

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

FIRST APPEAL NO. 676 OF 2008

1. Ravindra Anant Nilkanth
Age : 58 Yrs., Occ. Nil,
R/o : Tapadiya Nagar,
Aurangabad.
2. Parnita Ravindra Nilkanth
Age : 54 Yrs., Occ. Household,
R/o : Tapadiya Nagar, APPELLANTS/
Aurangabad. [ORI. CLAIMANTS]

V E R S U S

1. Babasaheb s/o Vithoba Deshmukh
Age : 44 Yrs., Occ. Driver,
R/o : A/p Mishan Hospital,
Solapur.
2. Dattatray s/o Dhondiram Gawade
Age : Major, Occ. Owner of
Truck, R/o : Dr. Golwalkar Complex,
Near Sargam Cinema,
College road, Post : Pandharpur,
Dist. : Solapur.
3. The New India Insurance Co.Ltd.

Through its Divisional Manager
Divisional office, Adalat Road,
Aurangabad.

4. Ritesh Ravindra Nilkanth
Age : Major, Occ. Service,
R/o : MSEB Quarters,
Class – 4 (A-4), Khadkeshwar, **RESPONDENTS/**
Aurangabad. **[ORI. RESP. NOS. 1 TO 4]**

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Mr. A.A.Joshi, Advocate for Appellants.

Mr. S.G.Chapalgaonkar, Advocate for R.No. 3.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 17th FEBRUARY, 2016

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JUDGMENT :

1. The Appeal is filed by the original claimants against the Judgment and Award of M.A.C.P. No. 649/2005, which was pending before the Motor Accident Claims Tribunal, Aurangabad on being dis-satisfied on the quantum of compensation. Learned counsels for both sides are heard.

2. Deceased Railendra was son of claimant Nos. 1 and 2. He was aged about 29 years. It is the case of the

appellants that the deceased was in the business of photography and his monthly income was ₹ 5,000/-. It is their case that they were totally depending for their livelihood on the income of the deceased.

3. The accident took place on 06/07/2003 at about 11.45 a.m. and the son of the claimants died in the accident. The claim was made against the owner and insurance company of the jeep. Under various heads, compensation of ₹ 7.22 Lakh was claimed.

4. The claim was contested by present respondents, the owner and insurance company of the offending vehicle. Only claimants gave evidence and produced some record with regard to the occupation and income of the deceased. School leaving certificate was produced for proving the age of the deceased. The Tribunal has presumed that the notional income was ₹ 15,000/- per annum. 1/3rd amount is deducted from this amount and the compensation of ₹ 1,23,500/- is awarded by the Tribunal.

5. The learned counsel for original claimants drew

the attention of this Court to the substantive evidence of the father of the deceased which is in accordance with the aforesaid contentions. The evidence shows that the deceased had passed S.S.C. Examination and he had completed one course in photography. It appears that the deceased was working as freelance photographer for various news-papers. Some certificates issued by the offices of those news-papers are produced to show that they were making payment on monthly basis and also on the basis of number of photographs supplied by the deceased to them. The totaling of the amount shown in the certificate shows that the deceased was getting at least ₹ 2,800/- per month. It can be said that his income was depending on the number of photographs accepted by the news-papers for publishing in the news-papers.

6. The accident took place in the year 2003 when the notional income @ ₹ 15,000/- per annum was fixed on 14/11/1994 under the provisions of Motor Vehicles Act, 1988. In view of these circumstances, the Tribunal ought to have presumed that the monthly income of the deceased was at least ₹ 3,000/-. As the deceased was unmarried, the

Tribunal could have deducted 50% amount from the income towards personal expenses. In view of the age of the deceased, 17 could have been adopted as multiplier. Thus, total loss of dependency comes to ₹ 3,06,000/- [1500x12x17]. The amount of ₹ 50,000/- needs to be given under the head of loss of love and affection and ₹ 5,000/- needs to be given under the head of funeral expenses. Thus, the claimants are entitled to at least ₹ 3.61 Lakh as compensation. The Tribunal has given interest @ 6% per annum when the nationalized banks were giving interest on fixed deposits @ 8% to 9% per annum. This Court holds that the claimants are entitled to get interest @ 9% per annum.

7. In the result, following order is made.

[i] First Appeal No. 676 of 2008 is allowed.

[ii] The Judgment and Award of the Tribunal is modified to make the compensation amount as ₹ 3.61 Lakh.

[iii] Interest @ 9% per annum is payable on the entire amount of compensation from the date of petition till the realization of amount.

- [iv] Award be prepared accordingly.
- [v] In view of the disposal of First Appeal, C.A. No. 8282 of 2014 stands disposed of.

[T.V.NALAWADE, J.]

KNP/F.A. 676.2008 - [J]