

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

FIRST APPEAL NO.274 OF 1998

1. Jayashree Ashok Chopada,
Age:34 years, Occu: Housework,
2. Sonal Ashok Chopada,
Age:12 years, Occu: Education,
3. Suyog Ashok Chopada,
Age:9½ years, Occu.:Education,
4. Gulabbai Pannalal Chopada,
Age:75 years, Occu.:Housework,

Appellant No.2 & 3 Minor,
U/G. of Appellant No.1 Mother,

All R/o. Mirajgaon, Tq. Karjat,
Dist. Ahmednagar.

...APPELLANTS

(No.1 to 3 are Ori.
Claimants No.1 to 3,
No.4 is Ori. Claimant
No.5, Ori.Cla.No.4
died hence deleted.)

VERSUS

1. Kisanrao Ambadas Bhuyar,
Age: Major, Occu.: Business,
R/o. Pannalal Nagar, Amaravati,
2. National Insurance Co. Ltd.
Aurangabad.
3. Abdul Naim Abdul Rashid,
Age: Major, Occu: Business,
R/o. Khidkipure, Old City, Akola,
Dist. Akola,

4. The Oriental Insurance Co. Ltd.
Aurangabad.

**...RESPONDENTS
(Ori. Respondents)**

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Mr. S.S.Chapalgaonkar, Advocate, h/f Mr.
S.P.Chapalgaonkar, Advocate for respondent no.2.
Mr.Anil A.Joshi, Advocate for respondent no.4.

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CORAM: P.R.BORA, J.

DATE : 21/9/2016

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ORAL JUDGMENT:

1. Even after availing number of opportunities, and even on second call today, no one has appeared for the appellants.

2. Shri Chapalgaonkar, learned Counsel, who is appearing for respondent no.2, is present before the Court. In view of the fact that the present is an appeal arising out of an award under the provisions of the Motor Vehicles Act seeking enhancement in the amount of compensation, though no one has appeared for the appellant, with the assistance of the learned Counsel Shri Chapalgaonkar appearing for respondent No.2, I

scrutinized the impugned judgment.

3. The alleged accident had happened on 5.5.1991. The Tribunal has awarded total compensation to the tune of Rs.1,70,000/- (Rs. one lac, seventy thousand) to the appellants / claimants inclusive of the amount of N.F.L. compensation.

4. Perusal of the impugned judgment reveals that the Tribunal has held the income of the deceased to the tune of Rs.1,000/- and applying the multiplier of 12 has calculated the amount of dependency compensation. From the discussion made by the learned Tribunal in the impugned judgment, it appears that there was no dispute about the fact that the deceased was working as a mechanic. His income was stated to be Rs.2,000/- per month. In fact, there was no reason for the Tribunal not to rely upon the income so stated of the deceased and accordingly assess the amount of compensation having regard to the fact that deceased was admittedly working as a 'Mechanic'. If the income of the deceased is held to the tune of Rs.2,000/- per month, his annual income

comes to the tune of Rs.24,000/-. Having regard to the number of dependents, which is 5, if one fourth amount is deducted from the said income towards the personal expenses of the deceased, it can be reasonably said that the deceased might be spending balance amount of Rs.18,000/- for the maintenance of his family members. Having regard to the age of the deceased, the appropriate multiplier will be of 17. Applying the said multiplier, the amount of dependency compensation comes to the tune of Rs.3,06,000/-.

5. The Tribunal though has awarded certain amounts towards love and affection, loss of consortium and funeral expenses, however, since the amount so awarded is not just and adequate, I deem it appropriate to enhance the said amount to the tune of Rs.50,000/- in aggregate and thus hold the appellants entitled to the total compensation of Rs.3,56,000/-. From the evidence on record, it appears to me that this will be just and fair compensation payable to the appellants / claimants and the impugned award, therefore, needs to be modified accordingly and the compensation so awarded by the

Tribunal needs to be enhanced to the aforesaid extent.

6. The further question arises as to from which date interest is to be awarded to the claimants on the enhanced amount of compensation. Shri Chapalgaonkar, learned Counsel, brought to my notice that the present matter was dismissed twice or thrice and was restored after a long delay. Learned Counsel further submitted that only because of the lapses on the part of the appellants that the appeal remained pending in this Court for long 18 years. Learned Counsel submitted that considering the lapses on the part of the appellant, it may not be proper to saddle burden of interest of the entire said period on the respondents and more particularly the insurance company which ultimately has to satisfy the award. Learned Counsel submitted that in the circumstances, the appellants may be dis-entitled from claiming interest towards half of the aforesaid period which would meet ends of justice. I find the proposal so made by the learned Counsel to be much fair and thus accept the same. In view of the above, following order is passed:

ORDER

1. The appellants are held entitled for the total compensation of Rs.3,56,000/- inclusive of N.F.L. compensation. Respondent nos. 1 and 2 shall, jointly or severally, pay 50 per cent, and respondent Nos. 3 and 4 shall, jointly or severally, pay remaining 50 per cent of the enhanced amount of compensation to the appellants along with the interest of nine years thereon at the rate of seven per cent per annum. The entire amount of compensation shall be paid to appellant No.1 Jayashree for and on behalf of the appellants. The impugned award to be modified accordingly. Deficit Court fees, if any, be recovered from the appellants.

The First Appeal stands allowed to the aforesaid extent. No order as to costs.

(P.R.BORA)
JUDGE

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AGP/274-1998fa