

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1498 OF 2014

National Insurance Company Ltd.	... Appellant
Vs.	
Hirmait Motilal Chauhan & Ors.	... Respondents

**WITH
CIVIL APPLICATION NO.3559 OF 2015
IN
FIRST APPEAL NO.1498 OF 2014**

Nathu Motilal Chauhan	... Applicant
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IN THE MATTER BETWEEN

National Insurance Company Ltd.	... Appellant
Vs.	
Hirmati Motilal Chauhan & Ors.	... Respondents

Mr.Amol Gatne i/b Mr.Atul Gatne for Appellant
Ms.C.S. Gongaone for the Respondents

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **4th DECEMBER, 2015**

P.C.:

1. Admit. Respondents waives notice through their Counsel.
2. By consent of the parties, the appeal is heard finally at the stage of admission itself.
3. The appeal is directed against the judgment and award dated 2.9.2013 passed by the Member, MACT, Mumbai in MACP No.2524 of 2007 whereby compensation of Rs.7,51,500/- alongwith interest @ 7.5% is awarded. It is the case of the original applicants that the deceased

Motilal Chauhan died in the road accident. When he was walking, a dumper bearing No.OR-14-K-8616 came from BPT road in a rash and negligent manner and dashed him. He sustained head injuries and died on 7.5.2007. The applicant/widow of Motilal alongwith four children filed application for compensation u/s 166 of the Motor Vehicles Act. The Member, MACT, Mumbai allowed the application and granted the amount of compensation as mentioned above. The said order is challenged in this Appeal.

4. Learned Counsel for the appellant/insurance company submits that the impugned judgment is challenged on the ground of quantum alone. He read over paragraphs 16 and 19 of the said judgment and award. He submitted that the Tribunal has committed error in fixing the notional income as Rs.4,500/- instead of Rs.3,000/-. No documentary evidence is produced by the applicants to show that the deceased was drawing an amount of Rs.4,500/-. In the absence of such documentary evidence, the learned Tribunal ought not to have fixed the notional income as Rs.4,500/- per month. He further submitted that the Tribunal granted Rs.1 lakh towards consortium and also granted Rs.1 lakh towards loss of love and affection of the children. The learned Counsel submitted that on the ground of notional income, the amount of consortium should have been fixed as per the judgment in the case of **Sarla Verma (Smt.) & Ors. vs.**

Delhi Transport Corporaton & anr.¹ as Rs.25,000/- and hence, the award is to be set aside. On the ground of notional income, the learned Counsel relied on the judgment in the case of **Laxmi Devi & ors. vs. Mohammad Tabbar & anr.**² He further submitted that the accident which took place in the said case was in the year 2007 and the accident in the case in hand also took place in 2007. However, the notional income which was fixed by the Tribunal and the High Court in the said case was Rs.3,000/- and that is considered as correct figure.

5. The learned Counsel for the original applicants opposed this appeal and supported the judgment and award passed by the learned Member, MACT, Mumbai.

6. On perusal of the judgment and order and the documents produced herewith, I am of the view that the amount of Rs.4,500/- fixed as notional income is correct. In the case of Laxmi Devi (supra), the nature of the job of the deceased is not mentioned. The amount was therefore, fixed notionally at Rs.3000/-. In the present case, power of attorney of the widow has stepped into the box and she has stated that the deceased was working as a gas cutter with one Ganga Marine Service, Reay Road, Mumbai. It was deposed that he was earning Rs.8000/- per month and he was 47 years old. The evidence brought on record before the Tribunal that

1 (2009) 6 SCC 121

2 (2008) 12 SCC 165

he was working as a gas cutter, the nature of his job required skill. Moreover the claimants are residing in Mumbai, where people are paid better and the expenditure is also more due to higher standard of life. Therefore, the amount fixed by the Tribunal towards notional income as Rs.4,500/- per month cannot be said as excessive but is appropriate. The amount granted towards the loss of love of Rs.1 lakh and towards consortium of Rs.1 lakh also cannot be said to be on higher side. In *Rajesh vs. Rajbir Singh*³, the amount of consortium was given as Rs.1 lakh.

7. In the circumstances, the compensation granted by the Member, MACT, Mumbai is just and adequate. Hence, the appeal need not be entertained and is dismissed accordingly. The statutory amount of Rs.25,000/- shall be transferred to the MACT, Mumbai.

8. In view of the dismissal of the appeal, Civil Application does not survive and the same is disposed of as such.

(MRIDULA BHATKAR, J.)

³ 2013 (9) SCC 54