

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

FIRST APPEAL NO. 2224 OF 2015

1. Baburao Bhikaji Dighole
Age : 53 years, Occ: Agriculture,
R/o : Bhalgaon, Taluka and
District Aurangabad.
2. Bhagwat Baburao Dighole,
Age : 25 years, Occ: Agriculture,
R/o : Bhalgaon, Taluka and
District Aurangabad.
3. Sominath Baburao Dighole
Age : 23 years, Occ: Education,
R/o : Bhalgaon, Taluka and
District Aurangabad.
4. Meena Baburao Dighole,
Age : 21 years, Occ: Education,
R/o : Bhalgaon, Taluka and
District Aurangabad.

... Appellants
(Ori.Claimants)

Versus

1. Maharashtra State Road Transport
Corporation,
Through Divisional Controller,
Aurangabad.
2. Sambhaji Madhavrao Dumne,
Age : 51 years, Occ: Driver,
R/o Raiwadi, Taluka Chakur,
District Latur.

.....
Advocate for the appellants : Mr. A. C. Darandale
Advocate for respondent No.1: Mrs. Ranjana Reddy
.....

CORAM : V. K. JADHAV, J.

RESERVED FOR ORDER ON: 11th MARCH, 2016
ORDER PRONOUNCED ON: 12th APRIL, 2016

ORDER:-

1. By consent of learned counsel for respective parties, heard finally at admission stage.
2. Being aggrieved by judgment and award dated 05.11.2014 passed by learned Chairman, MACT, Aurangabad in MACP No. 637 of 2012, the appellants-original claimants have preferred this appeal for enhancement of compensation.
3. Brief facts giving rise to the present appeal are as under:

On 05.07.2012, deceased Dropatabai was traveling as a pillion rider on motorcycle. One Shri Bhimrao was riding the said motorcycle. On that day at about 8:30 p.m. near Krushnai Hotel, within the limits of village Zalta on Aurangabad-Beed road, one S.T.Bus bearing registration No. MH-40-N-8378 came in high speed from Beed side and gave dash to the motorcycle, in consequence of which, said Bhimrao died on spot, where as deceased Dropatabai was taken to hospital where she succumbed to the injuries while under treatment. The appellants-claimants being legal representatives of deceased Dropatabai, filed claim petition bearing MACP No.637 of

2012 before MACT, Aurangabad for grant of compensation *inter-alia* contending therein that deceased Dropatabai was 45 years of age at the time of her accidental death and she was earning Rs.6,000/- per month by doing agricultural work and milk business. The appellants-claimants claimed total compensation of Rs.7,00,000/- under various heads. Learned Chairman, MACT Aurangabad, by the impugned judgment and award dated 05.11.2014, held the appellants/petitioners entitled for total compensation of Rs.3,50,000/- and accordingly, partly allowed the petition thereby directing the opponent MSRTC to pay total compensation of Rs.3,00,000/- to the appellants-claimants along with interest, since the appellants-claimants have already received an amount of Rs.50,000/- towards "No Fault Liability". Hence this appeal for enhancement of compensation.

4. Learned counsel for the appellants-claimants submits that the tribunal has not considered the income of deceased Dropatabai. Learned counsel submits that the tribunal has also not considered the increase of monthly income by considering the future prospects. Learned counsel submits that the tribunal has not considered the loss to the family of claimants, such as house keeping services, loss suffered by the children of the personal attention of their mother and the loss of wife's personal care and attention, the husband has

suffered. Learned counsel submits that the tribunal has considered notional income of deceased Dropatabai as Rs.3000/- per month and accordingly, assessed the compensation. Learned counsel submits that the tribunal has awarded meager amount under the heads of non-pecuniary loss. Learned counsel submits that as per the Notification issued by the Ministry of Rural Development dated 23.03.2012, the State-wise wage rates of unskilled manual workers came to be decided under the provisions of Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and as per this Notification, the wage rate in rupees par day for unskilled manual workers in the State of Maharashtra is Rs.145/-. Learned counsel submits that the tribunal should have considered the said rate while considering notional income of deceased Dropatabai.

5. Learned counsel for the appellants-claimants, in order to substantiate his contentions, placed reliance on the decisions in following cases:

1. ***Rajesh and others vs. Rajbir Singh and others***, reported in **(2013) 9 SCC 54**,
2. ***Kalpanaraj and others vs. Tamilnadu State Transport Corporation***, reported in **(2015) 2 SCC 764**,
3. ***Puttamma and others vs. K. L. Narayana Reddy and another***, reported in **AIR 2014 SC 706** and

4. ***Arun Kumar Agrawal and another vs. National Insurance Company Limited and Others***, reported in ***(2010) 9 SCC 218***.

