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

FIRST APPEAL NO. 521 OF 2005

1. Anita w/o Annarao Kendre,
Age : 38 years, Occu : Household,
R/o. Georai, Dist. Beed.

2. Vandana d/o Annarao Kendre,
Age : 15 years,

3. Pralhad s/o Annarao Kendre,
Age : 13 years,

4. Sonali s/o Annarao Kendre,
Age : 11 years,

5. Dipali d/o Annarao Kendre,
Age : 8 years,
(Appellants nos. 2 to 5 are minor,
and U/g ship of Mother Applicant No. 1,
R/o. As above. ...Appellants
(Orig. Claimants)

Versus

1. Sk. Alim s/o Sk. Chand,
Age : 43 years, Occu: Hotel Business,
R/o Pachod, Tq. Paithan,
Dist. Aurangabad.

2. National Insurance Company Ltd.,
Through its Divisional Manager,
Chambers Station Road, Aurangabad.

3. Ismile Shariff s/o Kasam Shariff,
Age : 53 years, Occu: Business,
R/o. Mominpura, Georai, Dist. Beed

4. United India Insurance Company Ltd.
Through its Divisional Manager,
Office at Vinayakrao Patil Chowk,
Station Road, Aurangabad.

...Respondents

(Orig. Respondent)
...

Shri S.G.Chapalgaonkar,Adv. For appellants.
Shri V.N.Upadhye,Adv. For respondent no.2
Shri R.F.Totla,Adv. For respondent no.4.
...

CORAM : S.V.GANGAPURWALA,J.
DATED : 27TH OCTOBER, 2015

ORAL JUDGMENT :-

The present appeal is filed for enhancement of compensation. Mr.Chapalgaonkar, learned counsel submits that the deceased was serving as Clerk with Municipal Council, Georai. He was in permanent service. His salary certificate is produced on record. The total salary of Rs.76,884/- ought to have been considered by the tribunal. According to the learned counsel, tribunal has considered salary as only Rs.2804/- and deducting 1/3rd from the same, it is illegal. According to the learned counsel there are 5 claimants, as such deduction towards personal expenses ought to have been 1/5th. According to the learned counsel multiplier of 15 is applicable, even 50% towards future prospects are also required to be added as the deceased was 36 years of age and was in permanent employment with the local authority. Towards non pecuniary damages also paltry sum has been awarded.

2] Mr.Upadhye and Mr.Totla, learned counsel for respondents submit that amount towards leave salary cannot be considered, so also Professional Tax is required to be deducted. The Court has rightly considered the income of the deceased and calculations are rightly made.

3] The tribunal has considered the salary certificate as reproduced in the judgment. The same is as under :

Basic	: Rs.3500/-
Leave Salary	: Rs.1330/-
House Rent Allowance	: Rs. 175/-
Other allowance	: Rs. 75/-
Total	: Rs.5080/-

<u>DEDUCTIONS</u>

LIC Premium	: Rs.513/-
GIS	: Rs. 30/-
Professional Tax	: Rs.150/-
GPF	: Rs.700/-
Other Miscellaneous	: Rs. 50/-
Credit society	: Rs.733/-
Total	: Rs.276/-
Net Amount	: Rs.2804/-

4] The deduction can be made from the salary in respect of the leave salary and the professional tax. The other deductions shown in the certificate towards L.I.C. Premium, Credit society, G.P.F. are part of the salary, the same cannot be deducted from the salary. The same is required to be considered and added in the salary only. As such the salary would come to Rs.5776/-. There are 5 claimants. I would deduct 1/4th towards personal expenses. The salary after deducting amount towards personal expenses would come to Rs.4332/- p.m. i.e. Rs.51,984/- p.a. Applying multiplier of 15, amount claimants would be entitled to towards loss of dependency would be Rs.7,79,760/-. The deceased was in permanent service. 50% of salary can be added towards future prospects. Same would be Rs.3,89,880/-.

5] There are 5 claimants. Claimant nos. 2 to 5 were minors and claimant no.1 was widow. I would award Rs.50,000/- for loss of consortium as far as claimant no.1 is concerned and Rs.50,000/- towards loss of love and affection to claimant nos.2 to 5. Towards funeral expenses, claimants would be entitled for Rs.20,000/-, total Rs.14,39,640/-.

6] The deceased being passenger in the vehicle, the deduction of 20% on account of negligence of the driver of the vehicle in which the deceased was travelling is erroneous. The deceased being passenger it would be case of composite negligence. In the result I pass following order :

7] Respondents shall jointly and severally pay amount of Rs.14,39,640/- to the claimants alongwith interest at the rate of 7.5% from the date of petition till realisation. The amount already paid shall be adjusted as on the date of payment is made. The apportionment of interse liabilities between both the insurance companies is 80% and 20% as per negligence as held by tribunal. Appeal accordingly disposed of. No order as to costs.

[S.V.GANGAPURWALA,J.]