IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1864 OF 2013

Smt. Asha W/o. Deelip Jadhav
Age:30 years, Occ:Household,
R/o. Gaitrinagar, Khadgaon,
Latur, Tq.& Dist. Latur

...APPELLANT
(Orig. Claimant)

VERSUS

1. Madhukar S/o. Tukaram Chepere
Age:45 years, Occ: Driver,

2. Rauf S/o. Mainuddin Momin
Age: Major, Occ: Driver

3. Mahadev S/o. Hariba Kamble
Age: Major, Occ: Driver,

All R/o Chapoli, Tq. Chakur,
Dist. Latur,

4. Mrs. Wajeeda Begum Mohmmad Nizamuddin
Age: Major,
R/o. Old Feelkhana Agapure,
Hyderabad.

5. United India Insurance Co. Ltd.,
Through it's Branch Manager,
Near Panchawati Hotel, Latur

(6. Mahesh Yadhav
Age: Major, Occ: Service,
R/o. F.I.No. 13, IInd Floor,
CHAWN Bldg. Urmila Society,
Opp. Grahaketh, Dhankawadi, Pune.)

{R.No.6 - Deleted as per Courts order, dated 05.08.2011 passed in CA No.9099/2011}

7. The Oriental Insurance Company Ltd., Through it's Br. Manager, Near Panchawati Hotel, Latur

8. Sushila W/o. Nivarti Jadhav Age:50 years, Occ:Agri.,

9. Nivarti S/o. Kishan Jadhav, Age:55 years, Occ:Agri.,

R.Nos. 8 & 9 R/o. Patti Wadgaon, Tq. Ambejogai, Dist. Beed.

...RESPONDENTS
(Orig.Respondents)

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Shri. N.P. Patil Jamalpurkar, Advocate for Appellant.
Mr.V.D.Gunale & Mr.U.P.Giri, Advocates, for Respondent No.3.
Mr.V.R.Mundada, Adv., for Respondent No.5.
Mr.V.N.Upadhye, Advocate for Respondent No.7.

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CORAM: P.R.BORA, J.

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Date of reserving the judgment: 9.8.2016

Date of pronouncing the judgment: 1.9.2016

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JUDGMENT:

1. The appellant has filed present appeal seeking enhancement in the amount of compensation awarded by the Motor Accident Claims Tribunal, Latur, in MACP No.355/2002 decided on 27.6.2006.

2. The appellant had filed the aforesaid claim petition being the widow of deceased Deelip Jadhav who died in a motor accident happened on 9.3.2002 having involvement of a truck bearing registration No. AP-9-T-6285 owned by respondent no.4 and insured with respondent no.5 Insurance Company. As was contended in the said claim petition, age of the deceased at the time of his death was 28 years and he was drawing the monthly salary of Rs.4,000/- per month plus Rs.400/- per day by way of daily allowance. The appellant had, therefore, contended that the appellant was entitled for the compensation amounting to Rs.37,25,000/- (Rs. thirty seven lacs, twenty five thousand) but had restricted the claim to a sum of Rs.4,00,000/- for want of funds for paying the Court fee on the entire amount.

3. The claim petition was resisted by the opponents and more particularly, by the Insurance Company. The Tribunal, after having assessed the oral and documentary evidence brought before it, allowed the claim petition and thereby awarded the compensation of Rs.4,00,000/-. Aggrieved thereby, the appellant has filed the present appeal.

4. Shri N.P.Patil Jamalpurkar, learned Counsel appearing for the appellant, submitted that the Tribunal has grossly erred in determining the amount of compensation though sufficient evidence was placed on record by the appellant claimant. Learned Counsel further submitted that the Tribunal has wrongly held the income of deceased Deelip to the tune of Rs.3,000/- for determining the amount of compensation when the appellant has sufficiently proved that the income of deceased Deelip was around Rs.15,000/- per month. Learned Counsel further submitted that the Tribunal has not awarded any compensation towards the non pecuniary damages. Learned Counsel further submitted that the Tribunal has manifestly erred in observing that the award of

compensation is restricted to Rs.4,00,000/- since the claimants have restricted the claim to the tune of Rs.4,00,000/-, ignoring the averments in the claim petition that the claim is restricted only for want of resources to pay the deficit Court fees. Learned Counsel, therefore, prayed for adequate enhancement in the amount of compensation having regard to the evidence placed on record by the claimant as about the income of the deceased.

5. Shri Mundada, learned Counsel appearing for respondent No.5 Insurance Company, has supported the impugned judgment. Learned Counsel submitted that since the appellant did not prove the income of the deceased by bringing on record any cogent and sufficient evidence, the Tribunal has rightly determined the amount of compensation holding the income of the deceased on notional basis to the tune of Rs.3,000/- per month. Learned Counsel, therefore, prayed for dismissal of the appeal.

6. I have carefully considered the submissions

advanced by the learned Counsel appearing for the respective parties. I have perused the impugned judgment and evidence on record.

7. Respondent nos. 1 to 5 against whom the liability of payment of compensation is fixed by the Tribunal have admittedly not filed any appeal. It is thus evident that the involvement of the truck bearing registration No. AP-9-T-6285 in occurrence of the alleged accident, and the further fact that the alleged accident happened because of the negligence on the part of the driver of the said truck, who was at the relevant time driving the said truck, and further that on the date of the accident, the offending truck was duly insured with respondent no.5 Insurance Company, and the Insurance policy was in force, are not in dispute.

