IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.300 OF 2015

1. Ashamati w/o Prakash Kokate,
   Age 28 years, Occu: Housewife.

2. Krushna s/o Prakash Kokate,
   Age 11 years, Occu: Education.

3. Rushikesh s/o Prakash Kokate,
   Age 07 years, Occu. Education.

4. Baynabai w/o Kundlik Kokate,
   Age 60 years, Occu: Housewife.

5. Kundlik s/o Bhaguji Kokate,
   Age 65 years, Occu: Nil.

   Appellant No.2 and 3 are minor u/g of mother
   Appellant No.1.
   All r/o Naygaon, Tq. Mantha,
   Dist. Jalna.

...APPELLANT
(Orig.claimants)

VERSUS

1. Jagdishprasad s/o Kanhaiyalal Sharma,
   Age 50 years, Occ. Owner
   r/o Palasner, Tq. Shirpur Dist.Dhule.

2. Surpalsing s/o Mansing Chouhan
   Age Major, Occ. Driver
   R/o. Sadarpur, dist.Dhar M.P. also
   Through Res.No.1.

3. New India Assurance Company Ltd.,
   through Branch Manager, Branch office at
   Lakkadkot, Jalna Tq. Dist. Jalna.

...RESPONDENTS
(Orig.respondents)

Mr.Girish B.Kulkarni, Advocate for the appellant.
Respondent nos.1 & 2 served through paper publication.
Mr.D.P.Deshpande, Advocate for respondent no.3.

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CORAM: P.R.BORA, J.

DATE : April 12th, 2016

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ORAL JUDGMENT:

1. Heard. Admit. With the consent of learned Counsel for the parties, Appeal is heard finally.

2. The appellants, who are the original claimants, have filed the present appeal seeking enhancement in the amount of compensation awarded by the Motor Accident Claims Tribunal at Jalna in MACP No.46/2012, decided on 18.11.2013.

3. It is the contention of the appellants that though the salary income of deceased Prakash Kundlik Kokate was duly proved by the claimants, the Tribunal, instead of determining the amount of compensation based on the salary income so proved, illegally and incorrectly deducted certain amounts from the said income, and determined the amount of compensation by applying the relevant multiplier to the said amount.

It is the further contention of the appellants that the learned Tribunal has completely overlooked the aspect of future prospects of deceased Prakash while determining the amount of compensation.

The third ground which has been raised by the appellants in exception to the impugned award is that while awarding compensation under other heads, the Tribunal has not followed the guidelines laid down by the Honourable Apex Court in the judgment of **Rajesh and others Vs. Rajbirsing and others (2013 (3) T.A.C. 697**).

It is the further objection of the appellants that while deducting the amount towards personal expenses of the deceased, the Tribunal has wrongly deducted one third of the income of the deceased Prakash whereas, according to the number of dependents on the income of the deceased Prakash, the maximum permissible deduction could have been to the extent of 20% of the total income.

4. Learned Counsel appearing for the appellants, therefore, submitted that the amount of compensation needs to be enhanced and just and adequate compensation needs to be awarded to the appellants.

5. Learned Counsel appearing for respondent No.3 Insurance Company supported the impugned judgment and

award. Learned Counsel submitted that the learned Tribunal, on the basis of the evidence brought before it, has correctly determined the amount of compensation, and no interference is required in the judgment and award so passed.

