IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1885 OF 2010

1. Nanda wd/o Bhausaheb Jadhav
   Age 28 years, Occu : Labourer,
   R/o. Pal, Taluka Phulambri,
   District Aurangabad.

2. Kashinath s/o Tukaram Jadhav,
   Age 60 years, Occu : Nil,
   R/o. As above.

3. Narmadabai w/o Kashinath Jadhav,
   Age 50 years, Occu : Household,
   R/o. As above. … Appellants
   (Orig. Claimants)

Versus

1. Vivek s/o Baburao Nirpharalle,
   Age Major, Occu : Business,
   R/o. Eshwashyam, Kulgaon,
   Badlapur, District Thane.

2. Bhujang s/o Bhanudas Palve,
   Age Major, Occu : Driver,
   R/o. Kolhar, Taluka Pathardi,
   District Ahmednagar.

3. The United Insurance Co. Ltd.,
   Through its Divisional Manager,
   Divisional Office, Aurangabad. … Respondents
   (Orig. respondents)

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Advocate for the appellants : Mr. A. A. Joshi
Advocate for respondent No. 3 : Mr. S. G. Chapalgaonkar
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CORAM : V. K. JADHAV, J.

RESERVED FOR JUDGMENT ON: 11th MARCH, 2016
JUDGMENT PRONOUNCED ON: 12th APRIL, 2016

JUDGMENT :-

1. Being aggrieved by the judgment and award passed by learned Member, Motor Accident Claims Tribunal, Aurangabad dated 14.07.2003 in MACP No. 568 of 1999, the appellants-original claimants have preferred this appeal to the extent of quantum of compensation.

2. Brief facts giving rise to the present appeal are as follows :

On 22.03.1998 on Aurangabad-Phulambri road near Phulambri, at about 10:30 p.m., deceased Bhausaheb was proceeding as pillion rider on M-80 Moped bearing registration No. MH-20-J-5502 driven by his friend Haribhau. At that time, one goods truck bearing registration No. MH-05-735 driven by its driver/original respondent No.2, was kept stationary on road without tail lamp indicator. Consequently, said Haribhau could not see the stationary truck while riding his Moped and thus, the Moped dashed against the back side of said truck. In consequence of which, said Haribhau died on spot, whereas, deceased Bhausaheb was shifted to hospital where he succumbed to injuries while under treatment. Said truck is owned by respondent No.1 and insured with respondent No.3. Respondent No.2 was the driver of said truck. The appellants-original claimants, being the legal representatives, preferred claim petition bearing MACP No. 568 of 1999 before learned Member, MACT, Aurangabad for grant of compensation under various heads, *inter-alia* contending therein that deceased Bhausaheb was 25 years of age at the time of his accidental death and he was serving as Sugar Operator in Devgiri Sahakari Sakhar Karkhana, Sillod on monthly salary. The appellants-claimants were totally dependent on his income. They have also claimed compensation under the heads of non-pecuniary loss. The learned Member of MACT, Aurangabad, by the impugned judgment and award dated 14.07.2003, partly allowed the claim petition and thereby directed the respondents jointly and severally to pay Rs.3 lacs inclusive of "no fault liability" to the claimants. Being aggrieved to the extent of quantum of compensation, the appellants-claimants have preferred this appeal.

3. learned counsel for the appellants-claimants submits that deceased Bhausaheb was permanent employee of the said sugar factory on monthly salary and the tribunal has not considered the future prospects. Learned counsel submits that deceased Bhausaheb was only 25 years of age as per his date of birth appearing in the SSC certificate and since he was holding permanent post in the said sugar factory, the tribunal ought to have added 50% of the salary towards future prospects of income. Learned counsel submits that even the tribunal has erroneously applied multiplier 17

instead of 18. Learned counsel submits that even though the tribunal arrived at the conclusion that the appellants-claimants would be entitled to total compensation of Rs.4,69,752/-, the tribunal awarded only Rs.3,00,000/- since the claimants had restricted their claim to that extent. Learned counsel further submits that the tribunal has not awarded any compensation under the non-pecuniary heads such as 'loss of consortium', 'loss of love and affection', 'loss of estate' and 'funeral expenses'. Learned counsel submits that after the accident, deceased Bhausaheb was admitted in hospital and he died while under treatment. Learned Member of the tribunal has not considered to award medical expenses and the attendance charges.

4. Learned counsel for the claimants-appellants, in order to substantiate his submissions, placed reliance on the decision in the case of ***Asha Verman and others vs. Maharaj Singh and others***, reported in ***2015 (11) SCC 389***.

