

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

FIRST APPEAL NO. 1356 OF 2014

BAPURAO NAGORAO MAGAR (DEAD) AND ANOTHER
VERSUS
SANTOSH PRABHU AMBORE AND ANOTHER

...
Advocate for Appellants : Suryawanshi Surendra V.

...

CORAM : S.V.GANGAPURWALA,J.

DATED : 15TH OCTOBER, 2015

ORDER :-

Initially on 31/7/2014 notice was issued to the respondents and the record and proceeding was called. As per office endorsement said notice is served. None appeared for the respondents. Thereafter, this Court on 25/8/2015 issued notice of final disposal to the respondents. The said notice of final disposal is also served on the respondents. However, none appears for the respondents.

2] Mr.Suryawanshi, learned counsel for the appellant submits that deceased Pratap was aged 22 years at the time of his death in an accident. The parents of the deceased had filed application u/s 166 of Motor Vehicles Act claiming compensation on account of the death of deceased Pratap. Learned counsel submits that deceased Pratap was 22 years of age at the time of accident. The tribunal has accepted income of the deceased Pratap as Rs.10,000/- p.m. however, deducted 85% amount towards personal expenses. The deceased Pratap being bachelor, amount towards personal expenses should have been half. The learned counsel relies on the judgment of the Apex Court in the case of **Munna Lal Jain and**

another V/s Vipin Kumar Sharma and others reported in 2015(4) All MR 436 (SC). The learned counsel submits that the multiplier applied was considering age of the claimants, however, the multiplier applied has to be considered with regard to the age of the deceased. The deceased was aged 22 years. As such multiplier applicable would be 18. The learned counsel submits that if the income of Rs.10,000/- p.m. is considered, half of the amount is deducted towards personal expenses and multiplier of 18 is applied then the loss towards dependency would be Rs.10,80,000/-. According to the learned counsel even tribunal has not considered any amount towards future prospects. So also towards loss of love and affection has granted amount of Rs.10,000/-. The learned counsel submits that on account of love and affection sum of atleast Rs.50,000/- to each claimant has to be awarded.

3] With the assistance of learned counsel, I have gone through record and proceeding. The factum of accident is proved. The tribunal has also accepted the income of the deceased as Rs.10,000/- p.m. Said order is not assailed by any party. Considering evidence on record, there is no impediment to consider the income of the deceased as Rs.10,000/- p.m. No doubt the claimants were aged about 55 and 50 years of age at the relevant time. However, their dependency cannot be disputed. The deduction towards personal expenses of the deceased being a bachelor ought to be half as is held by Apex Court in the case of Munna Lal referred supra.

4] In light of that, the loss of dependency would be to the extent of Rs.10,80,000/-. Claimant no.1 is dead as such towards loss of love and affection remaining claimant would be entitled for it. I would award Rs.20,000/- towards love and affection to the present

appellant. The said amount would come to Rs.11,30,000/-. With regard to future prospect, it would be seen that the claimants have three other sons. The claimants were residing at Aurangabad and the deceased was residing at Pune. I would award Rs.20,000/- towards funeral expenses, thus total Rs.11,50,000/-.

5] In the result, order passed by Tribunal is modified. It is held that the appellant is entitled for Rs.11,50,000/-. Respondent nos.1 and 2 shall jointly and severally pay amount of Rs.11,50,000/- to the appellant inclusive of amount awarded under no fault liability together with interest at the rate of 6% p.a. from the date of petition till realisation. The amount if paid as per award passed by tribunal shall be adjusted as on the date the same is paid. Appellant shall pay additional court fee in respect of the enhanced compensation awarded. Appeal is partly allowed. No costs.

[S.V.GANGAPURWALA,J.]

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