IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

First Appeal No.1825 of 2010
With
Civil Application No.1697 of 2016

1) Nagarbai w/o Vithal Gofane,
Age 25 years,
Occupation: Household,
R/o Jeur, Taluka Karmala,
District Solapur.

2) Samadhan S/o Vithal Gofane,
Age 24 years,
Occupation: Nil,
R/o As above.

3) Sagar s/o Vithal Gofane,
Age 25 years,
Occupation: Nil,
R/o As above.

4) Prayagbai W/o Rajaram Gofane
(Died on 23-7-2003). .. **Appellants.**

Versus

1) Babu S/o Kisan Gangurde,
Age Major, Occu: Driver,
R/o Bhavani Nagar,
Gulbarga (Karnataka State)

(Appeal is dismissed as against
respondent No.1 vide Court
order dated 13-1-2010)

2) Subhash S/o. Virasngappa Bhimnale,
Age Major,
Occupation : Business,
R/o Dongargaon,
Taluka Gulbarga (K.S.).

3) National Insurance Co. Ltd.
Javali Complex,
Super market, Gulbarga,
Through its Divisional
Manager, Shubhray Towers,
Datta Chowk, Solapur. .. **Respondents.**

Shri. V.C. Solshe, Advocate, for appellants.

Appeal is dismissed as against respondent No.1.

Shri. Sagar S. Phatale, Advocate, for respondent No.2.

Shri. P.P. Bhafna, Advocate, for respondent No.3.

CORAM: T.V. NALAWADE, J.

DATE : 3rd MARCH 2016

JUDGMENT:

1) The appeal is filed by the original claimants to challenge the quantum of compensation awarded to them in Claim Petition No.82/1998 which was pending before the Claims Tribunal Osmanabad. Civil Application No.1697/2016 is filed by the original claimants, who were minor to show them as major and to allow them to prosecute the matter as major persons. This Civil Application is allowed. Necessary amendment is to be made in the appeal memo. Both the sides are heard.

2) Claim was filed under section 166 of the Motor Vehicles Act in respect of death of one Vithal. Original claimants are widow, two issues and mother of the deceased. After decision of the Claim Petition, the mother died and so the present matter is prosecuted by the two sons and the widow of the deceased.

3) It is the case of the claimants that deceased Vithal was working as mechanic in one garage and he was making income also by cultivating his land. It is their case that the monthly income of the deceased was Rs.2500/-. Compensation of Rs. 5 lakh was claimed. The claim was contested by the insurance company.

4) To substantiate the claim, widow gave evidence which is as per the aforesaid contentions. For proving the age of the deceased she placed reliance on death certificate which shows that age of the deceased was 30 years. The claimants examined one Vilas Dengle, owner of one garage, workshop, and he has given evidence that he was giving Rs.2500/- per month to the deceased and the deceased was working as mechanic with him. No record

whatsoever is produced by the employer or the claimant in respect of this employment.

5) The accident took place in the year 1996 but the Tribunal presumed that annual income of the deceased was Rs.15,000/-. From this, 1/3rd amount is deducted by the Tribunal and the compensation is calculated which is Rs.1,55,000/-. Meagre amount is given under the head of loss of consortium and amount spent on funeral expenses.

6) At least four persons were dependent for livelihood on the income of the deceased. In the year 1994 under the schedule provided for use of section 163A of the Motor Vehicle Act notional income was given as Rs.15,000/- per annum. Four years after fixing this notional income, the accident took place. In view of the facts of the present case and the period which had expired after fixing of the notional income, this Court holds that it needs to be presumed that income was at least Rs.2,000/- per month. In view of the size of the family only 1/5th amount could have been deducted towards personal

expenses. Thus, there is monthly loss of Rs.1500/- to the claimants. In view of the age mentioned in the certificate of death, which was between 30 and 35 years, 16 can be used as multiplier for calculation of total loss of dependency. Amount of loss of dependency come to Rs.2,88,000/- (Rs.1500×12x16). This Court holds that amount of Rs.25,000/- needs to be given to the widow under the head of loss of consortium. Amount of Rs.5,000/- needs to be given under the head of amount spent for funeral expenses. Thus, total amount of compensation comes to Rs.3,18,000/-.

7) The learned counsel for the insurance company submitted that in the year 1996 under the Minimum Wages Act, 1949, minimum wages were given and for unskilled worker of village, in Zone IV minimum wages were given as Rs.1100/- per month. He submitted that on that basis the income needs to be presumed. Reliance was placed on a case reported as **2010 AIR SCW 5601 (Leela Gupta v. State of Uttar Pradesh)** and it was submitted that the multiplicand cannot be changed after so many years. On the other hand, learned counsel for the

original claimants placed reliance on a case reported as **2016 (1) ALL MR 818 (Nitadevi v. National Insurance Company Ltd.)**. It is true that in the 1998 Courts were not considering future prospects and the claims as on the date of the accident on the basis of actual income of the deceased were considered. In the present matter also this Court holds that aforesaid notional income can be considered and the multiplier needs to be adopted as per the case of **(2009) 6 SCC 121 (Sarla Verma v. Delhi Transport Corporation)**. The Minimum Wages Act cannot be used in the case like present one if there is evidence to show that deceased was getting more income. In view of these circumstances this Court holds that compensation amount needs to be enhanced.

8) In the result, following order is made :-

9) The appeal is allowed. The judgment and award of the Tribunal is modified to make total amount of compensation as Rs.3,18,000/- (Rupees Three Lakh & Eighteen Thousand Only). Interest at the rate of 9% per annum is payable on the amount from the date of petition

till the date of realization. If any amount is already paid under the principle of no fault, it is to be deducted and the interest is to be given on the remaining amount.

10) The amount of compensation is to be distributed amongst the three claimants like widow and two issues as follows. 50% amount is to be given to the widow by account payee cheque and the remaining 50% amount is to be equally distributed between the two issues.

11) Civil Application is allowed and amendment is to be carried out in the appeal to show the minors as major.

Sd/-
(T.V. NALAWADE, J.)

rsl