IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

First Appeal No.375 of 2000

* The New India Assurance Co. Ltd.
Branch Swantatrayaveer Savarkar
Udyog Bhavan, Congress Bhavan
Marg, Shivajinagar, Pune 411005,
Through the Divisional Manager,
The New India Assurance Co. Ltd.
D.O. No.I, Adalat Road, Aurangabad. **.. Appellant.**

Versus

1) Deepali Babasaheb Nimse,
Age 20 years,
Occupation : Household,
R/o Village Pokharwadi,
Taluka and District Ahmednagar.

2) Parubai w/o Mohan Nimse,
Age 46 years,
occupation : household,
R/o As above.

3) Sampat s/o Mohan Nimse,
Age 21 years,
occupation : Education,
R/o As above.

(respondent No.3 is abated as per
order dated 3-2-2004)

4) Raj Mohan Nimse,
Age 18 years,
Occupation & R/o As above.

5) Dadu s/o Shantaram Kadam,
Age Major,
Occupation : Driver,
R/o Laskar Bungalow No.10,
Pune.

6) Mohan Santu Nimse
Age 50 years,
Occupation : Nil (Deleted)

7) Dinshaw M. Kama,
Age Major, Occu: Business
(Dead). .. **Respondents.**

Shri. M.M. Ambhore, Advocate, for appellant.

Shri. V.P. Latange, Advocate, for respondent Nos.1,2 & 4.

Appeal abated as against respondent No.3.

Respondent No.6 – deleted.
Respondent No.7 – dead.

CORAM: T.V. NALAWADE, J.

DATE : 29th FEBRUARY 2016

JUDGMENT:

1) The appeal is filed by the insurance company to challenge the judgment and award of Claim Petition No.485/1993 which was pending before the Claims Tribunal Ahmednagar. In respect of death of one Babasaheb, who died in a motor vehicle accident, the Tribunal has granted total compensation of Rs.5,58,000/- in favour of the widow and parents and so the insurance company challenged the decision only on the point of quantum of compensation. Heard learned counsels for both sides.

2) It appears that the owner of the offending vehicle, present respondent No.7, Dinshaw Kama, is dead. Steps were not taken to bring legal representatives of the owner on the record. Learned counsel for the insurance company submitted that the matter was contested only by the insurance company before the Tribunal and the owner and driver had remained absent. In view of these circumstances, this Court presumes that permission must have been given by the Tribunal under section 170 of the Motor Vehicles Act in favour of the insurance company and so the insurance company can be allowed to prosecute the present matter against the original claimants.

3) The age of the deceased was 26 years. Evidence is given by the claimants that the deceased was making income of Rs.2600/- per month from his service and he was making income from agriculture which was around Rs.25,000/- per annum. Evidence is given that the family owns 5 acres agricultural land. At the relevant time the age of the deceased was 26 years. One Manoj is examined by the claimants to prove that the deceased was

working in his shop and he was paid at least Rs.2600/- per month. He gave evidence that in addition to salary, the deceased was given commission and in the year 1992 commission of Rs.4600/- was paid by him. One Kiran is also examined to prove the income of the deceased and he gave evidence that the deceased was earning at least Rs.3600 per month. Both these claimants' witnesses were working in the shop "M/s Walvekar Brothers". There is nothing in rebuttal.

4) The Tribunal has considered the aforesaid evidence. The Tribunal has also considered the prospects of making more income in future and the Tribunal has held that the monthly income was Rs.3500/- and Rs.1000/- is deducted towards personal expenses and the Tribunal held that there is monthly loss of Rs.2500/-. 18 is used as multiplier for calculating future loss of income though 17 could have been used. However, meagre amount is granted under the heads like loss of estate, loss of consortium and under the head of funeral expenses. Much more amount could have been given as compensation on the principle of fault. This Court holds that it is not

possible to interfere in the decision on the point of quantum of compensation.

5) Learned counsel for the appellant submitted that the insurance company has collected information which shows that the widow of the deceased married second time. He also submitted that during pendency of the appeal the father of the deceased died. Theses circumstances cannot help the insurance company in any way. Rights which were vested in the claimant which were there on the date of the petition need to be considered.

6) So, the appeal stands dismissed.

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

rsl