IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.677 OF 2008

1. Smt. Pramila Gautam Bharasake,
Age:31 years, Occu.:Household,

2. Kum. Priyanka Gautam Bharasake,
Age:13 years, Occu.:Education,

3. Kum. Diksha Gautam Bharasake,
Age:11 years, Occu.:Education,

4. Rahul Gautam Bharasake,
Age:7 years, Occu.:Education,
(Appellant No.1 is the natural
guardian and mother of the
respondent No. 2 to 4)

5. Smt. Hirakabai Ramkrishna Bharasake,
Age:61 years, Occu.:Household,
All are residing at Yashawant Nagar,
Jalgaon

...APPELLANTS
(Ori. Claimants)

VERSUS

1. Shri. Waquar A. Abdulla Ansari,
Age:64 years, Occu.:Business,
R/o. 71, New Islampura, Bhivandi,
Dist. Thane,

2. The Oriental Insurance Company Ltd.
198, Sadhana Chambers, Telipada,
Dhamankar Naka, Mumbai

(Summons may be served on The
Divisional Manager, The Oriental
Insurance Company Ltd. Hall G and H,
3rd Floor, Central Phule Market, Jalgaon)

...RESPONDENTS
(Ori. Opponents)

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Mr. M.M. Bhokarikar, Advocate for Appellants;
Mr. M.K. Goyanka, Advocate for Respondent No.2.

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CORAM: P.R.BORA, J.

DATE : December 9th, 2016

ORAL JUDGMENT:

1. The present appeal is filed by the Original Claimants seeking enhancement in the amount of compensation as awarded by the Motor Accident Claims Tribunal at Jalgaon, in M.A.C.P.No.219/2003, decided on 29th of September, 2007.

2. The Tribunal has awarded compensation of Rs.7,90,000/- including the amount of No Fault Liability with the interest thereon at the rate of seven and half per cent per annum from the date of filing of the petition till realization of the amount.

3. Mr. M.M.Bhokarikar, learned Counsel appearing for the appellant, has assailed the impugned judgment on two / three counts. Learned Counsel submitted that while assessing the amount of dependency compensation,

the Tribunal has manifestly erred in holding the monthly salary of the deceased to the tune of Rs.6249/-. Learned Counsel, inviting my attention to the observations made by the Tribunal in paragraph no.18 of the judgment, submitted that the Tribunal, while determining the amount of dependency compensation, has wrongly deducted the amounts of L.I.C. premium, G.I.S. and G.P.F. from the gross monthly salary of the deceased. Learned Counsel submitted that except the amount of Profession Tax, nothing more was liable to be deducted from the gross monthly salary of the deceased. Learned Counsel submitted that the claimants have sufficiently proved the monthly salary of the deceased and the Tribunal in paragraph no.16 of the judgment has provided the particulars of the salary received by the deceased for the month of September, 2002. Learned Counsel submitted that from the gross salary of Rs.11,790/-, the only amount which could have been deducted was of the amount of Profession Tax amounting to Rs.200/- and the dependency compensation ought to have been determined by the Tribunal considering the balance amount as the monthly salary of the deceased.

4. Learned Counsel further submitted that the Tribunal has also failed in not considering the future prospects of the deceased while determining the amount of compensation. Learned Counsel submitted that in view of the law laid down by the Honourable Apex Court in the case of Sarla Verma Vs. Delhi Transport Corpn. ((2009) 6 SCC 121), and Rajesh Vs. Rajbir Singh & others ((2013) 9 SCC 54), the Tribunal must have added 50 per cent amount in the actual income of the deceased in the last drawn salary and on the said amount the compensation under the head of dependency must have been determined. Learned Counsel, therefore, prayed for enhancing the amount of compensation as is awarded by the Tribunal.

5. Shri Goyanka, learned Counsel appearing for the respondent, supported the impugned judgment. Learned Counsel submitted that the Tribunal has passed a well reasoned judgment and no interference is required in

the award so passed. Learned Counsel further submitted that the Tribunal has rightly deducted the amounts of G.P.F. and L.I.C. contribution from the gross salary of the deceased while determining the amount of dependency compensation. Learned Counsel further submitted that since there was no evidence as about the future prospects of the deceased, the Tribunal has rightly not considered the said aspect while determining the amount of compensation. Learned Counsel submitted that even otherwise, the deceased, since has reached to the post of Accountant / Manager; apparently, there was no chance of further promotion and, as such, the Tribunal has rightly declined to consider the said aspect. Learned Counsel, therefore, prayed for dismissal of the appeal.

