IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.906 OF 2007

The New India Assurance Co. Ltd. ... Appellant

Vs.

Smt.Seema Sampat Babar & Ors. ... Respondents

Mr.Ketan Joshi for the Appellant
Mr.V.S. Talkute for Respondents

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **30th SEPTEMBER, 2015**

ORDER:

1. This First Appeal is directed against the judgment and award dated 28.11.2006 passed by the Member, MACT, Satara in MACP No.214 of 2004, thereby giving compensation of Rs.9,48,000 with interest @ 6% p.a. It is a death claim filed by the respondents. Respondent No.1 is a mother and Respondent Nos.2 to 5 are the minor children of the deceased. The challenge in the appeal is mainly on the ground on quantum i.e., the amount of salary fixed by the Tribunal. On perusal of the judgment on record, it appears that the deceased Sampat Babar met with an accident on 14.7.2002 and he died on the spot. He was working as a supervisor and Development Officer in Maharashtra Government Milk Scheme, Satara and was drawing a salary of Rs.9,868/- per month. The Tribunal has while fixing the salary has considered HRA and DA which was

received by him and so, his gross salary was considered as Rs.9,000/- per month.

2. The learned Counsel for the appellant has submitted that in the evidence of PW2 R.Y. Deshpande who was serving as an Accounts Officer in Dairy Development, Satara, has admitted that the deceased was drawing salary of Rs.5,676/- after deductions and the said amount ought to have been considered as his salary. Instead, the Court has erroneously fixed the salary of Rs.9,000/- per month. He further submitted that the deceased himself was negligent and that fact also ought to have been considered.

3. He relied on the judgment of the Division Bench of the Supreme Court in the case of **Asha & Ors. vs. United India Insurance co. Ltd. & anr.**[1] wherein it was held that the dependents would only be receiving the net amount less 1/3rd of the personal expenses of the deceased and the loss suffered by them is the amount which they would have been receiving at the time when the deceased was alive.

4. In reply, the learned Counsel for the respondent/claimants relied on the ratio laid down in the case of **Manasvi Jain vs. Delhi Transport Corporation Ltd. & Ors.**[2] where it is held that deductions voluntarily contributed by the deceased for the welfare of his family as savings cannot

1 2004 ACJ 448
2 (2014) 13 SCC 22

be deducted from monthly salary of the deceased to decide the net salary. Thus, the deductions to GPF, LIC, repayment of loans should not be excluded from the income. It is further argued that the DA and HRA payable to the deceased should be taken into consideration for the purpose of computing the amount of compensation as it is the amount which was received by the family. In support of this, he relied on the ratio laid down in the judgment of **Raghuvir Singh Matolya and ors. vs. Hari Singh Malviya and Ors.**[3]

5. The points raised by the appellant in respect of the deductions is already decided in the case of **Raghuvir Singh Matolya and ors. (supra)** by the Supreme Court. The salary amount of Rs.6,000/- fixed after deducting 1/3rd amount towards personal expenditure, considering the post and the nature of the job of the deceased, it appears reasonable and correct. Moreover, it is to be noted down that besides the wife, the deceased had four dependent minor children and yet, 1/3rd of his amount is deducted towards personal expenditure.

6. In view of this, I do not find any merit in the appeal and hence, the appeal is dismissed.

(MRIDULA BHATKAR, J.)

3 JT 2009 (7) SC 597

CERTIFICATE

Certified that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.