

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.824/2015

- 1) Asmakhatun w/o Shaukat Ansari
Age: 35 Yrs., occu. Household.
- 2) Sabiha d/o Shaukat Ansari
Age: 4 yrs., occu. Education
- 3) Sabina d/o Shaukat Ansari,
Age: 6 Yrs., occu. Education
- 4) Jarina d/o Shaukat Ansari,
Age: 8 Yrs., occu. Education
- 5) Nasim s/o Shaukat Ansari
Age: 10 Yrs., occu. Education
- 6) Jalimun d/o Shaukat Ansari,
Age: 15 Yrs., occu. Education

Appellant Nos. 2 and 6 minor
under Guardian ship of mother
Appellant No.1.

- 7) Kitaban Noormohammad Ansari
Age: 65 Yrs., occu. Nil
All R/o Sonpa, Tq.Chausa
District Baxer Bihar,
At present MIDC, Nagapur,
Ahmednagar

= **APPELLANTS**
(Orig. claimants)

VERSUS

- 1) Trigun Dhanji Pawar
Age: 40 Yrs., occu. Business
R/o 833, Kasba Peth,
Ta.Mada, Dist.Solapur.
- 2) The Manager,
The United India Insurance Co.
Ltd. Tilak road, Main Road,

(Orig.Opponent No.1
owner of vehicle)

Latur — 413531

= **RESPONDENTS**

Mr.VR Autade, Advocate for Appellants;

Respondent No.1 served;

Mr.Sudhir V.Kulkarni,Adv. for Respondent No.2.

CORAM : P.R.BORA, J.

DATE : 13th April,2016.

JUDGMENT:

1) Heard. Admit. By consent, taken up for final disposal.

2) The present appeal is filed by the original claimants in MACP No.512/2008. The aforesaid claim petition has been decided by the Motor Accident Claims Tribunal, at Ahmednagar (for short, the Tribunal) on 13th September, 2012. The Tribunal has awarded the compensation amounting to Rs.4,55,000/- inclusive of the no fault liability jointly and severally from the respondent Nos. 1 and 2. The Tribunal has also awarded interest on the aforesaid amount @ 6% per

annum from the date of filing of the claim petition till the actual realization of the amount. The present appeal is filed for enhancement of the amount of compensation and for modification of the impugned award to that extent.

3) The learned Counsel appearing for the appellants submitted that the learned Tribunal has determined the compensation holding the income of deceased - Shaukat notionally to the tune of Rs.2,500/- per month. The learned Counsel submitted that the appellants have specifically pleaded in their petition that the deceased was earning Rs.4,500/- per month from his employment with Ramdas Ispat, situated at MIDC, Ahmednagar. The learned Counsel submitted that the evidence on the point of income has remained uncontroverted since the insurance company did not raise any objection in that regard. As such, according to the learned Counsel, the compensation ought to have been determined

holding the income of deceased Shaukat to the tune of Rs.4,500/- per month.

4) Shri Kulkarni, the learned Counsel appearing for the insurance company, has resisted the submissions so made on behalf of the appellants. The learned Counsel brought to my notice that the income as pleaded of the deceased was denied by the insurance company. The learned Counsel further pointed out that the counsel, who was appearing for the appellant, i.e. original claimants before the Tribunal, himself had submitted before the Tribunal that the compensation may be determined by holding the income of deceased Shaukat notionally to the tune of Rs.3,000/- per month. The learned Counsel further submitted that accordingly, the Tribunal has considered the submissions and has determined just and appropriate compensation.

5) I have gone through the discussion made by the learned Tribunal in para 8 and 9 of the

impugned judgment. From the discussion made by the learned Tribunal and from the record of the case, it appears to me that though it was the case of the appellants/claimants that deceased Shaukat was employed with Ramdas Ispat, MIDC, Ahmednagar and was drawing wages to the tune of Rs.4,500/- per month, the employer or his representative has not examined by the appellants/claimants in order to prove the income so pleaded by them in the claim petition. That was the reason the Tribunal was constrained to assess the income of deceased Shaukat on notional basis.

6) Further, the submission was made on behalf of the original claimants themselves through their counsel before the Tribunal that the income of deceased Shaukat shall be notionally held to the tune of Rs.3,000/- per month and accordingly, the compensation be determined. Appellants, now, therefore, cannot say that the income of deceased be held to the

tune of Rs.4,500/- per month and the compensation be awarded accordingly.

7) From the further discussion made in the impugned judgment, it appears that the Tribunal has notionally held the income of deceased Shaukat to the tune of Rs.2,500/-. There is no discussion made by the Tribunal as to on what basis the income of deceased Shaukat was notionally held by it to the tune of Rs.2,500/-. It appears to me that there was a very just and reasonable suggestion from the side of the claimants that the compensation may be determined by notionally holding the income of deceased Shaukat to the tune of Rs.3,000/- In such circumstances, it appears to me that the learned Tribunal ought to have assessed the compensation by holding the income of deceased Shaukat notionally to the tune of Rs.3,000/- It was a very reasonable proposal and it ought to have been accepted by the the Tribunal. To that extent, it appears to me that the compensation

amount needs to be enhanced and the Award needs to be modified to that extent.

8) The learned Counsel appearing for the insurance company submitted that no mistake has been committed by the Tribunal in determining the amount of compensation, holding the income of deceased Shaukat notionally to the tune of Rs. 2,500/-, It is difficult to agree with the submission so advanced. In the year 2012, income of a person notionally to the tune of Rs.3,000/- cannot be in any way said to be unreasonable or excessive. If the income of deceased Shaukat is held to the tune of Rs.3,000/- per month and 30% amount is added in the said amount towards the future prospects of deceased Shaukat, monthly income of deceased Shaukat has to be held Rs.3,900/-. Having regard to the number of dependents on the income of deceased Shaukat, only 1/5th of his income was liable to be deducted towards his personal expenses. That amount comes to Rs.780/-. If that amount is

deducted from the monthly income of Rs.3,900/-, the balance amount of Rs.3,120/- can be said to be available to be spent by deceased Shaukat on the welfare of his family members. Multiplied by 12, it comes to Rs.37,440/- and that is to be held to be annual dependency of the petitioners/claimants on the income of deceased Shaukat. Having regard to the age of deceased, the Tribunal has correctly applied the multiplier of 14. By applying the said multiplier to the amount of Rs.37,440/-, the compensation amount comes to Rs.5,24,160/-. It further appears to me that the Tribunal has awarded a very meager sum of Rs.5,000/- to the claimants towards the loss of love and affection. I enhance it to Rs.25,000/-. I am also inclined to enhance the amount of compensation granted towards the funeral expenses from Rs.3,000/- to Rs.10,000/-. The appellants/claimants are thus entitled to receive the total compensation of Rs.5,59,160/- (i.e. Rs.5,24,160/- + Rs.25,000/- + Rs.10,000/- = Rs.5,59,160/-) inclusive of NFL compensation. The

amount of Award thus needs to be modified to the aforesaid extent. Save and except, the amount of compensation enhanced as above, the other part of the impugned Judgment and Award shall remain unchanged. Modified Award be prepared accordingly. Deficit court fees, if any, be recovered from the appellants/claimants before preparation of the modified award.

9) The appeal stands allowed in the aforesaid terms.

Sd/-
(P . R . BORA)
JUDGE

bdv/