5. Learned counsel for respondent No.3-insurer submits that deceased Bhausaheb was working as a labourer and witness No.2 Annasaheb, who is examined by the claimants to prove the contents of the salary certificate, has not deposed before the tribunal about the future prospects of deceased Bhausaheb. Learned counsel submits that even considering the contents of the salary certificate, it

appears that deceased Bhausaheb was drawing a fixed salary without provision for annual increments. Learned counsel, in order to substantiate his contentions, placed reliance on the decisions in following cases:

1. ***Reshma Kumari & Others vs. Madan Mohan & Another***, reported in ***2013 (9) SCC 65***,

2. ***Rajesh and others vs. Rajbir Singh and others***, reported in ***2014 (1) Mh.L.J. 79***,

3. ***Santosh Devi vs. National Insurance Company Ltd. and others***, reported in ***2012 (6) SCC 421***,

4. ***New India Assurance Co. Ltd. vs. Alpa Rajesh Shah***, reported in ***2014 (1) Bom.C.R. 755***,

5. Order dated 02.07.2014 passed by the Supreme Court in Special Leave to Appeal (c) No. 8058/2014, ***National Insurance Co. Ltd vs. Pushpa and others***,

6. ***Shashikala & others vs. Gangalakshmamma & another***, reported in ***2015 ACJ 1239,***

7. ***Munna Lal Jain and another vs. Vipin Kumar Sharma and Others***, reported in ***2015 AIR SCW 3105*** and

8. ***Sarla Verma (smt.) and others vs. Delhi Transport Corporation and another,*** reported in ***2009 (6) SCC 121.***

By referring the decisions in above cases, learned counsel for respondent No.3-insurer submits that post ***Sarla Varma's*** case (*supra)*, in the case of ***Reshma Kumari*** (*supra*), the issue of standardization of addition to income for future prospects is considered as helpful in arriving at appropriate compensation and the same is approved under certain contingencies such as nature of job whether permanent or temporary, age at the time of death, self employed income or a fixed salary without any annual increments etc. Learned counsel submits that in the case of ***Rajesh and others*** (*supra*), which was decided on 12.04.2013, the case of **Reshma Kumari** was not referred. Learned counsel submits that the case of ***Santosh Devi*** (*supra*) was decided on 23.04.2012. Learned counsel further submits that considering the divergent views on the point of future prospects, in the case of ***National Insurance Company Ltd. vs. Pushpa and others*** (*supra*), the Supreme Court referred the matter to larger Bench as regards to the manner of addition to income for future prospects. Learned counsel submits that even in the case of ***Shashikala*** (*supra*), further reference is made in respect of the same point for constitution of a larger Bench.

6. Learned counsel further submits that deceased Bhausaheb was getting a fixed salary without any increments and no such addition in income can be considered.

7. It is not disputed that the claimants succeeded in proving that the driver of the truck involved in the accident was negligent by keeping the truck stationary on road without any parking signals or indicators. Thus, the following points arise for my determination and I have recorded my findings to those points for the reasons given below :

	POINTS	FINDINGS
1.	Whether the tribunal has correctly assessed the compensation?	Partly in the negative.
2.	Whether the impugned judgment and award calls for an interference?	Partly affirmative.
3.	What order ?	As per final order.

REASONS

8. Appellants-claimants have examined witness No.2 Annasaheb Jadhav, who is serving as Labour Officer in Devgiri Sahakari Sugar Factory. He has deposed that deceased Bhausaheb was working as labourer in manufacturing department of the said sugar factory. He has further deposed that at the time of death, deceased Bhausaheb war drawing gross salary of Rs.3,307/- per month. He has produced on record the pay certificate of deceased Bhausaheb Jadhav for the month of February, 1997. The said pay certificate is marked at

Exh.46. On careful perusal of the same, it appears that deceased Bhausaheb was drawing salary with fixed allowances, Dearness Allowance and some other allowances. However, his pay band is not mentioned in the said certificate, nor it is made clear in the certificate that he was awarded periodical increments. Salary certificate is issued on letter pad of the factory. Even the date of appointment of deceased Bhausaheb is also not mentioned in the said certificate. It thus appears that, deceased Bhausaheb was drawing a fixed salary without any yearly increments. Even witness No.2-Annasaheb has not deposed about the future prospects of deceased Bhausaheb while working as labourer in the manufacturing department of the sugar factory.