6. From the record it appears that the appellants / claimants have duly proved the income of deceased Prakash. Deceased Prakash was serving as a Primary Teacher in Zilla Parishad Primary School at Pungala. He was receiving the salary to the tune of Rs.21,499/- per month. The claimants have placed on record his salary certificate at Exh.44 and the same was duly proved by the claimants by examining the Headmaster of the School in which deceased Prakash was serving at the relevant time. From the discussion made by the learned Tribunal, it reveals that the Tribunal has taken into consideration the deductions which were being made from the monthly salary of the deceased. The Tribunal has discussed that the salary certificate at Exh.44 was revealing that an amount of Rs.14,385/- used to be deducted from the monthly salary of deceased Prakash and his take home salary was shown Rs.7,114/-. The Tribunal in paragraph No.21 of its judgment has provided the particulars of the said deductions. Learned Tribunal, referring to the said deductions, has held that

`take home salary' was only liable to be taken into account while determining the dependency of the claimants on the income of the deceased Prakash. Further, the Tribunal has deducted one third of the said amount towards personal expenses of deceased Prakash and accordingly determined the amount of dependency compensation.

It appears to me that the Tribunal has grossly erred in arriving at the conclusion as aforesaid. The deductions which are taken into account by the Tribunal are towards the premium of the Life Insurance policy, towards the contribution of Provident Fund, towards Savings Account in Post Office, towards installment of the Teachers Pat Pedhi, etc. No doubt, the deduction is also shown towards Profession Tax. It appears to me that, except the amount which was being deducted towards Profession Tax, nothing more was liable to be deducted. Learned Counsel for the Insurance company has, however, pointed out that while determining the income of the deceased for assessing the compensation, it need to be considered that deceased must be paying Income tax and that much amount will have to be deducted from his salary income. However, the Tribunal has certainly erred in deducting the aforesaid amounts from the total income of the deceased while assessing the compensation. The mistake so committed by the Tribunal needs to be corrected.

7. Further, there is substance in the contention raised on behalf of the appellants that while determining the compensation, the Tribunal should not have deducted one third of the said amount towards personal expenses of deceased Prakash. In view of the law laid down by the Honourable Apex Court, having regard to the number of dependents on the income of deceased Prakash, in the instant case, the amount of 20 per cent only could have been deducted by the Tribunal towards the personal expenses of deceased Prakash.

8. Thus, on both the aforesaid counts, the amount of compensation needs to be enhanced and the award needs to be modified to that extent.

9. Though the learned Counsel was persuasive in submitting that future prospects of deceased are not considered by the Tribunal while determining the amount of compensation, in view of the fact that there is no specific evidence as regards to the future prospects of the deceased, it does not appear to me that the Tribunal has committed any error in not considering that aspect. The compensation awarded by the

Tribunal under other heads need no interference.

10. As has been proved by the claimants, deceased Prakash was drawing monthly salary to the tune of Rs.21,499/-. Though the correct figures are not available as to how much amount was liable to be deducted from the said amount towards Income Tax, it appears to me that towards the Income Tax and Profession Tax, if the deductions are held to the tune of Rs.1499/- per month, the net salary of Rs.20,000/- can be held to be the base for determining the amount of compensation under the head of dependency. Age of deceased Prakash at the time of his death was 36 years. The appropriate multiplier, therefore, would be 16. If income of the deceased Prakash is held Rs.20,000/- and 20% amount i.e.Rs.4,000/- is deducted from the said amount and the balance annual income is multiplied by the multiplier of 16, the amount of compensation comes to Rs.30,72,000/- (16,000 x 12 = 1,92,000 x 16 = 30,72,000). As I stated earlier, I am not inclined to cause any interference in the amount of compensation granted by the Tribunal under other heads.

11. The appellants / claimants are thus entitled for the total compensation of Rs.31,99,000/- (30,72,000 + 1,00,000 +

25,000 + 2,000 = 31,99,000). Respondent nos. 1 to 3 shall jointly or severally pay the aforesaid amount of compensation to the petitioners along with the interest thereon at the rate of 7.5% (as has been awarded by the Tribunal in the impugned award) from the date of filing of the petition till actual realization of the amount.

The impugned award stands modified to the aforesaid extent.

Clause Nos.(3) and (4) of the impugned award shall remain as it is. Modified award be prepared accordingly.

Deficit Court fee, if any, be recovered from the appellants / claimants before preparation of the modified award.

Appeal stands allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

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AGP/300-15fa