

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2909 OF 2015

1. Shaikh Taher s/o Shaikh Gulab,
Age 43 years, Occ. Nil,
2. Shannobee w/o Shaikh Taher,
Age 38 years, Occ. Household,
Both R/o Samangaon,
Taluka and District Jalna. ... Appellants

Versus

1. Shaikh Moosa s/o Amir Shaikh,
Age Major, Occ. Business,
R/o A-1, 894, Khanbag, Sangli,
Taluka and District Sangli.
2. Suresh s/o Sadashiv Hasve,
Age 45 years, Occ. Driver,
R/o Ahilya Nagar, Bazar Peth, Sangli,
Taluka and District Sangli.
3. The Oriental Insurance Company Ltd.,
Through its Branch Manager,
Branch at Jalna,
Taluka and District Jalna. ... Respondents

.....
Advocate for Appellants : Mr. Avinash D. Aghav
Advocate for Respondent No.3 : Mr. R.F. Totla
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CORAM : V. K. JADHAV, J.
DATED : 9th MARCH, 2016

ORDER :-

1. By consent of learned counsel for respective parties, heard finally.

2. The appellants are the original claimants. On account of accidental death of their son Akbar, the appellants-original claimants filed claim petition being M.A.C.P. No. 85 of 2011 before Motor Accident Claims Tribunal, Jalna. The learned Member of the Tribunal, by impugned judgment and award dated 19.12.2012 has partly allowed the claim petition. Being aggrieved by the said judgment and award, passed by the learned Ex-Officio Member, M.A.C.T. Jalna, in M.A.C.P. No. 85 of 2011, the appellants-original claimants have preferred this appeal for enhancement of compensation.

Brief facts, giving rise to the present appeal, are as follows:-

3. On 6.2.2011, at about 5.30 p.m., deceased Akbar alongwith his relative was proceeding towards Samangaon on motor cycle. On the way, one truck coming from opposite direction in speed gave a dash to the motor cycle and as a result thereof, deceased Akbar had sustained severe injuries. Deceased Akbar was immediately shifted to hospital and during treatment he succumbed to the injuries on 7.2.2011. As stated above, the appellants, who are parents of deceased Akbar, filed claim petition before M.A.C.T. Jalna claiming compensation on account of accidental death of their son against the owner of offending vehicle i.e. the truck involved in the accident and

the insurer.

4. Learned counsel for the appellants submits that the appellant-original claimant No.1 has deposed before the Tribunal that his deceased son Akbar was 18 years old at the time of his death and the same is not considered by the Tribunal. Learned counsel further submits that the Tribunal has considered the age of deceased Akbar as 16 years only for the reason that said age is mentioned in the inquest panchnama as well as in the post mortem report. Learned counsel submits that the age as mentioned in panchnama and post mortem note is just to complete the formalities and the Tribunal should have considered age of deceased Akbar as deposed by his father. Learned counsel further submits that deceased Akbar was doing mason work and in that way he was earning Rs.300/- per day. Learned counsel submits that the Member, M.A.C.T. has erroneously considered deceased Akbar as non earning member and considered his income as Rs.15,000/- p.a. and accordingly decided the quantum of compensation. Learned counsel further submits that for the age group of 15 to 20, the multiplier 18 is contemplated, however, the same is not considered by the Tribunal and multiplier of 16 is applied in the case, which is not proper, correct and legal. Learned counsel for the appellants-original claimants submits that in view of ratio laid down by the Supreme Court in the case of **Sarla Verma (Smt) and**

others vs. Delhi Transport Corporation and another, reported in 2009 (4) All MR 429 (S.C.), relevant multiplier in the case of death of a person between the age group 15 to 20 years, is 18. Learned counsel further submits that the Tribunal has not considered loss of estate as well as love and affection of the parents towards their son. Learned counsel further submits that the appellants-original claimants are poor persons and since they were not able to pay court fees, the appeal is restricted to the extent of enhancement of compensation at Rs.1,00,000/-. Learned counsel submits that if this court comes to the conclusion to enhance the amount of compensation, in that event the appellants are ready to pay court fees on such enhanced amount.