8) The amount of compensation as awarded by the Tribunal is sought to be enhanced by the appellant on the ground that the Tribunal has not properly appreciated the evidence as about the income of the deceased. As noted earlier, it was the case of the appellant before the Tribunal

that deceased Deelip was serving in one Seed Company as Sales Representative and was drawing the salary to the tune of Rs.4,000/- per month plus Rs.400/- towards daily allowance per day. The material on record reveals that the appellant had herself entered in the witness box and has deposed about the service and income of deceased Deelip. In addition to her evidence, the appellant did also adduce the evidence of one Chandrashekhar Mallikarjun Swami who is proprietor of Neha Enterprises, Latur, and one more witness by name Mahesh Karansing Yadav who was stated to be working as Sales Manager, Nunhems Seeds Pvt.Ltd.Co. with whom deceased Deelip was stated to be serving as Sales Representative. As has been stated by AW.No.2 Chandrashekhar and AW No.3 Mahesh, deceased Deelip was working as Sales Representative in Nunhems Seeds Pvt. Ltd. and was carrying out his work, by keeping his Headquarters at Latur, in the districts of Beed, Parbhani and Nanded. Both these witnesses have also deposed that deceased Deelip used to get monthly salary to the tune of Rs.4,000/- and was also receiving daily allowance at the rate of Rs.400/-. Xerox copy of the salary certificate was also placed on record by the appellant, however, in absence of the original certificate placed on record, the said copy could not be exhibited and was marked as Art. A. The Tribunal, in paragraph no.16 of the impugned judgment, has observed that the claimants have failed to bring on record the documentary evidence for ascertaining the actual earnings of the deceased. In the circumstances, the Tribunal preferred to hold the income of the deceased at the rate of Rs.3,000/- and has accordingly determined the amount of compensation.

9. Considering the evidence available on record, though it is true that the claimant did not produce the best possible evidence on record, the evidence of AW 2 and AW3 cannot be outrightly rejected and / or disbelieved. It would have been better if the claimants would have placed on record the original salary certificate and got it proved the same by its author. Admittedly, the said exercise has not been done. However, from the available evidence, it cannot be denied that deceased Deelip was working as a Sales Representative in Nunhems Seeds Pvt.Ltd. and his area of work was consisting of four

districts i.e. Beed, Parbhani, Nanded and Latur. Though it was sought to be canvassed by Shri Patil, learned Counsel for the appellant that the income of deceased Dilip must have been held by the Tribunal to the tune of Rs.16,000/- per month, considering the evidence of AW No.2 and AW No. 3 that deceased Deelip was receiving the salary to the tune of Rs.4,000/- per month and the daily allowance at the rate of Rs.400/- per day, the submission so advanced is unacceptable. The daily allowance cannot be held to be an income of a person. The daily allowance is paid for meeting the daily expenses of the concerned employee when he is on work. However, there was no reason for not holding the income of the deceased to the tune of Rs.4,000/- per month in view of evidence of AW No.2 and AW No.3. The Tribunal must have determined the amount of dependency compensation by holding the income of deceased Deelip to the tune of Rs.4,000/- per month. I further do not see any reason to outrightly disbelieve the evidence of the appellant as well as of AW No.2 and AW No.3 that deceased Deelip was receiving some amount towards the daily expenses. Considering the fact that deceased Deelip was receiving some amount towards daily expenses, the amount which is normally deducted from the income of the deceased towards personal expenses is not liable to be deducted in the instant case and the compensation must be determined by holding the income of the deceased to the tune of Rs.4,000/- per month i.e. Rs.48,000/- per annum. Having regard to the age of the deceased, un-disputedly, the multiplier of 17 would be applicable. Applying the said multiplier, the amount of dependency compensation comes to the tune of Rs.8,16,000/-. In addition to the aforesaid amount, the appellant being the widow of deceased Deelip is entitled for a sum of Rs.1,00,000/- towards the loss of consortium and the parents of the deceased Deelip are also entitled to jointly get a sum of Rs.1,00,000/- towards loss of estate. The appellant was also entitled for the amount of Rs.25,000/- by way of funeral expenses. Thus, the total compensation payable in the present case comes to Rs.10,41,000/-. I hold the appellant and respondent nos.8 and 9 entitled to receive the aforesaid amount in proportion to be mentioned hereinbelow.

10. After having considered the entire material on record, the amount of compensation needs to be enhanced as mentioned here-in-before and the impugned award needs to be modified to the aforesaid extent. In the result, following order:

ORDER

1. That, the appellant and claimant nos. 8 and 9 are held entitled to the total amount of Rs.10,41,000/- (Rs.ten lacs, fourty one thousand) jointly and severally from respondent nos. 1 to 5 with interest thereon at the rate of seven and half per cent from the date of the claim petition till its realization.

2. 75 per cent of the amount of compensation shall be paid to the appellant along with interest accrued thereon and 25 per cent of the amount of compensation be jointly paid to respondent nos.8 and 9 (with interest accrued thereon).

3. Out of the 75 per cent amount, 50 per cent amount be invested in any nationalized Bank in the name of appellant for the period of five years in any nationalized

Bank of appellant's choice and the balance 50 per cent amount be paid to her by account payee cheque.

4. The appellant and respondent nos.8 and 9 to pay deficit court fees in proportion to the enhanced amount to be received by them.

5. Modified Award be prepared accordingly after deficit Court fee Stamp is paid.

(P.R.BORA)
JUDGE

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AGP/1864-13FA