

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1250 OF 2004

1. Sayeeda Begum w/o Shaikh Hameed,
Age: 45 years, Occ. Household,
R/o Jintur, Tq. Jintur, Dist. Parbhani.
2. Shaikh Maroof s/o Shaikh Hameed,
Age: 22 years, Occ. Education,
Resident of as above.
3. Shaikh Wajed s/o Shaikh Hameed,
Age: 20 years, Occ. Education,
Resident of as above.
4. Nikhat Fatema d/o Shaikh Hameed,
Age: 18 years, Occ. Nil,
Resident of as above.
5. Shaikh Anwar s/o Shaikh Hameed,
Age: 17 years minor u/g. Of real
mother (Appellant No.1) i.e.
Sayeeda Begum w/o Shaikh Hameed ... Appellants

Vs.

1. M.A. Osman s/o M.A. Sattar,
Age: Major, Occ: Business,
R/o Phulang Street, Nizamabad (A.P.)
2. The New India Assurance Co. Ltd.,
through its Branch Managar,
Parbhani.
3. The Oriental Insurance Co. Ltd.,
through its Branch Managar,
Parbhani. ... Respondents

Advocate for Appellant : A N Ansari
 Advocate for Respondents: D S Kulkarni for R2 & S M Godsay for R4

CORAM : P.R. BORA, J.
DATE : 08-12-2016.

ORAL JUDGMENT:

1. In the present appeal respondent no.1 i.e. owner of the insured vehicle is yet to be served. The record shows that, he was proceeded ex parte even before the tribunal and, though, the attempts seems to have been made by the appellants to serve him, he could not be served. Today, when the matter was called for hearing, it is revealed that, the appellants are seeking enhancement in the amount of compensation and the insurance companies have not disputed their liability to pay the amount of compensation. In the circumstances, it does not appear to me that presence of respondent no.1, would be required for deciding the present appeal on merits. In the circumstances, service on respondent no.1 is exempted and the matter is taken up for final disposal with consent of the learned counsel appearing for the parties.

2. The learned counsel appearing for the appellant, has challenged the impugned judgment and award only on the point that the tribunal has not awarded any amount towards non-pecuniary damages. On perusal of the impugned judgment, it is revealed that, the tribunal has in fact not awarded any amount towards non-pecuniary damages.

3. Shri D.S. Kulkarni, the learned counsel appearing for respondent no.2 and Shri S.M. Godsay, the learned counsel appearing for respondent no.4, do not dispute the legal position

that, the non-pecuniary damages need to be awarded in the petitions filed by the legal representatives claiming compensation in accidental death cases.

4. In view of the submissions so made, the present appeal can be disposed of by awarding adequate amount towards the non-pecuniary damages to the applicant. It is not in dispute that appellant/claimant no.1 is the widow of the deceased, whereas, appellant claimant nos.2, 3 and 5 are the sons of the deceased and appellant/claimant no.4 is the daughter of the deceased. Considering, the relationship of the claimants with the deceased, I deem it appropriate to award a consolidated sum of Rs. One Lakh to the claimants towards loss of estate and love and affection and other non-pecuniary damages i.e. funeral expenses etc. The award be modified accordingly. The enhanced amount is made payable to the applicants with interest thereon @ 9% per annum from the date of filing of application till its realisation jointly and severally from the respondents.

(P.R. BORA)
JUDGE