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

FIRST APPEAL NO.20 OF 2005

United India Insurance Co.Ltd.,
Through it's Divisional
Manager and Authorised Representatives
And Signatory, Jalgaon Divisional
Office, Mansing Market, Opp.Atul
Dairy, Jalgaon.

...APPELLANT
(Original Respondent No.3)

VERSUS

1. Smt.Shakuntala alias Sakhubai
Laxmanrao Shinde, Age 35 years,

2. Smt.Shantabai Popatrao Shinde,
Age 65 years,

3. Mst.Amol Laxmanrao Shinde,
Age 17 years;

4. Miss Vaishali Laxmanrao Shinde,
Age 16 years,

5. Mst.Rahul Laxmanrao Shinde
Age 14 years;

All resident of Nampur,
Tal.Satana, District Nashik.

6. Kashinath Laxman Khairnar
Adult, Truck Driver,
Resident of Ganeshwadi, Malegaon,
Dist. Nashik;

7. Nihal Ahemad Abdul Rashid, Adult Truck Owner, 183, Hajihar Kholi Malegaon, Dist. Nashik.

...RESPONDENTS No.1 to 5
Original Claimants;
Respondents No.6 and 7
Orig.Opponent Nos. 1 & 2.

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Mr. A.B.Gatne, Advocate for the appellant.
Mr.D.J.Patil, Adv., h/f Mr. N.B.Suryawanshi, Adv., for respondent nos. 1 to 5.

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CORAM: P.R.BORA, J.

DATE : APRIL 15th, 2016

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ORAL JUDGMENT:

1. The present appeal is filed by the Insurance Company challenging the judgment and award passed in MACP No.970/1999 by the Motor Accident Claims Tribunal, Dhule, on 5th of August, 2004. The aforesaid claim petition was filed by the present respondent nos. 1 to 5 claiming compensation on account of death of Laxman Popatrao Shinde, who died in a motor accident happened on 5.10.1999 having involvement of a Truck bearing registration No.MH-18/D-7536 owned by present respondent no.7 and insured with the appellant Insurance Company.

2. It was the contention of the original claimants that deceased Laxman was a tractor mechanic and was running a garage at village Nampur and was earning around Rs.5,000/- per month. In order to prove the income of deceased Laxman, the claimants had placed on record certificate of income issued by Talathi of village Nampur showing therein that the annual income of the deceased was around Rs.58,000/-. Relying on the said certificate, the learned Tribunal held the annual income of deceased Laxman to the tune of Rs.58,000/- and accordingly determined the amount of compensation.

3. In the present appeal, the impugned judgment is challenged only on the point of quantum. More specific objection raised by the learned Counsel appearing for the appellant Insurance Company is that, despite there being any cogent evidence as regards to the income of deceased Laxman, the Tribunal has erroneously held income of the deceased to the tune of Rs.58,000/-. Learned Counsel submitted that the Talathi was having no authority to certify the income of deceased Laxman. Learned Counsel further submitted that except the certificate issued by the Talathi, the claimants did not produce on record any other cogent and sufficient evidence so as to assess the income of deceased Laxman. Learned

Counsel submitted that in absence of any cogent evidence as regards to the income of the deceased, the Tribunal at the most could have assessed the income notionally by applying the criteria as provided under the provisions of Section 163A of the Motor Vehicles Act by holding the income of deceased Laxman to the tune of Rs.15,000/- per annum. Learned Counsel submitted that the Tribunal has awarded unreasonable compensation by holding the income of the deceased on a higher side without there being any evidence therefor. Learned Counsel, therefore, prayed for determination of the just amount of compensation and to modify the impugned award accordingly.

4. Learned Counsel appearing for the original claimants submitted that the Tribunal has rightly relied upon the income certificate issued by the Talathi certifying that the annual income of deceased Laxman was around Rs.58,000/- per annum. Learned Counsel submitted that even otherwise, considering the fact that the deceased was working as a tractor mechanic, the income so held by the Tribunal is not in anyway unreasonable or on higher side. Learned Counsel submitted that the amount which has been determined by the Tribunal is just and reasonable and no interference is required in the

impugned judgment and award.

5. After having heard the arguments of the learned Counsel appearing for the parties and on going through the impugned judgment and evidence on record, the only point which arises for my determination is whether the income of the deceased held by the Tribunal for determination of compensation can be said to be proved by the claimants and whether on such basis, the compensation can be determined.

6. On perusal of the impugned judgment, it is revealed that the Tribunal has blindly relied upon certificate of income issued by the Talathi, certifying the income of deceased Laxman. The Tribunal has not at all considered as to whether Talathi was having any right or authority to certify income of the deceased or not. No further discussion is made by the Tribunal as to on what basis it has reached to the conclusion that the income of the deceased Laxman was to the tune of Rs.58,000/- per annum. I find substance in the submission made on behalf of the learned Counsel for the appellant that the income of the deceased could not have been certified by the Talathi. Except the aforesaid certificate, the claimants have not brought on record any other evidence to prove the income

of deceased Laxman. The assessment of the income of deceased Laxman on the basis of certificate issued by the Talathi, in any case, cannot be sustained.

7. In absence of any evidence brought on record by the claimants to prove the income of deceased Laxman, the Tribunal was expected to assess the income of deceased Laxman notionally on the basis of the work which was being carried out by the deceased, by applying the criteria as to what were the minimum wages for the said work in the relevant period. It is not disputed that the deceased was working as a tractor mechanic. He was, thus, a skilled workman. In such circumstances, it appears to me that, the minimum wages being earned by a skilled workman in the relevant period, can be appropriate base to determining the income of deceased and accordingly to determine the amount of compensation in the present matter. Learned Counsel for the appellant and the learned Counsel appearing for the original claimants are *ad idem* that Rs.3,000/- per month i.e. Rs.36,000/- per annum be held as income of the deceased. Having regard to the number of dependents on the income of deceased Laxman, only one fourth of his income would be liable to be deducted towards his personal expenses. Deducting the said amount, the balance amount of Rs.27,000/- can reasonably be held to be

available with the deceased to be spent for on the maintenance and welfare of his dependents. Considering the age of deceased Laxman, the appropriate multiplier would be of 17. By applying the said multiplier, the amount of dependency compensation comes to Rs.4,59,000/- (27,000 x 17). The Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.10,000/- towards loss of love and affection and Rs.5,000/- towards loss of consortium. I do not see any reason to cause any interference in the amounts so awarded. The claimants are thus found entitled to the total compensation of Rs.4,79,000/-. Save and except modification in the amount of compensation as aforesaid i.e. to say Rs.4,79,000/- in place of Rs.6,27,500/-, the other part of the award shall remain as it is.

Modified award be prepared accordingly.

The appeal stands allowed in aforesaid terms.

From the amount deposited, if any, by the appellant Insurance Company in this Court, or before the Tribunal, the amount to the extent of Rs.4,79,000/- and the interest payable thereon shall be paid to the original claimants in terms of the impugned award, if not already paid, and the excess amount, if any, be refunded to the appellant Insurance Company with the interest accrued thereon.

Civil Applications, if any, stand disposed of.

(P.R.BORA)
JUDGE

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