000/- on account of death of Shaikh Dawal in the vehicular accident caused by rash and negligent driving of the tanker bearing registration No. MH-22/1999 owned by respondent no.1 and insured with respondent no.2 - Insurance Company. According to claimants, on 8-9-2005, Shaikh Dawal was returning from Parbhani to Hingoli by his motorcycle. When he reached Nageshwadi "T" Point, the offending tanker came from opposite direction in rash and negligent manner and dashed motorcycle of Shaikh Dawal. Because of fatal injuries sustained in this accident, Shaikh Dawal died in the rural hospital at Aundha. According to claimants, deceased Shaikh Dawal was 44 years old at the time of accident in question. He was earning Rs. 8,000/- per month by doing hotel business, business of selling fruits as well as some other business. With these averments, claimants claimed for awarding compensation of Rs. 5,00,000/- from respondents.

(b) Despite service, respondent no.1 failed to participate in the proceedings. Respondent no.2 - Insurance Company opposed the claim by filing written statement at Exhibit 9. The fact of insurance of the tanker at the time of accident in question was not disputed by the Insurance Company. However, the Insurance Company denied that deceased Shaikh Dawal was earning Rs. 8,000/- per month by doing hotel business, fruit business and some other business. It further contended that the accident happened because of rash and negligent driving of the motorcycle by Shaikh Dawal himself.

(c) On the basis of rival pleadings, issues were framed and the parties went for trial. In support of their claim, claimants examined claimant no.1 Shahnoorbee - widow and also adduced evidence of CW 2 Shaikh Akbar s/o. Shaikh Babu - an employee allegedly working in the hotel of deceased Shaikh Dawal. In rebuttal, respondents did not enter in the witness box.

3. After hearing the parties, the learned Tribunal awarded compensation of Rs. 4,50,000/- to claimants by holding that deceased died because of rash and negligent driving of the offending tanker. Both respondents are jointly as well as severally made liable to pay compensation. Hence this appeal by original claimants feeling aggrieved by award of inadequate compensation by the learned Tribunal.

4. Heard the learned Counsel appearing for appellants - claimants. She argued that claimants have placed on record oral as well as documentary evidence in order to demonstrate that the deceased was earning income of Rs. 8,000/- per month. In her submission, the deceased used to save an amount of Rs. 200/- and Rs. 300/- per day and he used to deposit the same with Nagnath Urban Cooperative Bank Ltd., Hingoli as well as Marathwada Nagari Sahakari Bank Ltd., Hingoli. She further argued that the documents in the form of extract of accounts of the deceased maintained with the Cooperative Bank are placed on record by claimants. Apart from that, evidence of Shaikh Akbar Shaikh Babu shows that the deceased was having hotel business. She submitted that there is document on record to show that the deceased was doing transport business as he has purchased a motor vehicle. Purchase of motor vehicle, according to the learned Counsel for appellants, further shows that the deceased was doing business of fruits. The learned Counsel for appellants strenuously urged that considering the amount of saving reflected from the extract of accounts as well as variety of business done by the deceased, his income ought to have estimated at Rs. 8,000/- per month by the learned Tribunal. She further argued that the learned Tribunal erred in holding that

appropriate multiplier in this case would be 12 after deducting 1/3rd amount towards personal expenses of the deceased. By relying on judgments of the Hon'ble Apex Court in the cases of **(i)** ***Rajesh & others Vs. Rajbir Singh & others***, reported in ***(2013) 9 SCC 54***, **(ii)** ***Shashikala & others Vs. Gangalakshmamma & another***, reported in ***2015(3) Bom. C.R. 517***, and **(iii)** ***Savita Vs. Bindar Singh & others***, reported in ***2014(5) Mh.L.J. 95***, the learned Counsel for appellants submitted that the Tribunal erred in awarding meagre amount on account of loss of consortium, love and affection as well as funeral expenses of the deceased.

5. As against this, the learned Counsel appearing for respondent no.2 - Insurance Company vehemently argued that the learned Tribunal was perfectly justified in awarding compensation of Rs. 4,50,000/- when the original claim itself was Rs. 5,00,000/- He submitted that the income of the deceased is not proved by adducing cogent evidence by claimants. He further submitted that compensation on account of conventional heads is properly awarded.