9. In the case of ***Reshma Kumari*** (supra), it is held by the Apex Court that, in case the deceased was on fixed salary without having annual increments, the actual income at the time of death without any addition to income for future prospects would be appropriate. In the case of ***New India Assurance Company Ltd. vs. Alpa Rajesh Shah*** (*supra*), relied upon by learned counsel for respondent-insurer, this Court has expressed a view that only when there is strong and positive evidence on record to show that there were definite prospects of increase in the income of deceased in future, such a case can be treated as an exceptional case in which future prospects

of increase in the earning can be considered. Furthermore, in the case of ***National Insurance Company Ltd. vs. Pushpa*** (*supra*), the Apex Court held it appropriate to refer the matter to a larger Bench as regards the issue of manner of addition of income for future prospects. In the case of ***Shashikala*** (*supra*), by referring the above mentioned case, the request was made for constitution of a suitable larger Bench to decide the issue as to the addition towards future prospect, in case of self employed or person with fixed wages, to be added to the compensation towards dependency.

10. It is true that pendency of such reference does not prevent courts from adopting such course as held in the case of ***Manager, National Insurance Co. Ltd. Vs. Saju P. Paul and Anr.***, reported in ***2013 AIR SCW 609.*** However, the accident had taken place as back as in the year 1998. Considering the same and in view of the above discussion and the facts and circumstances of the present case, it would be just and appropriate to consider monthly income of deceased Bhausaheb as Rs.3,307/- for assessing the compensation. So far as the multiplier applied in the present case is concerned, date of birth of deceased Bhausaheb is 24.04.1974 as appearing in the SCC certificate Exh.37. Thus, deceased Bhausaheb was less than 24 years of age when he met with an accidental death. The tribunal has committed error in applying multiplier 17 instead of 18.

11. It also appears from the impugned judgment and award that the tribunal has not awarded compensation under the heads of non-pecuniary loss. Learned counsel for the appellants-claimants submits that in view of the compensation worked out in the case of ***Asha Verman*** (*Supra*), under the heads of non-pecuniary loss, the claimants herein are also entitled for the same. Perusing the said decision, it appears that the Apex Court has not laid down any preposition of law and it is in the facts of the said case before the Apex Court, such amounts have been granted. In the case in hand, I am dealing with the case of accident which occurred in the year 1998. In the present case, considering the age of appellant-claimant No.1, 'loss of consortium' of Rs.50,000/-, 'loss of estate' of Rs.10,000/-, 'loss of love and affection' for claimant Nos. 2 and 3 of Rs.10,000/- each (i.e. total Rs.20,000/-) and Rs.25,000/- towards medical expenses, attendance and funeral expenses would be just and appropriate.

12. Learned Member of the tribunal, though arrived at a conclusion that the total loss of dependency would come to Rs.4,49,752/-, awarded only Rs.3,00,000/- as compensation since the claim is restricted by the claimants to that extent. I do not find any justification in awarding compensation to the extent as restricted by the claimants. In my considered opinion, the claimants are entitled for

compensation as per the total loss of dependency and under various admissible heads, and even in case the claimants restrict their claim due to various reasons, additional amount of compensation can be considered and awarded by directing the claimants to pay the deficit court fees.

13. In view of the above discussion, the break up of compensation which can be broadly categorized as under :

1	Loss of Dependency/Income (3307 X 12 = 39,684 – 13228 towards 1/3rd personal expenses = 26456 X 18 = 4,76,208)	Rs.4,76,208/-
2	Loss of Love and Affection (10,000/- for claimant Nos. 2 and 3 each)	Rs.20,000/-
3	Loss of Consortium	Rs.50,000/-
4	Loss of Estate	Rs.10,000/-
5	Funeral Expenses	Rs.25,000/-
	TOTAL	**Rs. 5,81,208/-**

The claimants are thus, entitled for the total amount of Rs.5,81,208/- along with interest as awarded by the tribunal. I answer point Nos. 1 and 2 accordingly and proceed to pass the following order :

O R D E R

I. The First Appeal is hereby partly allowed with proportionate costs.

II. The judgment and award dated 14.07.2003 passed by learned Member, MACT, Aurangabad in MACP No.568 of 1999 is hereby modified in the following manner.

i) The claimants shall recover Rs.5,81,208/- (inclusive of no-fault liability) from respondent Nos. 1 to 3 with proportionate costs and respondent Nos. 1 to 3 are jointly and severally liable to pay the same with interest at the rate of 9% per annum from the date of petition till the entire amount is realized.

ii) The claimants shall pay the deficit court fees within a period of one month from today.

III. The rest of the judgment and award passed by the tribunal stands confirmed.

IV. Award be drawn up in tune with above modification.

V. The First Appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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