

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

FIRST APPEAL NO.2771 of 2013

1. Sow. Kaushalyabai @ Rukminibai
w/o Baburao Patil,
Age 62 Years, Occu. Household,

2. Baburao s/o Dadaro Patil,
Age 67 Years, Occu: Agriculture,
Both R/o Dalimb, Tq. Omerga,
Dist. Osmanabad.

.. Appellants
(Orig. Claimants)

Versus

1. Shri S. Madhukar Reddy,
Age 47 Yearsm /r/o 10-142,
Vijaypuri Colony, R.K.Purama,
Hyderabad (A.P.),
at present R/o Flat No.15, Block "B",
Abhishek Apartments,
Shahu Nagar, Chinchwad, Pune-19.

2. National Insurance Co.Ltd.,
Through its Branch Manager,
Branch Office at Osmanabad,
Dist. Osmanabad.

... Respondents
(Orig. Respondents)

...

Mr. Santosh B. Gatgar, Advocate for Appellants;
Mr. S.N.Pagare, Advocate for Respondent No.2

...

CORAM: P.R.BORA, J.

Dated : 07th April, 2016.

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ORAL JUDGMENT : (PER P.R.BORA, J.)

1) The original claimants have filed the present appeal, seeking enhancement of amount of compensation awarded in Motor Accident Claim Petition No.17 of 2005 decided by the Motor Accident Claims Tribunal at Omerga, District Osmanabad on 23.02.2011 and modification in the award to that extent.

2) The appellants / claimants had filed the aforesaid claim petition, seeking compensation of Rs. 15,00,000/- on account of the death of their only son viz. Balaji, who died in a vehicular accident happened on 28.11.2004 having involvement of a Santro Car bearing No. MH- 09 / AB-896, owned by respondent No.1 and insured with Respondent No.2. It was the contention of the claimants before the Tribunal that, the deceased Balaji was running two electric shops and was earning around of Rs. 1,50,000/- per annum. It was their further contention that, the deceased Balaji was also cultivating their agriculture land and was yielding the income to the tune of Rs. 2,00,000/- threfrom. As was stated in the petition, the age

of deceased Bajaji was 25 years on the date of accident, and he was a bachelor.

3) The respondent Insurance Company resisted the claim on several grounds. The liability was also disputed by the Insurance Company, alleging the breach of policy condition by the owner of the offending Santro Car. According to the contentions raised by the Insurance Company, the driver of the Santro Car was not holding the valid driving license at the relevant time. The Insurance Company had also raised the defense of contributory negligence on the part of deceased Balaji. Quantum was also disputed. The claimants adduced evidence on the point of occurrence of accident and for proving the income of deceased Balaji. None of the respondents adduced any oral evidence.

4) The learned Tribunal on its assessment of oral and documentary evidence brought before it, partly allowed the claim petition. The Tribunal awarded the total compensation of Rs.4,05,000/- and directed the respondent Nos. 1 and 2 to jointly and severally pay to the petitioners the said compensation, along with 9% interest thereon from

the date of filing of the petition till its realization including the amount of N.F.L. Being dissatisfied by the award so passed, the original claimants have preferred this appeal.

5) Shri S.B. Gastgar, the learned Counsel appearing for the appellants / claimants has assailed the impugned Award mainly on two counts, first that, the trial Court has grossly erred in applying the multiplier of 5 while assessing the dependency compensation, and the other that, the income of deceased Balaji has not been properly considered by the learned Tribunal while determining the amount of compensation. Learned Counsel brought to my notice that, considering age of the dependents and based on their age, a multiplier of 5 has been applied by the Tribunal in assessing the amount of compensation. Learned Counsel relying upon the judgment of the Hon'ble Supreme Court in the case of **Amrit Bhanu Shali & ors. Vs. National Insurance Co. Ltd. & Ors. reported in (2012) 11 SCC 738**, submitted that, selection of multiplier in a death case must be on the basis of the age of the deceased and the age of dependents have no nexus with the computation of compensation.

6) In so far as the income of deceased Balaji is concerned, the learned Counsel taking me through the evidence on record, submitted that the Tribunal has totally failed in appreciating the evidence so placed on record by the claimants and has wrongly held the income of deceased Balaji to the tune of Rs.10,000/- per month. Learned Counsel submitted that, the income which was stated by the claimants to the tune of Rs.1,50,000/- was duly proved by the claimants and the compensation ought to have been assessed on the basis of the said proved income. Learned Counsel submitted that, on aforesaid two counts, the award passed by the Tribunal needs modification and the amount of compensation needs to be enhanced accordingly.

7) Shri S.N.Pagare, the learned Counsel appearing for the Insurance Company has opposed the submissions advanced by the learned Counsel appearing for the appellants / claimants. Learned Counsel submitted that, the Tribunal has rightly assessed the amount of compensation and no interference is required in the Award so passed. Learned Counsel when asked to clarify the stand as above the application of multiplier in view of the

judgment of the Hon'ble Apex Court in the case of **Amrit Bhanu Shali** (cited supra), the learned Counsel fairly submitted that, the compensation will have to be determined by applying multiplier as prescribed in the Judgment of the Hon'ble Apex Court. In so far as the income is concerned, the learned Counsel submitted that, the Tribunal has properly considered the entire evidence and has arrived at right conclusion in holding the income of deceased Balaji to the tune of Rs.10,000/- per month.

8) I have considered the submissions advanced on behalf of the learned Counsel appearing for the respective parties. I have also gone through the impugned Judgment and Award and the record of the case. In so far as the objection as regards the multiplier is concerned in view of the Judgment relied upon by the learned Counsel for the appellants in the case of **Amrit Bhanu Shali** (cited supra), the amount of compensation arrived at by the learned Tribunal by applying the multiplier of 5 in any case cannot be sustained. In so far as the income of deceased Balaji is concerned, after having gone through the evidence on record, it does not appear to me that, the Tribunal has committed any error by assessing income of deceased

Balaji to the tune of Rs.10,000/- . It is thus evident that, the impugned Award needs correction in so far as application of the multiplier is concerned.

9) The deceased was admittedly bachelor and as such, only one half of his income can be said to be available for his dependents. Income of the deceased is held as Rs. 10,000/- per month. As such, while determining the dependency compensation, one half of the same i.e. Rs. 5,000/- will have to be multiplied by the appropriate multiplier. Having regard to the age of the deceased, the appropriate multiplier in the instant case would be 18. By applying the said multiplier, the amount of compensation comes to Rs.10,80,000/- ($60,000 \times 18 = 10,80,000$). I do not wish to cause interference in the compensation awarded by the Tribunal under the head of loss of love and affection and funeral expenses. The Tribunal has awarded a sum of Rs.1,00,000/- to the claimants towards the loss of love and affection and Rs.5,000/- towards funeral expenses. The claimants are thus entitled to receive the total compensation of Rs. 11,85,000 ($10,80,000 + 1,00,000 + 5,000 = 11,85,000$). The respondent Nos.1 and 2 are jointly and severally liable to pay aforesaid amount to the

claimants. In the result, the following order:

ORDER

- a) The appellants / claimants are held entitled to the total compensation amounting to Rs.11,85,000/- inclusive of N.F.L compensation jointly and severally from respondent Nos. 1 and 2 along with the interest thereon at the rate of 9% per annum from the date of filing the claim petition till its realization.
- b) Modified award be prepared accordingly.
- c) Deficit Court fees, if any, be recovered from the appellants / claimants before preparation of the modified award.
- d) Appeal stands allowed in the aforesaid terms.

(P.R.Bora)
Judge

SPR