6. I have carefully considered the submissions advanced by the learned Counsel appearing for the appellants / claimants and the respondent Insurance Company. I have also perused the impugned judgment. On perusal of the impugned judgment it is revealed that the Tribunal has apparently erred in deducting the

amounts of LIC premium, G.I.S., and contribution towards Provident Fund from the gross salary of the deceased while determining the amount of dependency compensation. Law is well settled that such deductions are impermissible. The only amount which is liable to be deducted from the gross salary of the employee is the amount of Income Tax or Profession Tax or the amount which is being paid for personal benefit of the said employee. It is, thus, evident that the compensation as determined by the Tribunal after deducting the amount of G.I.S. Provident Fund, etc. from the gross salary of the deceased will have to be adequately enhanced.

7. In paragraph No.16 of the judgment, the Tribunal has reproduced the particulars of the salary received to the deceased in the month of September, 2002. It was, admittedly, the last drawn salary of the deceased. The salary slip reflects that the basic pay of the deceased was Rs.2920/- and he was receiving fixed Dearness Allowance of Rs.7680/-. The deceased was also paid variable Dearness Allowance of Rs.214/- and H.R.A.

of Rs.541/-. The salary slip further shows that conveyance allowance of Rs.260/- and Library Allowance of Rs.175/- was also paid to the deceased. Both the aforesaid allowances are personal allowances and the same cannot be considered as the income of the deceased. Variable Dearness Allowance and H.R.A. certainly forms part of monthly salary and the said amount comes to Rs.11,355/-. From the said amount, Rs.200/- towards Profession Tax will have to be deducted and deducting the said amount, the monthly salary comes to Rs.11,155/-. I hold it the monthly salary of the deceased for determining the amount of dependency compensation.

8. It is not in dispute that the number of dependents is 5. It was submitted by the learned Counsel for the respondents that respondent no.5 is receiving pension and hence cannot be said to be dependent on the income of the deceased. Even if the said contention is accepted, the number of dependents remains 4 and, as such, only 1/4th of the monthly income will be liable to be deducted towards the personal expenses of the deceased

and the dependency compensation will have to be assessed on the balance 75 per cent of the salary amount which comes to Rs.8366.25 per month i.e. Rs.1,03,095/- per annum. Having regard to the age of the deceased, the appropriate multiplier will be of 16. By applying the said multiplier, the amount of compensation payable under the head of compensation comes to Rs.16,06,320/-.

9. Though the learned Counsel for the appellant was much persuasive in making submissions as about the non consideration of the future prospects of the deceased by the Tribunal, from the material on record, it appears that there was no concrete evidence adduced as about the chances of promotion of the deceased. In view of the judgment of this Court in the case of The New India Assurance Co. Ltd. Vs. Smt. Alpa Rajesh Shah and Ors. (2014 (4) ALL MR 172) by the Division Bench of this Court, unless, there is concrete evidence as about the future prospects, the said aspect cannot be considered while awarding the amount of compensation. In the present matter, though the claimants did claim the

compensation towards future prospects, the evidence on record falls short to accede to the contention so raised by the appellants. Secondly, as has been submitted by the learned Counsel for the respondent, the appellant had already reached to the grade of Accountant / Manager and there is nothing on record to show as to which were the further promotions which could have been achieved by the deceased. In absence of any such evidence on record, I am unable to accept the contention of the appellant that the amount of compensation needs to be further enhanced by considering future prospects of the deceased.

10. For the reasons stated above, I hold the appellants entitled to the total compensation of Rs.16,06,320/- inclusive of N.F.L. amount. In the facts and circumstances of the case, according to me this would be the just and adequate compensation payable to the appellants / claimants. Amount of compensation thus stands enhanced by Rs.8,16,320/-. In the result, the following order is passed:

ORDER

1. The appellants are held entitled for the enhanced compensation of Rs.8,16,320/- in addition to the compensation awarded by the Tribunal.

2. The respondent nos. 1 and 2 shall jointly and / or severally pay the enhanced amount of compensation to the appellants / claimants with interest at the rate of seven and half per cent per annum from the date of application till the date of realization and with proportionate costs.

3. Upon realization of the amount as aforesaid Rs.3,00,000/- (Rs. three lacs) out of it be paid to appellant No.5, namely, Smt. Hirakabai by account payee cheque and a sum of Rs.3,00,000/- (Rs. three lacs) be invested in the name of appellant No.4 Rahul Gautam Bharasake in Fixed Deposit Receipt in any nationalized Bank till the period he attains majority.

4. From the remaining amount, 60 per cent

amount be paid to appellant No.1 Smt. Pramila Gautam Bharasake and 20 per cent each be paid to appellant nos. 2 Kum.Priyanka Gautam Bharasake and appellant No.3 Kum.Diksha Gautam Bharasake. The Award be drawn accordingly.

5. The appellants shall pay deficit Court fees, if so required.

The First Appeal stands allowed in aforesaid terms. No order as to costs.

(P.R.BORA)
JUDGE

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