IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1184 OF 2004

Asaram s/o Maroti Raut,
Age: 47 years, Occ: Clerk,
R/o 15-Chari, Rahata,
Tq. Rahata, Dist. Ahmednagar. …Appellant

Vs.

1. Somnath s/o Murlidhar Pavbake,
Age: 45 years, Occ. Business,
R/o Pavbaki, Tq. Sangamner,
Dist. Ahmednagar.

2. The United India Insurance
Company Ltd.,
Market Yard, Opp. Bus Stand,
Ahmednagar, Tq.& Dist. Ahmednagar.
Through Manager …Respondents

Mr. M.R. Deshmukh, Advocate for the Appellant.
Mr. Atul B. Gatne, Advocate for respondent no.2.

CORAM : P.R. BORA, J.
DATE : 14-12-2016.

ORAL JUDGMENT :

1. The present appeal is filed seeking enhancement in the amount of compensation as awarded by the Motor Accident Claims Tribunal at Kopargaon in M.A.C.P. No. 595 of 2002 decided on 31/03/2004.

2. The aforesaid petition was filed by the present appellant seeking compensation on account of the death of his son namely Mahesh who died in a vehicular accident on 26.03.2002, having

involvement of a TempO bearing registration No. MH-17-K-5200, owned by respondent no.1 and insured with respondent no.2. As stated in the claim petition deceased Mahesh was 18 years old at the time of his death. It was the contention of the present appellant that, his son was the only support in his old age and he was depending upon him. The claim petition was resisted by the insurance company on several grounds. The tribunal, partly allowed the claim petition and awarded a sum of Rupees One Lakh towards compensation to the present appellant. Aggrieved by, the appellant has filed the present appeal.

3. Shri M.R. Deshmukh, the learned counsel appearing for the appellant submitted that, the tribunal has erred in applying the multiplier of 10 while determining the amount of compensation. The learned counsel submitted that, according to the age of deceased the appropriate multiplier would have been of 18, whereas, if the age of the appellant is considered the multiplier of 14 must have been applied. The learned counsel submitted that, even if it is considered that, the multiplier depending upon the age of the appellant is to be applied, the tribunal has certainly erred in applying the multiplier of 10. The learned counsel further submitted that, while determining the amount of compensation, the tribunal has also erred in holding the income of the deceased to the tune of Rs.1500/- per month. The learned counsel submitted that, it was specifically deposed by the appellant that, deceased was earning

around Rs.2,000/- per month. According to the learned counsel, the tribunal must have determined the amount of compensation holding the income of the deceased to the tune of Rs.2,000/- per month. The learned counsel further submitted that, the tribunal also erred in awarding a very meager amount towards funeral expenses, as well as, towards love and affection and towards the other miscellaneous expenses. The learned counsel, therefore, prayed for enhancement in the amount of compensation.

4. Shri Atul B. Gatne, the learned counsel appearing for the respondent no.2 i.e. insurance company resisted the submissions made on behalf of the appellant. The learned counsel submitted that, the tribunal has passed a well reasoned order and no interference is required in the impugned judgment and award. The learned counsel submitted that, in fact, the father cannot be held to be a dependent on the income of the son. The learned counsel submitted that, even according to the judgment of the Hon'ble Apex Court in the case of Sarala Verma, the father cannot be held to be dependent upon the income of a son. Learned counsel submitted that, in view of the fact that, the amount of compensation awarded was small one, the insurance company find it appropriate not to prefer any appeal. The learned counsel further submitted that, as per the prevailing circumstances, the tribunal has awarded adequate amount towards the non-pecuniary damages. The learned counsel, therefore, prayed for dismissal of

the appeal.

5. I have carefully considered the submissions advanced by the learned counsel appearing for the respective parties. It is true that, the impugned judgment and award has not been challenged by the insurance company. In so far as the legal issues which are raised by the appellant as about the application of the multiplier and the award of non-pecuniary damages are concerned both the grounds deserve to be considered. In so far as the point urged as about the income of the deceased, I see no reason to cause interference in the observations made by the tribunal and ultimate conclusion recorded by the tribunal. Since there was no cogent and sufficient evidence as about the income of the deceased no fault can be found, if the tribunal has assessed the amount of compensation holding the income of the deceased to the tune of Rs. 1500/- per month.

6. In so far as application of multiplier is concerned, it appears that, the tribunal has committed an error in applying the multiplier. Having regard to the age of the present appellant the appropriate multiplier would be of 14. By applying the said multiplier the amount of dependency compensation comes to Rs. 1,68,000/-. I hold the appellant entitled for the said amount under the aforesaid head. The compensation as awarded by the tribunal under the head of loss of estate and funeral expenses is

undoubtedly meagre, I enhance the said amount to Rs. 32,000/- and, accordingly, I hold the appellant entitled for the total compensation of Rupees Two Lakhs. In the facts and circumstances of the case, it appears to me that, this will be the just and fair compensation payable to the appellant and the impugned award needs to be modified to the aforesaid extent. It be accordingly modified. The enhanced amount of compensation be paid to the present appellant along with the interest accrued thereon @ 6% per annum from the date of filing of the present appeal till its realisation. Appeal is allowed in aforesaid terms.

(P.R. BORA)
JUDGE

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