IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2406 OF 2010

1. Ahemedbee w/o. Ahmedsab, .. Appellants
   Age. 49 years, Occ. Household

2. Syd. Gous s/o. Syd. Ahmedsab,
   Age. 35 years, Occ. Labour

3. Syd. Rauf s/o. Syd. Ahmedsab,
   Age. 30 years, occ. Labour

4. Syd. Shabbir s/o. Syd. Ahmedsab,
   Age. 30 years, Occ. Labour

   All are R/o. Narsi, Tq. Naigaon (Kh),
   Dist. Nanded.

Versus

1. Thirumathi M Bhanumati w/o. .. Respondents
   G.R. Moha,
   Age. Major, Occ. Managing Partner,
   of Jayakrishna road ways,
   F-12, Kennedy Avenue Fairland Salem-16,
   Dist. Salem (Tamilnadu).

2. National Insurance Co. Ltd.,
   2nd Floor, Maruti Complex, F-215
   Omalur Main Road, P.B. No.27,
   Salem, Dist. Salem (Tamilnadu).

3. National Insurance Co. Ltd.,
   Through its Branch Manager,
   Branch at Nanded.

Mr. S.S. Patil, Advocate for the appellants.
Mr. S.V. Kulkarni, Advocate for respondent No.3.

CORAM : A.V. NIRGUDE,J.
DATED : 28.07.2015

ORAL JUDGMENT :-

1. This appeal filed for enhancement in compensation amount inter alia challenges the correctness of judgment and award dated 07.09.2009, passed by learned Member of the Motor Accident Claims Tribunal, Biloli, Dist. Nanded in Claim Petition No. 21 of 2006. The only question that arises in this appeal is 'what amount of compensation the appellants are entitled to'.

2. It is common ground that the appellant No.1's husband and father of other appellants was working as Valve Operator with Maharashtra Jivan Pradhikaran, Division No.1, Nanded. His salary was Rs.11,049/- per month. He died at the age of 50 years. In order to calculate compensation, pecuniary loss caused to the family members of the deceased is required to be calculated. Out of salary of the deceased, he would use at least 1/3rd amount for his own survival. Rest of the amount he would spent for his wife and children.

3. Learned Member of the Tribunal perused the salary certificate [Exh.32] & held that take-home salary of the deceased was only Rs.2710/-. When I perused Exh.32, I found that take-home salary of the deceased was Rs.6979/-. From his salary of Rs.11,049/-, certain dedications were made. Most of the deductions were made for repayment of loans. Learned Member [almost recklessly] opined that for the purpose of calculating compensation, 'take-home salary' is required to be taken into account. The law on this subject is settled from time to time and at least in 2009 when the impugned judgment was delivered, the law required the gross salary to be taken into account for calculating the compensation. The tax liability of the deceased was only to the tune of Rs.175/-. One has to deduct that amount from the total salary. In addition to this one must add certain amount towards future prospects. In view of the fact that the deceased was a Government servant and was only 50 years old, 30% of his salary should be added towards future prospects. Out of this amount 1/3rd amount deserves to be deducted towards personal expenses of the deceased and the remaining amount would have been used by the deceased for maintaining his family. Due to death of the deceased, such amount is now loss to the claimants. Since the deceased died at the age of 50, the multiplier of 13 is applicable as per the law laid down

by the Supreme Court in the case of **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr., AIR 2009 S.C.3104**. In addition to this the appellant No.1 suffered loss of consortium and deserves certain amount as compensation. In my view an amount of Rs.25,000/- should be sufficient compensation for loss of consortium. Rest of the appellants are also entitled to certain amount towards loss of love and affection. In my view, Rs.10,000/- would be appropriate amount towards compensation for love and affection. In additional to this, the claimants are entitled to compensation of Rs.2000/- towards funeral expenses. Thus, the calculation would be as under :-

Particulars	**Amount Rs.**
Earning per month	11049
Less Tax	-175
	10874
30% future prospects (+)	3262
	14136
Less 1/3rd personal deduction	-4712
	9424
Annual income (multiplied by 12)	113090
Multiplied by 13 multiplier	1470165
Loss of consortium	25000
Loss of love and affection	10000
Funeral expenses	2000
Total compensation	**1507165**

4. The appeal should, therefore, succeeds. The amount of Rs. 15,07,165/- shall be paid to the appellants with interest at the rate of 6% p.a. from the date of application. The amount, so far received, shall be deducted from the total compensation. The appellants shall also be entitled to costs of this appeal.

[A.V. NIRGUDE,J.]

snk/2015/JUL15/fa2406.10