IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 507 OF 2014

The Oriental Insurance Co. Ltd.
Through its Branch Manager
Divisional office, Central Phule
Market, Jalgaon through its
constituted Attorney and
authorized signatory,
Sr. Divisional Manager, **.... APPELLANT/**
Aurangabad. **[ORI. RESP.NO. 2]**

V E R S U S

1. Surekha Ashok Asodekar
   Age : 51 Yrs., Occ. Housewife,
   R/o : Plot No. 2, Mundada
   Nagar, Behind M.J.College,
   Jalgaon.

2. Ashok Hari Asodekar
   Age : 64 Yrs., Occ. Nil,
   R/o : Plot No. 2, Mundada
   Nagar, Behind M.J.College,
   Jalgaon.

3. Nilesh Ashok Asodekar
Age : 34 Yrs., Occ.
Education, R/o : Plot No. 2,
Mundada Nagar, Behind **.... RESP.NOS. 1 TO 3/**
M.J.College, Jalgaon. **[ORI. CLAIMANTS]**

4. Shivaji Laxman Giri
Age : 46 Yrs., Occ. Owner/
driver, R/o : 112,
Priyadarshini Hsg. Society,
Rajbhar Nagar, Chinchpada
Road, Kolshewadi, Kalyan, **.... RESPONDENTS/**
Dist. Thane. **[ORI. RESP.NO. 1]**

....

Mr. Dhananjay P.Deshpande, Advocate
for Appellants
Mr. B.S.Deshmukh, Advocate for R.Nos.
1 to 3.

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CORAM : T.V.NALAWADE, J.
DATE OF JUDGMENT : 17th FEBRUARY, 2016

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JUDGMENT :

1. The Appeal is filed by the Insurance Company to challenge the Judgment and Award of M.A.C.P. No. 12/2006, which was pending before the Motor Accident Claims

Tribunal, Jalgaon. Learned counsels for both sides are heard.

2. The accident took place on 02/03/2005 at about 6.30 p.m. within the local jurisdiction of Zilla Peth police station, Jalgaon. The deceased was riding motorcycle. It is contended that TATA Tempo bearing No. MH-05-748 gave dash to the motorcycle of deceased and the accident took place. The claim was made by the parents and brother of the deceased. Under various heads, compensation of ₹ 15.50 Lakh was claimed.

3. It is the case of the claimants that the deceased was aged about 28 years and by working as electrician he was earning at least ₹ 4,500/- per month. It is contended by claimants that they were totally dependent for their livelihood on the income of the deceased. The claimants placed reliance on the copies of police papers.

4. The owner filed Written Statement and contested the matter. He contended that the accident took place due to the fault of the deceased. The appellant/insurance company filed Written Statement and took similar defence.

5. The police papers show that police blamed the driver of Tempo and filed case against him. The spot panchanama shows that no brakes were applied by the Tempo driver and dash was given from front side to the motorcycle. After the dash, Tempo has crossed the distance of 25'. In view of these circumstances, it was necessary to prove that there was contributory negligence on the part of the deceased. No such evidence was given and so there was no other alternative before the Tribunal than to give finding that the accident took place due to the fault of Tempo driver.

6. In addition to the oral evidence, voluminous record is produced to show that the deceased was B.Com., he had completed I.T.I. course in electrician and it was the course of 2 years completed from 1995 to 1997. He had done the course of computer operation. The evidence is given that the deceased was working as electrician and the letter of appointment and salary given by the employer is produced at Exh. 38. This document was not disputed and so the employer was not examined. Thus, the claimants have proved that the monthly income of the deceased was ₹ 4,500/-. School record is produced to show the age and it

was around 28 years. The Tribunal gave increase of 50 % in aforesaid monthly income and then deducted 50 % amount towards personal expenses. The Tribunal used 14 as multiplier and held that there is loss of dependency of ₹ 5.5 Lakh. No amount is given under the head of loss of love and affection and no amount is given for funeral expenses. Similarly, interest @ 7.5 % per annum is given when higher rate could have been given.

7. Learned counsel for insurance company submitted that the Tribunal ought not to have given 50 % increase in the monthly income as he was employed in private concern. This submission is not acceptable and the aforesaid record was not challenged before the Tribunal. Even if the increase of 50 % is not given, the things can not change for insurance company. It is already observed that 14 was used as multiplier when 17 could have been adopted as multiplier. Further, amount of ₹ 50,000/- could have been given under the head of loss of love and affection and the amount of ₹ 25,000/- could have been given under the head of funeral expenses. The interest @ 9 % could have been given as the nationalized banks were giving such interest in

the year 2005. Thus, more amount of compensation could have been given than awarded by the Tribunal. This Court holds that it is not possible to interfere in the decision of the Tribunal even on the point of quantum of compensation.

8. In the result, First Appeal No. 507 of 2014 stands dismissed.

[T.V.NALAWADE, J.]

KNP/F.A. 507.2014 - [J]