6. The learned Counsel appearing for respondent no.1 - owner has supported the impugned award and contended that the same needs no interference.

7. Having heard the learned Counsel appearing for the parties and on perusal of record and proceedings, leg us examine whether the compensation awarded by the learned Tribunal on account of death of Shaikh Dawal in a vehicular accident represent just and reasonable compensation to which claimants are entitled. The finding of the learned

Tribunal that the accident occurred because of rash and negligent driving of the tanker bearing registration No. MH-22/1999 is not at all challenged by filing an appeal or cross-objection by respondents. As such, it became final and therefore it is not at all necessary to traverse the facts and evidence on that aspect. The only question which needs to be considered is adequacy of quantum of compensation awarded by the learned Tribunal.

8. Perusal of the impugned award shows that the learned Tribunal has assessed monthly income of the deceased at Rs. 4,500/-. 1/3rd thereof came to be deducted on account of personal and living expenses of the deceased. Multiplier of 12 was applied and loss of dependency was estimated at Rs. 4,32,000/-. In addition, amount of Rs. 2,000/- was awarded for funeral expenses, Rs. 10,000/- on account of loss of consortium and Rs. 6,000/- on account of loss of love and affection. Accordingly, compensation of Rs. 4,50,000/- was assessed.

9. Now let us examine whether the learned Tribunal was right in concluding that monthly income of the deceased was Rs. 4,500/-. In this regard, by stating that the deceased was running hotel business, selling fruits and doing some other business, claimants pleaded that his monthly income was Rs. 8,000/-. His widow Shahnoorbee in her evidence has stated that her deceased husband Shaikh Dawal was running hotel business in Hingoli city. She further stated that he was also running business of fruit selling and some other business. What was the name of that hotel, whether it was having necessary registration under Shop & Establishment Act, what was the nature of business done at that hotel, turn over of that hotel, are the aspects which are not at all clarified by claimant

Shahnoorbee in her evidence. Even location and name of that hotel allegedly run by deceased Shaikh Dawal is not stated by Shahnoorbee in her evidence. Though CW 2 Sk. Akbar s/o. Sk. Babu claims to be working in the hotel owned by deceased Shaikh Dawal, his evidence is also as vague as it can be. This witness has not even disclosed the name of so called hotel, its location, nature of business conducted at that hotel as well as other particulars regarding other employees, turn over, etc. in respect of that hotel. That apart there is no documentary evidence on this aspect. Though claimant Shahnoorbee deposed that her deceased husband was running business of selling fruits, evidence on this aspect is also as ambiguous as it can be. Location of this business, nature of this business, types of fruits in which the deceased was dealing, his turn over in respect of business of selling fruits is conspicuously absent in her evidence. Her evidence does not make it clear whether deceased Shaikh Dawal was retailer selling the fruits or whether he was whole seller in fruit business. In argument, it is sought to be clarified that some other business done by deceased Shaikh Dawal is business of transport. For that purpose, one photocopy of the document in the nature of purchase deed is sought to be relied and it is contended that the deceased had purchased motor vehicle by which he used to transport fruits. Though proceedings before the Tribunal are summary in nature, genuine documents can only be relied upon, provided there are some pleadings in that regard apart from some evidence on the said aspect. That what is not at all pleaded cannot be sought to be proved by stating that the deceased was doing transport business because he had purchased some motor vehicle. Even there is no oral evidence on this aspect regarding purchase of motor vehicle by the deceased.

10. Claimants have placed on record copies of pass-book of Nagnath Urban Cooperative Bank Ltd., Hingoli, as well as Marathwada Nagari Sahakari Bank Ltd., Hingoli, in which the deceased was having account. Though evidence on this aspect is scanty, it appears that after closing his account in Marathwada Nagari Sahakari Bank, Hingoli, the deceased had opened another account in Nagnath Urban Cooperative Bank Ltd., Hingoli. Statements of extract of account of the deceased with said Nagnath Urban Cooperative Bank Ltd. are placed on record without examining any of the employee of the said Bank. In the backdrop of this nature of evidence adduced by the claimant, by doing guess work, the learned Tribunal assessed monthly income of the deceased at Rs. 4,500/-. With available evidence, no other conclusion can be possible so far as income of the deceased is concerned. Hence, I hold that the learned Tribunal has rightly assessed monthly income of the deceased as Rs. 4,500/-.

