

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

FIRST APPEAL NO. 323 OF 2014

Yogeshwarbai Pramod Thakre
and others

.. Appellants

Versus

Satish Ramji Barwad and another

.. Respondents

Shri Shrikant S. Patil, Advocate for Appellants.

The Respondent No. 1 is served.

Shri Vinodkumar R. Mundada, Advocate for the Respondent No.
2.

CORAM : S. V. GANGAPURWALA, J.

DATE : 25TH AUGUST, 2015.

PER COURT :

. Mr. Patil, the learned counsel submits that, the present appeal is filed to the extent of enhancement. According to the learned counsel, the income ought to have been considered as Rs. 3,000/- per month. According to the learned counsel, even though there is ceiling of Rs. 40,000/- per annum, the appellant had claimed income of deceased as Rs. 3,300/- per month. According to the learned counsel, considering said income amount, compensation ought to have been calculated. The multiplier 18 is applied, but the income is considered at Rs. 16,000/- per annum after deducting 1/3 amount from the income.

2. According to the learned counsel, even meager amount towards non pecuniary damages is awarded i. e. for funeral expenses Rs. 2,000/-, for loss of consortium amount of Rs. 5,000/- and for loss of estate an amount of Rs. 2,500/- is awarded. The learned counsel submits that, as per the judgment of the Apex Court in a case of **Asha Verman and others Vs. Maharaj Singh and others** reported in **2015 All SLR 1476** amount of Rs. 1,00,000/- to each on account of loss of consortium, loss of love and affection and loss of estate is required to be awarded.

3. Mr. Mundada, the learned counsel submits that, the income has been rightly considered by the Tribunal. No illegality has been committed in the same. According to the learned counsel the claimant No. 5 is not a dependent. In absence of actual proof of income the Tribunal has rightly considered the income to be Rs. 24,000/- per annum and deducted 1/3 amount towards personal expenses which is legal and proper. The non pecuniary damages are rightly awarded.

4. I have considered the submissions canvassed by learned counsel for both the parties.

5. A fact is brought on record that the deceased was the owner of taxi and was possessing license to drive the said taxi. In absence of any proof of income Rs. 3,000/- per month ought to

have been considered. If income is considered to Rs. 3,000/- per month, the annual income would be Rs. 36,000/- and after deducting the 1/3 amount towards personal expenses an amount of Rs. 24,000/- per annum would come. The multiplier is rightly applied by the Tribunal. There are four dependents. Considering the factum of four dependent the deduction towards personal expenses ought to be 1/4. That would bring the annual income for loss of dependency as Rs. 27,000/- per annum. The multiplier of 18 would be legal and proper. The said amount would come to Rs. 4,86,000/-. Towards non pecuniary damages also the Apex Court has held in a case of **Asha Verman and others Vs. Maharaj Singh and others** referred supra that for the children Rs. 1,00,000/- each is to be awarded, towards loss of love and affection due to loss of their father and to the parent Rs. 50,000/- each to be awarded. The said view is consistent view of the Apex Court.

6. In the light of that, I award an amount of Rs. 1,00,000/- to each claimant Nos.1, 2 and 3 and Rs. 50,000/- each to the respondent Nos. 4 and 5 towards loss love and affection. So also for funeral expenses Rs. 25,000/- would be proper. As such, the appellants are entitled for total compensation amount of Rs. 9,11,000/-.

7. In the light of the above, I pass following order. The

judgment and award passed by the Tribunal is modified. It is held that the claimant Nos. 1 to 4 are entitled for the compensation amount of Rs. 8,61,000/-. The respondent Nos. 1 and 2 are jointly and severally liable to pay the amount of Rs. 8,61,000/- to claimant Nos. 1 to 4 along with interest at the rate of 8% per annum from the date of petition i. e. 26.07.2010 till the date of realization. The amount already paid shall be adjusted. The claimant No. 5/father is entitled to Rs. 50,000/-. The respondent Nos. 1 and 2 shall jointly and severally pay an amount of Rs. 50,000/- to the claimant No. 5. The amount of compensation of Rs. 8,61,000/- shall be proportionately given as per the share of claimants and amount of the share of appellant Nos. 2 and 3 shall be kept in fixed deposit of any nationalized bank. The first appeal accordingly is disposed of. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Aug. 15