IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 994 OF 2013

1. Smt. Ushabai Prabhakar Nyhalde,
Age 48 years, Occ. Housewife,

2. Mayur Prabhakar Nyhalde
Age 25 years, Occ. Education

3. Paresh Prabhakar Nyhalde
Age 25 years, Occ. Education

All R/o. Nimbhore, Tq. Amalner
District Jalgaon ...Appellants

versus

1. Shri Dilipkumar Nathulal Jain,
Age major, Occ. Transport
R/o. Mamta Road Lines
52/203, Mahindra Park,
Palghar Rod, Bhoisar,
Tq. and District Palghar

2. The New India Assurance Company Ltd.
Through its Branch Manager
Yashovallabh Complex,
Dhule ...Respondents

.....

Mr. Shrikant S. Patil, advocate for the appellants
Mr. M.M. Ambhore, advocate for respondent No.2

.....

CORAM : V. K. JADHAV, J.

Date of Reserving the Order : 22.03.2016

Date of pronouncing the Order: 12.04.2016

ORDER :-

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

2. Being aggrieved by the judgment and award dated 03.08.2012, passed by the learned Member, M.A.C.T. Dhule in M.A.C.P. No. 15 of 2009, the appellants-original claimants preferred this appeal for enhancement of compensation.

3. Brief facts, giving rise to the present appeal, are as under:-

a) On 23.11.2008 at about 11.30 a.m. on Mumbai-Agra Road near Varkheda Phata, Dhule, deceased Prabhakar was riding his motor cycle bearing registration No. MH-19-W-7621 in the direction of Parola road Chaowfully towards Vaidane. One Naval Manore was the pillion rider on the said motor cycle. On the way, one truck bearing registration MH-04-CP-6015, being driven in high speed in rash and negligent manner by its driver, gave a dash to the motorcycle. In consequence, deceased Prabhakar had sustained injuries and he succumbed to those injuries. The legal heirs and representatives of deceased Prabhakar filed M.A.C.P. No. 15 of 2009 before the M.A.C.T.

Dhule for grant of compensation under various heads.

b) According to the claimants, deceased was 50 years of age at the time of his death. He was government servant and he was personally cultivating the agriculture land and he was the only earning member in the family. All the claimants were dependent on his earnings. The claimants have claimed compensation of Rs.15,00,000/- from owner of the truck as well as insurer of the vehicle involved in the accident. Respondent No.1 owner though duly served, remained absent and therefore, the claim petition ordered to be proceeded exparte against him.

c) Respondent No.2-Insurer has however, strongly resisted the claim petition by filing written statement at Exh.16. On the basis of rival pleadings of the parties to the claim petition, the Tribunal has framed issues. The claimants in order to prove claim, adduced oral as well as documentary evidence. Respondent No.2 insurer has not adduced any evidence.

d) The Learned Member of the Tribunal by its impugned judgment and award dated 3.8.2012 partly allowed the claim petition and thereby directed the respondents to pay jointly and severally compensation of Rs.12,05,000/- with interest at the rate of 8% p.a. Being aggrieved by the same, the original claimants prefer this appeal to the extent of quantum of compensation.

4. The learned counsel for the appellants-original claimants submits that deceased Prabhakar was serving as Gram Sevak in Panchayat Samiti, Jalgaon on monthly salary and as per his salary certificate, produced on record, the last pay (gross salary) for the month of October, 2008 drawn by him was Rs.17,447/-. Learned counsel submits that deceased Prabhakar had permanent job and addition of 30% should be made by taking note of his future prospectus. Learned counsel submits that the Tribunal has not considered the same. Learned counsel further submits that in addition to salaried income, deceased Prabhakar was also getting income by cultivating his agriculture land. The value as supervisory services of the deceased was required to be estimated. It is not permissible to say that no amount need be awarded towards loss merely because corpus of the agriculture land is left intact for the dependents. Learned counsel submits that the Tribunal could have added Rs.3000/- p.m. as loss on account of untimely death of deceased Prabhakar. Learned counsel submits that the Tribunal has considered non pecuniary damages at extremely lower side. Learned counsel submits that the Tribunal has also erroneously deducted 1/3rd amount from salaried income, as deduction towards

income tax, the same is not permissible. Learned counsel submits that the interest is awarded from the date of order without giving any reason. Learned counsel submits that Tribunal could have considered the same in view of authoritative pronouncement of Hon'ble Supreme Court in the case of ***Asha Verman vs. Maharaj Singh, reported in AIR (SCW)-2015-3577,*** in view of the principles lay down in the case of ***Kalpanaraj and ors. Vs. Tamilnadu State Transport Corporation, reported in 2014 AIR (SCW) 2982***.

