IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 860 OF 2004

1. Zubedabee w/o. Daulat Khan Pathan
Age 44 years, Occu. Household
Resident of Malegaon, Tal. Kalamnuri,
Dist. Hingoli.

2. Riyasad Khan s/o. Daulatkhan Pathan,
Age 20 years, Occu. Nil,
Resident of as above.

3. Saleem Khan s/o. Daulat Khan Pathan,
Age 16 years, Occu. Nil,
Resident of as above.

4. Kaleem Khan s/o. Daulat Khan Pathan,
Age 14 years, Occu. Nil,
Resident of as above.

5. Shafiyabi d/o. Daulat Khan Pathan,
Age 15 years, Occu. Nil,
Resident of as above.

6. Rukhiyabi d/o. Daulat Khan Pathan,
Age 13 years, Occu. Nil,
Resident of as above.

7. Zakiyabee d/o. Daulat Khan Pathan,
Age 10 years, Occu. Nil,
Resident of as above.

(Appellant Nos. 3 to 7 are minors)
Under the Guardianship of their
real mother, Appellant No. 1. **....Appellant.**

Versus

1. M.S.R.T.C. Through its
Divisional Controller,
Parbhani,

2. Patingrao s/o. Bhauraji Panpatte,
Age Major, Ocu. S.T. Driver,
S.T. Depot (Kalamnoori),
Tal. Kalamnoori, Dist. Hingoli. **....Respondents.**

Mrs. A.N. Ansari, Advocate for appellants.
Mr. M.K. Goyanka, Advocate for respondent No. 1.
Mr. S.G. Rudrawar, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.
DATED : 10th December, 2015.

JUDGMENT :

1. The appeal is filed to challenge the judgment and award of Claim Petition No. 120/2000 (old No. 124/1998), which was pending before the Claims Tribunal, Hingoli. Original claimants have filed the appeal for enhancement of the compensation given by the Claims Tribunal. Both the sides are heard.

2. The accident took place on 1.4.1998. Claimant No. 1 is the widow of deceased and she had given her age as 44 years at the time of filing of claim petition. The claimant No. 2 was major son of deceased and claimant Nos. 3 to 7 were minor issues of the deceased born to claimant No. 1 from the deceased. It is the case of claimants that the deceased was businessman and he who was involved in utensil business and

he was earning daily atleast Rs. 150/-. It is the case of claimants that they were totally depending on the deceased for livelihood. They had claimed compensation of Rs. three lakh in respect of the death of the deceased. They had contended that the age of the deceased was 45 years at the relevant time.

3. M.S.R.T.C. contested the matter by filing written statement. The claimants examined one co-worker to prove that the deceased was in such businessman. The spot panchanama also shows that utensils of the deceased were damaged. In the year 1998 the deceased was required to take care of atleast seven persons. The Tribunal presumed that the monthly income of the deceased was hardly Rs. 2,250/-. From that amount, the Tribunal deducted 1/3rd amount for calculation of loss of dependency.

4. The Tribunal took into consideration one admission given by the claimant that the age of the deceased was 60 years. The Tribunal considered the P.M. report in which the age of the deceased was mentioned as 60 years and on that basis, the Tribunal held that 5 was the proper multiplier. There was identity card issued by the Election Commission in which the age of the deceased was given 45 years in the year 1994. Even if it is

presumed that the approximate age was given in P.M. report by the doctor who conducted the P.M. and claimants have given approximate age, in view of the record of identity card prepared by the Election Commission, this Court holds that Tribunal could have held that the deceased was in the age group of 55 and 60 years. Thus, the Tribunal could have adopted 8 as multiplier for calculation of loss of dependency. Such age is given in the Schedule given under section 163-A of Motor Vehicle Act.

5. Considering the size of the family and the business in which the deceased had got himself involved, this Court holds that monthly income of the deceased was atleast Rs. 3,000/-. He would have spent at the most 1/3rd amount for himself and so, there is monthly loss of dependency of Rs. 2,000/- to the claimants. If 8 is adopted as multiplier, the total loss of dependency comes to Rs. 1,92,000/- (2000 x 12 x 8). The amount of Rs. 15,000/- can be given on the count of loss of consortium and loss of love and affection and amount of Rs 5,000/- can be given under head like funeral expenses. Thus, the total compensation of Rs. 2,12,000/- can be given. The Tribunal has awarded only amount of Rs. 1,05,000/-. The claim of Rs. three lakh was made in the Tribunal. In the present matter, due to inability to pay Court fee, valuation of the appeal was done for

Rs. one lakh. The Tribunal is expected to give just compensation [Reliance placed on the case reported as **AIR 2008 SC 1221 [A.P.S.R.T.C. Vs. M. Ramadevi**].

6. In the result, the appeal is allowed. The judgment and award of the Tribunal is modified as follows :

(i) The Claim Petition is allowed.

(ii) The respondent Nos. 1 and 2 do jointly and severally pay the amount of Rs. 2,12,000/- (Rupees two lakh twelve thousand) to the claimants as compensation on principle of fault under section 166 of Motor Vehicle Act.

(iii) The respondents are also liable to pay interest at the rate of 9% p.a. The interest would be payable on the remaining amount, if the amount under the principle of non fault liability is paid by the M.S.R.T.C. The interest would be payable from the date of filing of the petition till the its entire reliazation.

(iv) Out of the total amount of compensation 50% amount is to be given to widow of the deceased. Remaining amount is to be equally disbursed amongst the other claimants.

(v) Deficit Court fees of the appeal is to be recovered from the claimants before making the disbursement of the amount.

(vi) Award is to be prepared accordingly.

[T.V. NALAWADE, J.]

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