

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

First Appeal No. 990 of 2013

- 1) Arjun Kacharu Dethe,
Age 35 years,
Occupation : Service
- 2) Suhasil Arjun Dethe,
Age 4 years,
Occupation : Nil.
- 3) Sayali Arjun Dethe,
Age 6 years,
Occupation Education.
- 4) Kajal Arjun Dethe,
Age 11 years,
Occupation : Education.
- 5) Karishma Arjun Dethe,
Age 10 years,
Occupation: Education.

Appellant No.1 is the natural
guardian of appellants 2 to 5

All R/o Sawalivihir,
Taluka Rahata,
District Ahmednagar.

.. Appellants.

Versus

- 1) Umesh Bhilare,
Age Adult,
Occupation : Business,
R/o 2/3, Sunil Niwas,
Chavan Chawl, Bhatwadi,
Barwenagar, Ghatkopar (West),
Mumbai 400 084.

- 2) The Divisional Manager,
National Insurance Co. Ltd.
Kothala, Ahmednagar.

.. Respondents.

Shri. Sandeep B. Gorde Patil, Advocate, for appellant.

Shri. S.S. Deshmukh, Advocate, for respondent No.1.

Shri. S.R. Bodade, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 10th FEBRUARY 2016

JUDGMENT:

1) The appeal is admitted. Notice after admission made returnable forthwith. By consent, heard both the sides for final disposal.

2) The original claimants have filed the appeal against the judgment and award of the Claim Petition No.42 of 2005 which was pending before the Claims Tribunal Kopergaon. In respect of the death of Kacharu, husband of claimant No.1, claim was filed under section 163-A of the Motor Vehicles Act. It is the case of the claimants that by working as security guard in Sai Seva Security Service the deceased was earning monthly

Rs.3000/-. They had claimed compensation of Rs. Three lakh.

3) To prove the income of the deceased, claimant, widow gave evidence which is as per the aforesaid contentions. There was no evidence like birth certificate and therefore the Tribunal presumed that age was 30 years as such opinion was given in post mortem report. The Tribunal, however, presumed that the annual notional income was Rs.15,000/- and calculated the compensation accordingly.

4) The accident took place in the year 2004 and the notional income of Rs.15,000/- per annum was fixed in the year 1994. In view of these circumstances, it was not proper on the part of the Tribunal to presume that annual income was Rs.15,000/-. This Court has no hesitation to hold that the monthly income could have been presumed as Rs.3,000/- and accordingly compensation could have been calculated by using the schedule given for the purpose of section 163-A of the Motor Vehicles Act. Multiplier can be adopted by presuming that age was 30

years and so compensation amount comes to Rs.3.84 lakh. As per the schedule amount of Rs 2000/- can be given under the head of funeral expenses and amount of Rs.5000/- can be given under the head of loss of consortium. Thus the total amount of compensation comes to Rs.3,91,000/-. The Tribunal has granted interest at the rate of 7.5% per annum when the matter was decided in the year 2012. In view of the rate of interest given by nationalised bank which was around 9% per annum this Court holds that interest at the rate of 9% needs to be given. In the result, following order is made :-

5) The appeal is allowed. The judgment and award of the Tribunal is modified to make the compensation as Rs.3.91 lakh (Rs. Three Lakh Ninety One Thousand). Interest at the rate of 9% per annum is made payable from the date of petition till realisation. Disbursement is to be made as per the award of the Tribunal. Award to be modified accordingly. Deficit Court fees is to be recovered.

Sd/-
(T.V. NALAWADE, J.)

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