6. Learned counsel for respondent No.1-MSRTC submits that the tribunal has, in absence of income proof of deceased Dropatabai, rightly considered her notional income at Rs.3,000/- per month. Learned counsel submits that for applying the provisions of Section 163-A, most particularly Second Schedule of the Motor Vehicles Act, 1988, income of the earning spouse is required to be brought on record and in absence of that, the tribunal has rightly considered the income of deceased Dropatabai. Learned counsel submits that deceased Dropatabai had no fixed income as such, and there is no question of addition of any income considering the future prospects in this case. Learned counsel further submits that the tribunal has awarded just and reasonable compensation under the non-pecuniary heads. Learned counsel submits that no interference is required and the appeal is thus, liable to be dismissed with costs. Learned counsel, in order to substantiate her contentions, placed reliance on the decisions in following cases:

1. ***Munna Lal Jain and another vs. Vipin Kumar Sharma and others***, reported in ***(2015) 6 SCC 347***,
2. ***Ramilaben Chinubhai Parmar vs. National Insurance***

Co., reported in 2014 (4) Bom.C.R. 338,

3. ***Maharashtra State Road Transport Corporation vs. Pundlik Natthuji Adagale***, reported in **2013 (5) Mh.L.J. 214,**
4. ***New India Assurance Co. Ltd. vs. Alpa Rajesh Shah and others***, reported in **2014 (2) Mh.L.J. 17** and
5. ***Smt. S. R. Mangala Gowramma and others vs. P. M. Narayana and National Insurance Co. Ltd.***, reported in **2014 ACJ 1833.**

7. There is no dispute that the petitioners proved that on 05.07.2012 at about 8.30 p.m. near Krushnai Hotel within the limits of village Zalta at Aurangabad-Beed road, the accident had taken place due to rash and negligent driving of S.T. Bus bearing registration No.MH-40-N-8378 by its driver and in the said accident, Dropatabai sustained serious injuries and died in hospital.

8. Thus, the following points arise for my determination and I have recorded my findings to those points for the reasons given below :

POINTS	FINDINGS
1. Whether the tribunal has assessed the compensation under various heads correctly, properly and legally ?	Partly in the negative.

- | | | |
|----|---|----------------------------|
| 2. | Whether the impugned judgment and award calls for an interference ? | Partly in the affirmative. |
| 3. | What order ? | As per final order. |

REASONS

9. Claimant No.3-Sominath has deposed that his deceased mother Dropatabai was doing agricultural work and milk business and earning Rs.6,000/- per month. However, the claimants have failed to substantiate the same. As per Schedule II of the Motor Vehicles Act, 1988, in case of a spouse, 1/3rd of income of the earning surviving spouse for the purpose of computing compensation is considered. In the case in hand, claimant No.1-husband of deceased Dropatabai has not examined himself, nor his income was brought on record to compute the income of deceased Dropatabai in terms of Schedule II of the Motor Vehicles Act. In the case of **Arun Kumar Agrawal** (*supra*), relied upon by learned counsel for the appellants-claimants, the Supreme Court has observed in paragraph No.35 of the judgment as under :

“35. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependants of a deceased wife/mother, who does not have a regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a

fixed period. The gratuitous services rendered by the wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. It its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs.15,000/- per annum and in case of a spouse, 1/3rd income of the earning/surviving spouse for the purpose of computing the compensation.”

10. In absence of income proof in the present case, learned Chairman of the tribunal is left with no other choice but to consider the notional income of deceased Dropatabai.

11. Learned Member of the tribunal has considered the notional income of deceased Dropatabai at Rs.3,000/- per month as agricultural labour. So far as the notifications issued by the Industries, Energy and Labour Department, State of Maharashtra, relied upon by learned counsel for the applicant, are concerned, those rates of wages specified in the Notification are payable to the employees employed in any industry engaged in the scheduled employment in the State of Maharashtra. The said rates are fixed by calculating average of the “Cost of Living Index Number” applicable

to the said employees. Thus, the same can not be considered while deciding the notional income of an agricultural labour in the State of Maharashtra.

