IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

FIRST APPEAL STAMP NO.:7717 OF 2016

New India Insurance Company Ltd.,
Through its Authorized Signatory
Divisional Office, Mahesh Compound,
Adalat Road, Aurangabad. **… APPELLANT**
(Original Respondent No.1)

V E R S U S

1) Shama Bee wd/O Hafiz Rafique Shah,
Age : 27 years, Occu : Household,
R/o: Kasambari Dargah, Padegaon,
Aurangabad.

2) Sabha Firdos d/o Hafiz Rafique Shah,
Age : 7 years, Occu : Student,
R/o: As above.

3) Ismail Shah s/o Osman Shah,
Age : 65 years, Occu : Nil,
R/o: As above.

4) Hamida Bee w/o Ismail Shah,
Age : 60 years, Occu : Household,
R/o: As above.

5) Sachin Bhanudas Kolekar,
Age : Major, Occu. Business,
R/o : Shop No.L-6, A Building,
Kasliwal Survarnayog,
Garkheda, Aurangabad. **… RESPONDENTS**
(Rspdt Nos.1 to 4 – Org. Claimants
Rspdt No.5 – Org. Rspdt No.2)

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Mr. S. G. Chapalgaonkar, Advocate for Appellant.
Mr. Suhas R. Shirsat, Advocate for original Claimants.

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CORAM : **P. R. BORA, J.**
DATE : 11th August, 2016.

ORAL JUDGMENT:

. Heard the learned counsel appearing for the respective parties.

2 Admit.

3 By consent of the learned counsel appearing for the respective parties, the appeal is taken up for final disposal.

4 The learned counsel for the Appellant submits that Respondent No.5 is a formal party and no relief is claimed against the said Respondent, and as such, Respondent No.5 need not to be served. The learned counsel further pointed out that in the notice issued in the application for condonation of delay, though notice was served on Respondent No.5 he has not entered his appearance. Hence, the service is complete.

5 As informed by the learned counsel for the Appellant, the Appellant Insurance Company has deposited in this Court the

entire amount under the impugned award alongwith interest accrued thereon.

6 Since the learned counsel for Appellant Insurance Company and the learned counsel for original Claimants both have shown willingness for disposal of the present appeal at admission stage, the appeal is finally heard at admission stage.

7 The following objections are raised by the Appellant Insurance Company in exception to the impugned award:

(i) That, the Tribunal has failed in appreciating that it was the case of contributory negligence and has wrongly held the driver of the vehicle, insured with the Appellant solely responsible for occurrence of the accident.

(ii) That, though there was no evidence as regards to the future prospects of the deceased, the Tribunal has enhanced the income of the deceased by 50% and on the basis of that income has assessed the amount of compensation.

(iii) That, while determining the amount of dependency compensation, the Tribunal has erred in deducting the amount of compensation towards personal expenses of the deceased.

8 The learned counsel for the Claimants has supported the impugned judgment. According to the learned counsel, the Tribunal has rightly determined the amount of compensation and no interference is required in the judgment and award so passed.

9 I have carefully perused the impugned judgment and the material on record. Though the learned counsel for the Appellant Insurance Company did canvass that in occurrence of the alleged accident negligence on the part of deceased Hafiz Rafique Shah was also a contributing factor since it was head on collision, after having read the discussion made by the learned Tribunal in this regard, it does not appear to me that the Tribunal has committed any error in not holding the deceased responsible or negligent in causing alleged accident.

10 In so far as the other objection raised on behalf of the Appellant that while determining the amount of compensation, the future prospects of the deceased are taken into account by the

Tribunal though neither there was any pleading in that regard nor there was any evidence in that regard, the learned counsel has placed reliance on the judgment of the Division Bench of this Court in the case of ***New India Assurance Co. Ltd. Vs. Alpa Rajesh Shah***, reported in, ***[2014 (2) Mh.L.J. 17]***. The learned counsel submits that in so far as the income as has been proved by the Claimants to the tune of Rs.5,000/- per month is concerned, the Appellant do not have any objection for assessing the amount of compensation on that basis. The learned counsel submitted that the Tribunal has, however, held the income of the deceased to the tune of Rs.7,500/- by adding 50% of the income in the proved income stating the same to be under the head of future prospects.

