**IN THE HIGH COURT OF BOMBAY AT GOA**

**FIRST APPEAL NO. 125 OF 2010**

**WITH**

**FIRST APPEAL NO. 126 OF 2010**

Mast. Junaid Admani,
minor, student, through his uncle
and guardian Shri. Mohammad Iqbal
Mohammad Yusuf Admani, major,
married, businessman, resident of
House No.1543, Yusuf Manzil,
2nd Vidyanagar, Aquem, Margao, Goa **… Appellant.**

**Versus**

1. Shri. Sitaram Ganpat Kande,
major, Driver, s/o Ganpat Kande
r/o Kerevade Sidache Shet, Kudal
Taluk, Sindhudurg, Maharashtra
2. Shri. Rajkumar K. Gidhwani,
s/o K. Gidhwani, major,
r/o Dwarkadas Raw Mills, Post Murbao
Room No. (2), Manaka Society,
Ulhasnagar – 3, Thane,
Maharashtra 421 003.
3. National Insurance Co. Ltd.,
Divisional Office, 15, Sterling Cinema
Bldg., 3rd Floor, 65, Murzban Road,
Fort, Mumbai, 400 001.
4. Shri. Kiran Ravinder Samant
major, r/o Sai Sadan, At Post
Pali, Taluka & Dist. Ratnagiri
Maharashtra. **… Respondents.**

Mr. A. R. Kantak, Advocate for the applicant
Mr. E. Afonso, Advocates for the respondents.

**Coram :- K. L. WADANE, J.**

**Reserved on :- 17 April 2015.**

**Pronounced on :- 09 June 2015.**

**COMMON JUDGMENT :**

The First Appeal No.125 of 2010 filed by the minor appellant/ claimant namely Junaid Admani for compensation on account of death of his mother namely Tahaseen and First Appeal No.126 of 2010 is filed for the compensation on account of death of his father namely Mohammad Sadiq Admani. The claim petitions filed by the appellant/claimant regarding death of his parents were heard and decided by the learned Presiding Officer of the Motor Accident Claims Tribunal, South Goa at Margao (hereinafter referred to as 'Presiding Officer') and both the petitions are partly allowed holding the income of mother of the petitioner namely Tahaseen to the extent of Rs.3,000/- and father namely Mohammad Sadiq to the extent of Rs.5,000/-. Being aggrieved by the judgment and award passed by the Presiding Officer above two appeals are filed by the appellant/claimant. In the trial court, in order to establish the claim of the claimant the guardian of the petitioner is examined AW-1, Chartered Accountant, Mr. T. S. Mahadevan is examined as AW-2, and to prove the negligence claimant has examined AW-3, Mr. Phadte, P.S.I. No evidence is adduced by the respondents. Considering the evidence on record and upon hearing both the sides the learned Presiding Officer of the Tribunal has partly allowed the claim petitions and awarded compensation of Rs.4,46,500/- with interest at the rate of 9% on account of death of the mother and

Rs.6,44,500/- with interest at the rate of 9% on account of death of the father. According to the petitioner the amount of compensation awarded in both the petitions is very meagre and at very lower side, compared to the monthly earning of his parents. Looking to the reasons recorded by the learned Presiding Officer it appears that, the learned Presiding Officer has disbelieved the evidence of the income tax return filed by the parents of the appellant because the Form No. 2D for the period from 2002-2003, 2003-2004 both are in the name of M/s. Noor Selection. Both the returns were verified by one Mr. Mohammad Iqbal s/o Mohammad Yusuf who is not deceased or his wife. Further, it disbelieves these documents as AW-1, Chartered Accountant has specifically stated in the cross-examination that as per the income tax rules forms and other returns are to be signed and verified by the person concerned filling the returns, therefore, whatever the evidence adduced by the claimant/appellant relating to the income of his parents was disbelieved by the learned Presiding Officer.

**2]** I have heard the arguments of Mr. A. R. Kankat, learned Advocate for the appellant and Mr. E. Afonso, learned Advocate for the respondents.

**3]** At the time of argument Mr. Kantak, the learned counsel appearing for the appellant has stated that the appellant filed Misc.

Applications No.76 of 2010 and 77 of 2010 for the permission to adduce additional evidence. I have considered these applications and in the interest of justice both the applications are allowed and the copies of the relevant record i.e. copies of Form 2D along with the statement of account are taken on record. On scrutiny of these documents, it appears that the Form No. 2D stated to be filled by the parents of appellant for the year 2004 – 2005 to 2006 – 2007 are produced on record along with the statement of account showing profit and loss. On perusal of these documents, it appears that the first Form No. 2D for the year 2004 – 2005 and 2005 – 2006 is filled in the name of Mohammad Sadiq i.e. father of the appellant but it is verified by one Mohammad Yusuf and Form No. 2D for the year 2006 – 2007 stated to be filled and verified in the name of Sadiq but from the stamp of the office of the income tax it reveals that it was received to the Income Tax Department on 31/10/2010 and below that the date is mentioned as 21/01/2010 below the signature. The accident occurred on 02/04/2006 in which both parents namely Mohammad Sadiq and Tahaseen were died. Therefore, some sort of clarification is needed how such form is filled and verified in the name of deceased Sadiq. Though, I have allowed those documents to bring on record, it does not mean that it should be straightway admitted in the evidence these documents are to be tested after the cross-examination. Looking to the above aspect, I am of the opinion that accepting and admitting the above documents as an evidence an opportunity must be given to the respondents to cross-examine the relevant witnesses for which both the appeals are liable to be remanded. Both the Judgments and award passed by the learned Presiding Officer dated 25/08/2009 are set aside and both the Claim Petitions No.233/2006 and 234/2006 are remanded to the Presiding Officer for disposal in accordance with law. The learned Presiding Officer to give an opportunity to both the sides to adduce the evidence and to dispose of the above claim petitions as early as possible. Parties are directed to remain present before the learned Presiding Officer on 30 June 2015.

**4]** Appeals are disposed of accordingly. No order as to costs.

**K. L. WADANE, J.**

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