5. Learned counsel for the appellants in order to substantiate his submissions places reliance on the following judgments:-

I) Kalpanaraj and Ors. vs. Tamilnadu State Transport Corporation, reported in 2014 AIR (SCW) 2982

ii) Rajesh and others vs. Rajbir Singh and others, reported in 2013 (9) SCC 54

iii) Asha Verman vs. Maharaj Singh, reported in AIR (SCW)-2015-3577,

iv) Sarla Verma and others vs. Delhi Transport Corporation and Anr, reported in 2009 (6) SCC 121

v) Tukaram Vaijnath Bahirwal and Anr. vs. Nasib Kaur w/o late Babusing and others, reported in 2003 BCI (0) 25,

vi) Sau. Rekha Ramesh Warghe and ors. vs. Tirandas Bansi Wankhede & Ors, reported in 2010 (0) BCI 153

vii) Ponnumany @ Krishnan and Anr. vs. V.A. Mohanan and Ors, reported in 2008 AIR (SC) 2014.

viii) Decision of this Court in First Appeal No. 323 of 2014 dated 25.8.2015 (Yogeshwarbai Pramod Thakre and others vs. Satish Ramji Barwad and Anr)

6. Learned counsel for respondent No.2-insurer submits that deceased Prabhakar was more than 50 years of age at the time of his accidental death and therefore, there cannot be any addition towards future prospectus. Learned counsel submits that so far as the question of determination of addition in income by considering future prospectus is concerned, in the light of divergent views, the Supreme Court in the case of ***National Insurance Company vs. Pushpa and others,*** referred the matter to the larger Bench as regards the manner of additional income for future prospectus. Learned counsel further submits that even otherwise also the claimants have not adduced satisfactory evidence to show that there were genuine prospectus for increase or enhancement in the earning of deceased. Learned counsel submits that if as per the case of claimants deceased Prabhakar was doing full time job on monthly salary, then it was not possible for him to personally cultivate the land. Learned counsel submits that corpus of agriculture land

remained as it is and major sons of deceased Prabhakar are cultivating the agriculture land after death of Prabhakar. Learned counsel submits that there is no loss for want of experienced and skilled approach for cultivating the agriculture land. Learned counsel in the alternate submits that at the most Rs.500/- p.m. can be considered as loss of income on that count. Learned counsel further submits that the Tribunal has rightly deducted 1/3 amount towards income tax and the same is permissible in view of authoritative pronouncement of Supreme Court of India in the case of ***Shyamwati Sharma and Ors. vs. Karam Singh and Others, reported in 2010 AIR SCW 4391 (1).*** Learned counsel submits that the Tribunal has rightly awarded the compensation under the heads of non pecuniary damages. Learned counsel submits that the Tribunal has awarded just and reasonable compensation and therefore, the impugned judgment and award calls for no interference.

7. It is not disputed that deceased Prabhakar died due to rash and negligent driving of the driver of truck bearing registration No. MH-04-CP-6015 owned by respondent No.1 and insured with respondent No.2. Thus, following points arise for my consideration and I record my findings on them for the reasons given below:-

SR.NO.	POINTS	FINDINGS
1	Whether the Tribunal has correctly assessed the compensation under various heads?	Partly in the negative.
2	Whether the impugned judgment and award calls for interference?	Partly affirmative to some extent.
3	What order?	As per final order.

8. Claimant No. I (widow of deceased Prabhakar) stepped into witness box and deposed that at the time of death, the age of her husband was 50 years. She has produced various documents before the Tribunal, including school leaving certificate of her husband Prabhakar at Exh.34 and driving licence of deceased Prabhakar at Exh.38. In both the documents, date of birth of deceased Prabhakar is mentioned as 01.06.1958. The date of accident in this case is 23.11.2008. Thus, considering date of birth of deceased Prabhakar, he was 50 years, five months of 22 days old when the accident had taken place.

9. In the case of ***Sarla Verma and others vs Delhi Transport Corporation and Anr. (supra),*** relied upon by both the counsel for the respective parties, the Supreme Court, in para 11 of the judgment made the following observations:-

> "11. In Susamma Thomas, this Court increased this income by nearly 100%, in Sarla Dixit, the income was

increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospectus, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 yeas. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

10. In the case of ***Reshma Kumari & others vs. Madan Mohan and Anr. reported in 2013 (9) SCC 65***, in para 36 of the judge, the Hon'ble Supreme court has made following observations:-

"36. The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases."

11. In the case of ***Rajesh and others vs. Rajbir Singh and others, reported in 2014 (1) Mh.L.J. 79,*** wherein judgment in the case of Reshma Kumari and others (supra) is not referred to. In para 12 of the said judgment, the Supreme Court has made following observations:-

"12. In *Sarla Verma's case (supra)*, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the

> victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

12. In ***Santosh Devi vs. National Insurance company Ltd. and others, reported in 2012 (6) SCC 421*** though Rajesh and others vs. Rajbir Singh (supra) is not referred to. The same view was taken by the Supreme court so far as addition of future prospects in case of a person who is self employed or who is employed on a fixed salary without provision for annual increment.