5. Learned counsel for respondent No.3-insurer submits that the Tribunal has rightly considered the age of deceased as 16 years, as no documentary proof of age was submitted. Learned counsel submits that if deceased Akbar was 16 years old at the time of his accidental death, then the Tribunal has rightly considered his annual income as Rs.15,000/-. Learned counsel submits that the Tribunal has rightly awarded compensation and no case is made out for enhancement of compensation. Learned counsel submits that the appellants-original claimants have restricted their claim to the extent of Rs.1.00,000/- (Rupees One Lac only) so far as the enhancement

is concerned, and if this Court forms the opinion to enhance the compensation, then the same may be considered to the extent of Rs.1.00,000/- only. Learned counsel submits that there is no merit in the appeal and the appeal is thus liable to be dismissed.

6. After hearing learned counsel for the respective parties, following points arise for my consideration and I record my findings on the same, as under:-

	<u>POINTS</u>	<u>FINDINGS</u>
I.	Whether the learned Member of M.A.C.T. Jalna has assessed the compensation correctly?	No
II.	Whether the impugned judgment and award dated 19.12.2012 passed by M.A.C.T. Jalna calls for interference?	Yes
III.	What order?	As per final order.

REASONS

7. Appellant No.1 has deposed before the Tribunal that his son deceased Akbar was 18 years of age at the time of his accidental death. He has admitted in his cross examination that he is not having any documentary proof about the age of his deceased son Akbar. However, it appears that the Tribunal has considered age of deceased Akbar as 16 years mainly on the ground that the same is mentioned in the inquest panchnama as well as in post mortem

report. Even assuming that deceased Akbar was 16 years of age at the time of his accidental death, it appears that the claimants herein are labourers by occupation and deceased Akbar was illiterate. This is the way of life in poor families that at the age of 14 and above, generally the members of family work on daily-wages. Learned Member of the Tribunal, though has considered the age of deceased Akbar as 16 years, failed to consider further that he was earning something by doing labour work. Consequently, learned Member of the Tribunal has erroneously considered the income of deceased Akbar as non earning for the sole reason that he was 16 years of age at the time of his death and accordingly treated him as non earning member and considered the loss of income as Rs.15,000/- per year.

8. Claimant No.1 has deposed that deceased Akbar was doing mason work and earning Rs.300/- per day, however, the same is not supported by any evidence. Thus, in that way the notional income can be considered and in the present case, the same is appropriate to be considered at Rs.3000/- p.m. If the notional income is considered as Rs.3000/- p.m., after considering the personal expenditure i.e. $\frac{1}{3}^{\text{rd}}$ of notional income, Rs.2000/- p.m. corresponding to Rs.24000/- per year would be the loss of income. The learned Member of the Tribunal has wrongly applied the multiplier 16 instead of 18. In that event, if 18 multiplier is applied in

the present case, the total loss of income comes to Rs.4,32,000/-. Learned member of the Tribunal has deducted 20% of the amount of compensation under the head of loss of income on account of contributory negligence by deceased Akbar. Learned counsel for the appellants-original claimants has also accepted the same. Thus, after deducing the said amount to the extent of 20% of contributory negligence, the total compensation under the head of loss of income comes to Rs.3,45,600/-.

9. Learned member of the Tribunal has erroneously awarded compensation under the heads of pains and sufferings. In death claim, I do not think that compensation can be awarded under pains and sufferings when deceased Akbar died on the very next day. Learned counsel for the appellants-original claimants has rightly submitted that the Tribunal has not awarded compensation under the head of loss of estate and love and affection. Thus, the amount awarded under the head of pains and sufferings be treated as compensation awarded under the head of loss of estate and love and affection.

10. In the light of above observations, the breakup of compensation under the different heads awardable to the appellants-claimants can be broadly categorized as under:-

I)	Amount towards loss of financial support from deceased Akbar	Rs.3,45,600.00
ii)	Loss of estate, love and affection	Rs. 67,000.00
iii)	Towards funeral expenses	Rs. 5,000.00

	Total	Rs. 4,17,600.00
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Thus, the claimants are entitled to Rs.4,17,600.00 as total compensation with interest @ 7.5% p.a. from the filing of claim petition till realization of entire amount.

11. The appellants-claimants shall pay additional court fees on the enhanced amount of compensation. I answer the points accordingly and I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby allowed.
- II. The respondent Nos. 1 to 3 are jointly and severally do pay Rs.4,17,600/- to the claimants with interest @ 7.5% p.a. from the date of filing of claim petition till realization of the amount. The said amount includes claim under Section 140 of the Motor Vehicles Act.
- III. Award be drawn up accordingly. Appeal is disposed of. No costs.

(V. K. JADHAV, J.)