

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

FIRST APPEAL NO. 997 OF 2009

1. Smt Laxmibai @ Punyarath W/o Bandu @ Datta Giri
Age: 28 years, Occu: Household,
R/o. Surpimpri, Parbhani,
Tq. & Dist. Parbhani.
2. Ku. Komal D/ Bandu @ Datta Giri
Age: 9 years, Occu: Nil,
R/o As above.
3. Ku. Kanhopattra D/o Bandu @ Datta Giri,
Aged: 13 years, Occu: Nil,
R/o As above

Both Appellant Nos. 2 & 3 Minor under
guardianship of real Mother
Smt. Laxmibai @ Punyarath Giri,
Age : 28 years, Occu: Household,
R/o As above.

4. Devgir S/o Vithalgir Giri
(Died on 27.3.2008),
Age: 65 years, Occu: Labour,
R/o. As above.
5. Sow Sarjabai W/o Devgir Giri,
Age : 59 years, Occu: Household,
R/o As above.

..APPELLANTS
(Orig. Claimants)

VERSUS

1. Nagorao S/o Rangnathrao Wavle,
Age: 40 years, Occu: Owner & Business
R/o Udegaon, Tq. Aundha,
Dist. Hingoli.
2. The New India Assurance Co,
Through its Branch Manager,
Yashodeep Building, Parbhani,
Tq. & Dist. Parbhani.

...RESPONDENTS
(Orig. Respondent)

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Mr. S.B.Agrawal, Advocate for Appellant;
Mr. M.M. Ambhore, Advocate for Respondent No.2

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CORAM :P.R.BORA, J.
Dated: April 15, 2016

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ORAL JUDGMENT:

1. The present appeal is filed by the original claimants seeking enhancement in the amount of compensation awarded by the learned Motor Accident Claims Tribunal at Parbhani in MACP No. 192/2004 decided on 02.04.2007.

2. Learned Counsel appearing for the appellant submitted that though it was a specific case pleaded by the claimants that deceased was working as a driver with original respondent no.4 and was drawing the salary to the tune of Rs.4,000/- per month, the learned Tribunal has determined the compensation holding the income of the deceased Bandu @ Datta to the tune of Rs.2,000/- per month. Learned Counsel submitted that respondent no.4 with whom the deceased was working as a driver at the relevant time, had in his written statement admitted that he was paying Rs.4,000/- to the deceased by way of his monthly salary. In such circumstances, according to the learned Counsel, the compensation ought to have been determined holding the income of the deceased to the tune of Rs.4000/- per month. He, therefore, sought enhancement in the amount of compensation and modification in the award to that extent.

3. Shri Ambhore, learned Counsel appearing for the Insurance Company has supported the impugned judgment and award. Learned Counsel submitted that the claimants have

failed in bringing on record any cogent and sufficient evidence as regards to the income of the deceased. Learned Counsel further submitted that since the claim petition was filed by the claimants under the provisions of Section 163A of the Motor Vehicles Act, in any case, the income of the deceased could not have been held Rs.4,000/- per month, as contended by the claimants. Learned Counsel submitted that, had the income of the deceased be held to the tune of Rs.4,000/- per month, as contended by the claimants, his annual income would have been Rs.48,000/- and, as such, the claim petition under Section 163A of the Motor Vehicles Act would not have been maintainable. Learned Counsel, therefore, prayed for dismissal of the appeal.

4. I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and the evidence on record. From the discussion made by the learned Tribunal it is difficult to gather as to what was the basis for the Tribunal to hold the income of the deceased to the tune of Rs.2,000/- per month. In fact, neither the petitioner nor the respondents have brought on record any concrete and cogent evidence as regards to the average income of a driver, the job which was being performed by the deceased. In the circumstances, for determining the just and fair compensation payable to the claimants, the Tribunal ought to have taken into account the average income being earned by a skilled workman. There is no dispute that deceased was working as a Driver. It cannot be further disputed that the driver will fall into the category of a skilled workman. At the relevant time, it can reasonably be said that the income of the skilled workman

was around Rs.100/- per day. Even if it is presumed that a person may not get work for all 30 days, or on holidays, the wages of 26 days can be deemed to be the income of a skilled workman. The income of deceased Bandu thus can be held to the tune of Rs.2600/- per month and, accordingly, Rs.31,200/- per annum. Having regard to the number of family members depending upon the income of the deceased, only one fourth of his income will be liable to be deducted from his total annual income. Deducting the same, the balance amount of Rs.23,400/- (31,200 (-) 7800) can be said to be available to be spent by the deceased for maintaining his family members. The Deceased, at the time of his death, was aged about 28 years. The appropriate multiplier would be therefore 17. By applying the said multiplier, amount of dependency compensation comes to Rs.3,97,800/- (Rs. three lacs, ninety seven thousand, eight hundred) (23400 x 17).

I am further inclined to enhance the amount granted by the Tribunal towards loss of love and affection from Rs.7500/- to Rs.25,000/-. The total amount of compensation payable to the claimants thus comes to Rs.4,22,800/- (Rs. four lacs, twenty two thousands, eight hundred). According to him, this will be the just and fair compensation to the claimants, inclusive of the amount of No Fault Liability compensation.

5. In the result, the following order:

ORDER

1) The appeal is partly allowed with proportionate costs.

2) Respondent nos. 1 and 2 shall jointly or severally pay to the appellants i.e. original claimants the aforesaid amount of compensation to the tune of Rs.4,22,800/- ,inclusive of amount of No Fault Liability, together with interest thereon at the rate of six per cent per annum from the date of filing of the claim petition till the actual realization of the amount.

3. Out of the aforesaid amount of compensation,, Rs.1,00,000/- (Rs. one lac), each be invested in Fixed Deposit Receipt, in the names of appellant No.2 Ku.Komal and appellant No.3 Ku.Kanhopattra, in any nationalized Bank till the appellant nos. 2 and 3 attain the age of majority.

A sum of Rs.1,00,000/- (Rs. one lac) be paid to appellant No.5 Smt.Sarjabai widow of Devgir Giri, by account payee cheque.

The balance amount, along with interest accrued thereon, be paid to appellant No.1 Smt. Laxmibai by account payee cheque.

Modified award be prepared accordingly.

(P . R . BORA)
JUDGE

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