13. The Supreme Court in the case of ***National Insurance Company vs. Pushpa and others, in Special Leave to Appeal (C) No. 8058 of 2014 decided on 2.7.2014*** considering the divergent opinion in the case of Reshma Kumari (supra) and Rajesh and others (supra), has made observation to refer the matter to larger Bench as regards the manner of admission of income for future prospectus.

14. In the present case, deceased Prabhakar had permanent job and considering his age of superannuation no addition can be made towards future prospectus, as deceased Prabhakar was more than 50 years of age at the time of his accidental death. Furthermore, the appellants-claimants have examined witness No.2 on the point of salaried income of deceased. He has not deposed about any definite

prospectus of increase in the income of deceased in future. In absence of any strong and positive evidence on record, no addition of income can be considered since deceased Prabhakar had crossed the age of 50 years at the time of his accidental death.

15. The appellants-original claimants had produced 7x12 extracts before the Tribunal and the same are marked Exh. 35, 36 and 37. On perusal of the same, it appears that deceased Prabhakar was owner and in possession of total 3 Hectare and 08 R of land. It has come in the evidence that he was personally cultivating the said land. Deceased Prabhakar was serving as Gram Sevak. Undisputedly it is a full time job. Thus, while estimating the damages in case of income from agriculture land, the value of supervisory services needs to be considered. In the case in hand, considering the Government job of deceased Prabhakar and the nature of his duties and the fact that deceased Prabhakar left behind two major sons, who are admittedly looking after agriculture land, it would be appropriate to consider the value of supervisory services on the part of deceased Prabhakar at Rs.500/- p.m. in addition to his salaried income.

16. So far as the compensation awarded by the Tribunal under non pecuniary heads is concerned, in the case of ***Rajesh and others vs. Rajbir Singh and others (supra)*** it appears that the Apex Court has

not laid down the proposition of law and in the fact of the said case before the Apex Court, certain amounts have been granted under the said heads. In the said case, the claim petition, filed by the widow with three minor children was under consideration and widow was 33 years of age. However, in the case in hand, the appellant-claimant No.1 is 45 years of age, as shown in the title cause of claim petition and the claimant Nos. 2 and 3 are major sons. However, I accept that the Tribunal has awarded very meager amount under the head of loss of consortium, loss of estate, funeral expenses and love and affection.

17. It appears that Tribunal has deducted 1/3rd amount towards income tax. As per the calculations, considering monthly salary of deceased Prabhakar, yearly income comes to Rs.2,07,000/- and if permissible deductions are applied, the income appears to be in the range exempted from income tax. Furthermore, in the case in hand, addition in the annual income by way of future prospectus is also not considered. Thus, the deduction of 1/3rd amount from the annual income of deceased by the Tribunal towards income tax appears to be unwarranted and uncalled for.

18. In view of the above discussion, monthly income of deceased Prabhakar for the purpose of assessment of compensation is

required to be considered as Rs.17,750/- (Rs. 17250/- towards salary + Rs.500/- towards the valuation of supervisory services with regard to agriculture income). After deducting 1/3rd amount towards personal expenses of deceased Prabhakar, the actual income of deceased Prabhakar comes to Rs.11,833/-, which can be rounded off at Rs.11,800/- p.m. Considering the age of deceased, the multiplier 13 is appropriate and the same is rightly considered by the Tribunal.

19. The appellants are entitled for amount of Rs.25,000/- towards loss of consortium, Rs.10,000/- each (Rs.20,000/-) for claimant Nos.2 and 3 towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.10,000/- towards funeral expenses. The learned Member of the Tribunal has awarded interest from the date of order without specifying any reason for the same. Thus, the appellants-claimants are entitled for interest from the date of application till realization of entire amount.

20. In view of the aforesaid discussion, after modification of quantum, the breakup of compensation can be broadly categorized as under:-

i)	Towards loss of dependency/ income (Rs.11,800X12X13)	Rs.18,40,800.00
ii)	Towards loss of consortium	Rs. 25,000.00
iii)	Towards love and affection	Rs. 20,000.00
iv)	Loss of estate	Rs. 10,000.00
v)	Funeral expenses	Rs. 10,000.00
	Total	Rs.19,05,800.00

(Rupees nineteen lacs five thousand eight hundred only)

21. In view of the above, following order is passed.

O R D E R

I. First appeal is hereby partly allowed with proportionate costs.

II. The judgment and award dated 03.08.2012, passed by learned Member, M.A.C.T. Dhule, in M.A.C.P. No. 15 of 2009 is modified to the following effect;

The respondent Nos. 1 and 2 are directed to pay, jointly and severally, compensation of Rs.19,05,800/-

with interest, as prescribed by the Tribunal from the date of application till the realization of entire amount to the claimant.

III. Rest of the judgment and award passed by the Tribunal stands confirmed.

IV. The award be drawn up accordingly.

(V. K. JADHAV, J.)

rlj/