11. The deceased was self-employed businessman. As such in view of law laid down by the Hon'ble Apex Court in the case of ***Rajesh & others Vs. Rajbir Singh & others (supra)***, claimants were certainly entitled for 30 % increase in his income towards future prospect of advancement of life and career. The learned Counsel for appellants has rightly relied on observations of the Hon'ble Apex Court in para 8 of the said ruling which reads thus :-

> " Since, the Court in *Santosh Devi Vs. National Insurance Co. Ltd., (2012) 6 SCC 421* actually

> intended to follow the principle in the case of salaried persons as laid down in *Sarla Verma Vs. DTC (2009) 6 SCC 121* and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30 % always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50 % to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30 % in case the deceased was in the age group of 40 to 50 years. "

Hence as the deceased was 44 years of age, 30 % of his income needs to be added towards loss of future prospect of advancement in his life and career. Hence, by adding Rs. 1,350 (30 %), monthly income of deceased Shaikh Dawal is assessed at Rs. 5,850/-.

12. It is seen that there were in all four dependents on deceased Shaikh Dawal. They are his widow, his mother as well as two children. As such only 1/4th amount is required to be deducted from income of the deceased towards his personal and living expenses. Hence after deducting Rs. 1,462/- towards personal and living expenses of the deceased, monthly loss of dependency of claimants is estimated at Rs. 6,392/-. As such on

account of death of Shaikh Dawal, claimants suffered loss of dependency per annum at Rs. 76,704/-. The deceased was 44 years old. As such in view of the judgment of the Hon'ble Apex Court in the case of ***Sarla Verma & others Vs. Delhi Transport Corporation & another***, reported in ***2009(5) Mh.L.J. 775***, appropriate multiplier for capitalizing the loss of dependency would be 14. Therefore, claimants are entitled for Rs. 10,73,856/-

13. Now let us examine whether the learned Tribunal has correctly assessed compensation on account of conventional heads. In the case of ***Rajesh & others Vs. Rajbir Singh & others (supra)***, it is held that in view of changed social economic views, consortium is a right to which a spouse is entitled for major compensation. In that matter, considering the facts of that case, Rs. 1,00,000/- was awarded towards loss of consortium and Rs. 1,00,000/- towards care and guidance for minor children apart from award of Rs. 25,000/- towards funeral expenses. Similar is the view expressed by the Hon'ble Apex Court in the case of ***Shashikala & others (supra)***. In the case of ***Savita Vs. Bindar Singh & others (supra)***, on account of loss of consortium, Rs. 1,00,000/- came to be awarded. However, loss of consortium as well as loss of love and affection constitute conventional heads for awarding compensation.

14. In the instant case, the learned Tribunal has awarded Rs. 10,000/-, Rs. 6,000/- and Rs. 2,000/- towards loss of consortium, loss of love and affection and funeral expenses. This award is totally inadequate in the facts and circumstances of the case. Considering the fact that the deceased was self-employed person from the middle age group, in my opinion, ends of justice would meet if claimant no.1 Shahnoorbee is

awarded Rs. 50,000/- towards loss of consortium. Similarly award of Rs. 50,000/- towards loss of love and affection would represent the just and adequate compensation on this count. Claimants are further entitled for Rs. 25,000/- towards funeral expenses of the deceased. Hence claimants are found to be entitled for total compensation of Rs. 11,98,856/- and this amount is awarded to them as compensation on account of death of Shaikh Dawal.

15. In the result, the Appeal is partly allowed.

Impugned judgment and award of the learned Motor Accident Claims Tribunal, Parbhani, is modified. Respondent nos.1 and 2 are jointly as well as severally directed to pay compensation of Rs. 11,98,856/- to appellants herein - original claimants. Rest of the award is confirmed. Payment, if any, made in respect of the amount under the award to appellants / claimants be adjusted as on the date of payment. It is made clear that the Motor Accident Claims Tribunal, Parbhani, shall pass appropriate order regarding apportionment and disbursement of compensation.

16. The Appeal is disposed of in the above terms with no order as to costs.

(A.M. BADAR)
JUDGE

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