11 The Division Bench of this Court in the judgment relied upon by the Appellant has held that in absence of any cogent and sufficient evidence brought on record by the Claimants as about the future prospects of the deceased, no flat increase under the head of future prospects can be made in the income of the deceased and amount of compensation cannot be determined on that basis. Referring to the judgment of the Honourable Apex Court in the case of ***Santosh Devi Vs. National Insurance Co. Ltd***, reported in, ***[2012 (3) Bom. C. R. 698 (S.C.)]***, the Division Bench has

observed that the Claimants must produce satisfactory evidence to show that there were genuine prospects of increase or enhancement in the earnings of the deceased. It is further observed that only when there is a strong and positive evidence on record to show that there were definite prospects of increase in the income of the deceased in future, such a case can be treated as an exceptional case, in which future prospects of increase in the earnings can be considered by the Tribunal. On perusal of the material on record there appears substance in the contentions so raised by the Appellant Insurance Company that there is no evidence from the side of the Claimants as about future prospects of the deceased. In such circumstances, the Tribunal in view of the judgment of the Division Bench of this Court shall not have assumed any increase in the proved income of the deceased and shall not have determined the amount of compensation on that basis. To that extent modification is certainly needed in the award, impugned in the present appeal.

12 It was further contended that the Tribunal has deducted $1/5^{th}$ of the total income of the deceased towards his personal expenses and has determined the amount of dependency compensation on the remaining $4/5^{th}$ income of the deceased.

Placing reliance on the judgment of the Honourable Apex Court in the case of ***Sarla Verma Vs. Delhi Transport Corporation***, reported in, ***[2009 (6) S.C.C. 121]***, the learned counsel submitted that having regard to number of dependents of the deceased, the Tribunal must have deducted 1/4th of the total income of the deceased towards his personal expenses and should have determined the amount of compensation on the remaining 3/4th income of the deceased. It appears that the Tribunal has erred in deducting 1/5th of the total income of the deceased towards his personal expenses ignoring the decision rendered by the Honourable Apex Court in the case of ***Sarla Verma Vs. Delhi Transport Corporation*** (supra). The mistake so committed by the Tribunal also needs to be corrected and the award needs to be modified in that regard also.

13 For the reasons stated above, the impugned award needs to be modified as below:

There is no dispute that the income of the deceased was Rs.5,000/- per month. If the 1/4th amount from the said income, which comes to Rs.1,250/- is deducted towards his personal expenses, the dependency compensation can be assessed on the balance amount, which comes to Rs.3,750/- per month, which annually comes to Rs.45,000/-. Applying the multiplier of 16 to the said amount, the amount of dependency compensation comes to Rs.7,20,000/-. The Tribunal has held the Claimants entitled for the sum of Rs.2,25,000/- towards non-pecuniary losses. I do not see any reason to cause any interference in the amount so awarded by the Tribunal. If the aforesaid amount is added into the amount of dependency compensation assessed as above, the total amount of compensation comes to Rs.9,45,000/-. In the facts and circumstances of the case, it appears to me that this will be the just and fair compensation payable to the Claimants.

14 The record reveals that the Appellant Insurance Company has deposited the amount of Rs.13,77,000/- as has been awarded by the Tribunal in the impugned judgment. In view of the fact that the amount of compensation has been decreased in the present appeal, the excess amount will have to be refunded to the Appellant Insurance Company. In view of the above, the following order :

O R D E R

I. Respondent Nos.1 to 4 i.e. original Claimants are held entitled to receive from Appellant and

Respondent No.5 jointly and severally total amount of compensation amounting to Rs.9,45,000/- together with interest at the rate of 9% per annum from the date of filing of application till the date of deposit of the amount of compensation by the Appellant Insurance Company.

II. 25% amount of such payable compensation be jointly paid by account payee cheque to Respondent Nos.3 and 4 i.e. original Claimant Nos.3 and 4.

III. 25% of such payable compensation shall be invested in FDR in any nationalized bank in the name of Respondent No.2 i.e. original Claimant No.2 for the period till the said Respondent attains the age of majority.

IV. Balance 50% of such payable compensation be paid to Respondent No.1 i.e. original Claimant No.1; out of which, 25% amount be invested in FDR in any nationalized bank in her name and 75% amount be paid to her by account payee cheque.

V. Award be drawn accordingly.

VI. After making the payments as aforesaid, the balance amount be refunded to the Appellant Insurance Company.

VII. Pending civil applications, if any, stand disposed of.

[P. R. BORA, J.]

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