IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 520 OF 2005

1. Jakarabegum w/o Ismile Shariff,
Age : 49 years, Occu : household,
R/o. Mominpura, At. Po – Georai, Dist. Beed.

2. Sumera w/o Ishar Shaikh,
Age : 23 years, Occu: Household,
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.

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CORAM : S.V.GANGAPURWALA,J.
DATED : 26TH OCTOBER, 2015

ORAL JUDGMENT :-

The present appeal is filed for enhancement of compensation. Mr.Chapalgaonkar, learned counsel submits that the deceased was the son of claimant no.1 and husband of claimant no.2. He was a Pharmacist and was running Ready made clothes shop in the name and style as Modern Dresses. His income was Rs.70,000/- p.a. The tribunal wrongly held income to be Rs.3000/- p.m. According to the learned counsel, multiplier applicable would be 18. Deducting 1/3rd towards personal expenses, the amount of compensation ought to have been calculated. Even towards non pecuniary damages, paltry sum has been awarded. According to the learned counsel, the claimant is entitled for compensation of Rs.9 lakhs.

2] Mr.Upadhye and Mr.Totla, learned counsel for respondents support the judgment and state that there is no proof of actual income. The notional income has been properly considered by the Court. Deduction is properly made.

3] With the assistance of learned counsel, I have gone through judgment and order. There is no proof of actual income of the deceased as such notional income considered of Rs.3000/- is correct. Deduction towards personal expenses is made at Rs.1000/-. The same is also correct. The multiplier applied by tribunal is 18. The same ought to have been 17. As such, the amount towards loss of dependency would come to Rs.4,08,000/-. The tribunal has wrongly deducted 20% towards contributory negligence. The deceased was passenger in vehicle, as such it would be case of composite negligence and not contributory negligence. There are two claimants. I would award Rs.50,000/- each on account of loss of love and affection and consortium and Rs.20,000/- towards funeral expenses. The total compensation which the claimants would be entitled to is Rs.5,28,000/-.

4] In light of above, order of the tribunal is modified. The respondents shall jointly and severally pay amount of Rs.5,28,000/- to the claimants with interest of 7.5% p.a. from the date of petition till realisation. The amount already paid shall be adjusted as on the date the 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.]

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