12. Learned counsel placed reliance on certain provisions of The National Rural Employment Guarantee Act, 2005. The said Act provides for enhancement of the livelihood security of the households in the rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to such households, whose adult members volunteer to do unskilled manual work. As per the Notification dated 23.03.2012, State-wise wage rates for Unskilled Manual Workers are specified. So far as the State of Maharashtra is concerned, the same is specified as Rs.145/- per day with effect from 1st April, 2012. Said Notification is subject to outcome of Special Leave to Appeal pending before the Supreme Court. Learned counsel for the appellant has not brought to the notice of this Court the decision, if any, rendered in the said Special Leave to Appeal, as referred to in the said Notification.

13. It appears from the said Notification that the Central Government specified the wage rates payable to the Unskilled Manual Workers working under various schemes under the provisions of The National Rural Employment Guarantee Act, 2005.

It also appears from the provisions of the said Act of 2005 that for the purpose of giving effect to the guarantee of rural employment to household, every State Government is required to make a scheme for providing not less than 100 days of guaranteed employment in one financial year to every household in rural areas covered under the scheme. It thus appears that, the wages are specified considering the provisions of said Act and for implementation of a scheme for the purpose of giving effect to the provisions of the said Act by the State. In absence of any fix minimum wages for agricultural labour in the State, I am not inclined to consider the above rates as specified considering the provisions of the said Act.

14. In case of ***Sarla Verma (smt.) and others vs. Delhi Transport Corporation and another***, reported in **2009 (6) SCC 121**, addition is made to the actual income of deceased towards his future prospects in relation to the salaried persons, and subsequently, in the case of ***Santosh Devi vs. National Insurance Company Ltd. and others***, reported in **2012 (6) SCC 421**, the same is also made applicable to the person self employed or engaged on fixed wages. Furthermore, in view of the judgment delivered by the Apex Court in the case of ***National Insurance Co. Ltd vs. Pushpa and others*** (Special Leave to Appeal (c) No. 8058/2014) decided by the Apex Court on 02.07.2014, the question

of manner, in which the future prospects are required to be considered, has been referred to larger Bench. In the case in hand, deceased Dropatabai was neither self employed, nor engaged on fixed wages. Thus, there is no question of making addition to the notional income towards her future prospects.

15. So far as compensation awarded by the tribunal under the heads of non-pecuniary loss is concerned, the same requires reconsideration. Learned Chairman of the tribunal has awarded Rs.12,000/- towards "loss of consortium" and a meager amount of Rs.2,000/- for "funeral expenses". Considering the facts and circumstances of the present case, "loss of consortium" is required to be awarded at Rs.25,000/-, Rs.10,000/- each, for claimant Nos. 2 to 4 towards "loss of love and affection". After the accident, deceased Dropatabai was taken to hospital, where she succumbed to the injuries while under treatment. Considering the same, the "funeral expenses" are required to be awarded at Rs.10,000/-.

16. Thus, compensation under the heads of non-pecuniary loss is recalculated and redetermined as follows :

- | | | | |
|----|---|----|-------------|
| 1. | Loss of consortium | -- | Rs.25,000/- |
| 2. | Loss of love and affection
(Rs.10,000/- each to claimant
Nos. 2 to 4) | -- | Rs.30,000/- |

3.	Funeral expenses	--	Rs.10,000/-
	TOTAL	--	Rs.65,000/-

Total amount of compensation, thus, comes to Rs.4,01,000/- (Rs.3,36,000/- towards 'loss of dependency' as awarded by the tribunal + Rs.65,000/- towards compensation under non-pecuniary heads). The appellants-claimants have already received an amount of Rs.50,000/- towards "No Fault Liability". The claimants are thus, entitled for a total amount of Rs.3,51,000 (4,01,000-50,000) along with interest as awarded by the tribunal. I answer point Nos. 1 and 2 accordingly and proceed to pass the following order :

O R D E R

- I. The First Appeal is hereby partly allowed.
- II. The judgment and award dated 05.11.2014 passed by learned Chairman, MACT, Aurangabad in MACP No.637 of 2012 is hereby modified in the following manner.

Opponent No.1-M.S.R.T.C. is directed to pay total compensation of Rs.3,51,000/- to the petitioners along with interest at the rate of 9% per annum from the date of filing of the petition till realization of the amount.

- III. The rest of the judgment and award passed by the tribunal stands confirmed.

IV. Award be drawn up in tune with above modification.

V. The First Appeal is accordingly disposed of.

(V. K. JADHAV, J.)

...

vre/-