IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2711 OF 2016

1. Rukhminibai w/o Govind Yemunwad,
   Age 25 years, Occ. Household.

2. Ankush s/o Govind Yemunwad,
   Age 7 years, minor, u/g of appellant no.1.

3. Gangabai w/o Vithalrao Yemunwad,
   Age 61 years, Occ: Household.

   All r/o. Khanapur Tq. Degloor, Dist.Nanded
   At present Maganpura, Nanded.

...APPELLANTS
(Orig.Claimants)

VERSUS

1. Sayed Chand Pasha s/o Sayed Azam Sab,
   Age major, Occ. Business and owner of
   Truck No.MH 26/H-5008,
   R/o. Mohalla Begban Colony,
   Near Omar Colony, Nanded.

2. The Oriental Insurance Company Ltd.
   Through its Branch Manager,
   Branch Office at sant krupa market,
   G.G.Road, Nanded.

...RESPONDENTS
(Orig.Defendants)

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Mr.Janakwade Shivsamb N., Advocate for the appellants.
Mr.A.N.Phatale, Adv., for respondent no.1.
Mr.Malte Uday S., Adv., for respondent no.2.

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CORAM : P.R. BORA, J.
Dated: September 23, 2016
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ORAL JUDGMENT:-

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

The claimants in M.A.C.P.No.510 of 2008, decided by the Motor Accident Claims Tribunal at Nanded, on 4th of May, 2013, have filed the present appeal seeking enhancement in the amount of compensation as awarded by the Tribunal.

2. The aforesaid petition was filed by the present appellants seeking compensation on account of the death of one Govind Yemunwad in a vehicular accident occurred on 13.5.2008 having involvement of a truck owned by present respondent no.1 and insured with present respondent no.3.

3. Appellant no.1 is the widow of the deceased. Appellant no.2 is the son of the deceased whereas appellant no.3 is the mother of the deceased. It was the contention of the appellants before the Tribunal that age of deceased Govind was 23 years on the date of the accident and that he was earning around Rs.3,000/- by way of

labour work and also used to receive Rs.50/- towards daily allowance. The appellants had, therefore, claimed compensation amounting to Rs.5,00,000/- (Rs. five lacs). The Tribunal, after having assessed the evidence brought on record, has held appellants entitled to the total compensation of Rs.4,20,000/- inclusive of No Fault Liability amount. Aggrieved thereby, the appellants have filed present appeal seeking enhancement in the amount of compensation.

4. Learned Counsel appearing for the appellant submitted that though the appellants had placed on record sufficient documentary evidence as about the date of birth of deceased Govind, the Tribunal has discarded the said evidence only on the ground that necessary witness was not examined to prove the document so filed on record and has held the age of the deceased in between 26 to 30 years and has applied multiplier of 17 while determining the amount of compensation.

5. On perusal of the judgment, it is revealed that

the appellants had placed on record the school leaving certificate, however, the Tribunal did not consider the said certificate observing that the same was not duly proved by examining the relevant witness. The approach of the Tribunal cannot be subscribed. There was no reason for the Tribunal to reject the said evidence in absence of any contrary evidence. Further, it is not revealed as to on what basis the Tribunal has held the income of the deceased between 26 to 30 years. It appears that the Tribunal has erred in drawing such an inference. In view of the documentary evidence on record, the Tribunal must have accepted the said evidence and held the age of the deceased as 23 years.

6. In so far as the other objection that the Tribunal has not considered the income and has determined the amount of compensation on notional income of Rs.3,000/- per month is concerned, I do not see any substance in the objection so raised. The Tribunal has rightly observed that the income of the deceased has not been duly proved by the claimants by bringing on record the necessary

evidence.

7. Thus, the only aspect that requires to be considered is whether the appropriate multiplier was applied by the Tribunal while determining the amount of compensation. The Tribunal has applied multiplier of 17 holding the age of the deceased between 26 to 30 years. As noted by me hereinabove, the Tribunal must have held the age of the deceased as 23 years on the basis of the school leaving certificate existing on record. Thus, the multiplier of 18 has to be applied in determining the amount of compensation. By applying the said multiplier, the amount of dependency compensation comes to Rs.4,32,000/- (Rs. four lacs, thirty two thousand).

8. Further, it is apparent that the Tribunal has not awarded the adequate compensation towards non pecuniary damages. The Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate. I deem it appropriate to award a sum of Rs.1,50,000/- in

aggregate towards the non pecuniary damages. The applicants are thus entitled to the total compensation of Rs.5,82,000/- (Rs. five lacs, eighty two thousand). In the facts and circumstances of the case, it appears to me that this much of compensation will be just and fair compensation payable to the appellants claimants. The impugned award, therefore, needs to be enhanced to the aforesaid extent. In the result, the following order is passed:

ORDER

1. The appellants / claimants are held entitled for the total compensation of Rs.5,82,000/- (Rs. five lacs, eighty two thousand), inclusive of the amount of N.F.L. compensation.

2. Respondent nos. 1 and 2 shall jointly or severally pay to the appellants the aforesaid amount of compensation with interest thereon at the rate 7½ per cent from the date of claim petition till its realization.

3. 25 per cent of the aforesaid amount of

compensation with the interest thereon shall be paid to appellant No.3 Gangabai widow of Vithalrao Yemunwad by account payee cheque.

4. 30 per cent of the aforesaid amount with the interest thereon shall be deposited in any nationalized Bank in a Fixed Deposit Receipt in the name of Appellant No.2 Ankush s/o. Govind Yemunwad for a period till he attains the age of majority.

5. 20 per cent of the aforesaid amount be invested in the name of Appellant No.1 Rukhminibai W/o. Govind Yemunwad in any nationalized Bank in a Fixed Deposit Receipt for a period of 3 years.

6. Balance 25 per cent of the aforesaid amount with the interest thereon shall be paid to Appellant No.1 Rukhminibai W/o. Govind Yemunwad by crossed account payee cheque.

7. The Appellants to pay the deficit Court Fees

Stamp. Modified award be prepared after payment of deficit Court Fees.

The appeal shall stand allowed in aforesaid terms.

(P.R. BORA, J.)

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