

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 184 OF 2002
WITH CA/1534/2002 IN FA/184/2002

1. United India Insurance Co Ltd. Chennai
Latur, Branch At and District Latur
Through its Divisional manager
authorized representative and
signatory
Ahmednagar Division,
Kisan Kranti Building,
Ahmednagar, Dist. Ahmednagar
 2. Mohammad Muquemuddin Mohammad
Allemuddin Baig, Age 45 years,
Occ. Business,
R/o. H. No. 11-1-131, Agapur,
Hyderabad
- ...Appellants

versus

1. Smt. Savita Tatyrao Bhosale,
Age 42 years, Occ. Household
 2. Smt. Meenakshi Tatyrao Bhosale,
Age 22 years, Occ. Education
 3. Satish Tatyrao Bhosale,
Age 20 years, Occ. Education
 4. Dnyanendra Tatyrao Bhosale,
Age 18 years, Occ. Education

All R/o. Kavha Road, Gulmarket,
Latur, District Latur
 5. Ashokkumar Nagsheeti Appa
Age 42 years, Occ. Truck Driver
R/o. Malikarjun Street,
Basavkallyan, District Bidar
- ...Respondents

...
Advocate for Appellants : Mr. A B Gatne
Advocate for Respondents 1 to 4 : Mr. L.B. Palod
.....

CORAM : V. K. JADHAV, J.
DATED : 12th APRIL, 2016

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award dated 10.7.2001 passed by the learned Chairman, M.A.C.T. Ahmednagar in M.A.C.P. No. 1219 of 1994, the original opponent Nos. 3 and 4 prefer this appeal.

2. Brief facts, giving rise to the present appeal, are as under:-

a) On 3.7.1994, at about 3.40 p.m. near village Guha on Rahuri-Shirdi road, deceased Tatyrao alongwith two other persons were proceeding in a car. On the way, one truck bearing registration No. ABT 2927 came from opposite direction in high speed and gave a dash to the car, by coming on wrong side of road. In consequence of which, all three including the driver, were seriously injured in the accident. Deceased Tatyrao died on the spot. Legal representatives of deceased Tatyrao filed claim petition bearing M.A.C. No. 1219 of 1994 against respondent Nos. 3 to 5 i.e. owner, driver and insurer of the truck involved in the accident and in the alternate also claimed compensation from owner, insurer and drivers of both the vehicles involved in the accident. Learned

Chairman, M.A.C.T. Ahmednagar, by impugned judgment and award dated 10.7.2001 allowed the claim petition with costs and thereby directed respondent Nos. 3 to 5 to pay compensation of Rs.7,00,000/- including no fault liability to the claimants with interest @ 9% p.a. from the date of filing of application till realization of amount.

b. Being aggrieved by the same, the original respondent Nos.3 and 4 preferred this appeal to the extent of quantum. So far as the finding recorded by the tribunal holding truck driver responsible for the accident alone is concerned, the same is not challenged by way of this appeal. Thus, the appeal is preferred against quantum only.

3. Learned counsel of the appellants submits that the Tribunal has considered the income of deceased Tatyrao erroneously. Even though, as contended by the claimants, deceased Tatyrao was getting salaried income, the salary certificate is not produced on record and merely the salary details are given on letter pad. Learned counsel submits that the Tribunal has considered the loss of agriculture income to the tune of Rs.2,500/- p.m. Learned counsel further submits that even after accidental death of deceased Tatyrao, corpus of agriculture land remained as it is and the major

sons of deceased Tatyrao i.e. claimant Nos. 3 and 4 can cultivate the land and in that event, there is no loss in the agriculture income as such. Learned counsel, in the alternate, submits that at the most the loss towards supervision charges can only be considered.

4. Learned counsel for the respondents-original claimants submits that salary certificates of deceased Tatyrao are placed on record, the same are marked at Exh.40 and 43 and details of salary are mentioned in salary certificate Exh. 40. Learned counsel submits that deceased Tatyrao was getting gross salary of Rs.8630/- and after deducting professional tax and income tax, he was getting salary of Rs.8060/- p.m. at the time of his accidental death. Learned counsel submits that the Tribunal has rightly considered the income from agriculture source and accordingly added Rs.2500/- p.m. in the income of deceased Tatyrao. Learned counsel submits that the Tribunal has erroneously applied multiplier 10 instead of 11. Learned counsel submits that the Tribunal has not at all awarded any compensation under non pecuniary heads.

5. It appears from the contents of salary certificate Exh.40 that deceased Tatyrao was getting gross salary of Rs.8630/- p.m. and if the amount under the heads of professional tax and income tax are deducted, then the salary certificate shows that the deceased

Tatyrao was getting Rs.8060/- p.m. So far as the agriculture income is concerned, the learned counsel for the appellant has rightly pointed out that the corpus of land remained as it is even after accidental death of deceased Tatyrao and his major sons are quite competent enough to cultivate the land. In that event, there can be hardly any loss for the agriculture income. However, the claimant Nos. 3 and 4 are young boys, taking education at the time of death of deceased Tatyrao. Considering their inexperience, loss of Rs.500/- p.m. towards supervision charges would be appropriate. In view of this, the monthly salaried income is Rs.8060/- and Rs.500/- on account of loss of supervision charges, then the loss of dependency/income comes to Rs.8560/-. Since respondent Nos. 2, 3, and 4 are major children, I do not find any fault in the order passed by the Tribunal considering $\frac{1}{3}^{\text{rd}}$ deduction on account of personal expenses of deceased Tatyrao. After deducting $\frac{1}{3}^{\text{rd}}$ amount from income of deceased Tatyrao towards his personal expenses, his monthly income comes to Rs.5707/-, which corresponds to Rs.68,484/- per year. Deceased Tatyrao was 52 years old at the time of accidental death and the same is not seriously disputed. Even though the appeal is preferred by the respondent Nos. 3 and 4 i.e. insured and owner of the vehicle-truck involved in the accident, it appears that the Tribunal has not awarded compensation in accordance with law. The Tribunal is duty bound to award just and

reasonable compensation in accordance with law. In the case in hand, the Tribunal has not considered the salaried income of deceased Tatyrao as per salary certificate Exh.40. Further more, the Tribunal has not awarded any compensation under non pecuniary heads. In my considered opinion, for this purpose, no cross objection is required.

6. In view of this, appropriate multiplier would be 11 instead of 10. The Tribunal has committed mistake in applying multiplier and also calculating the compensation amount. The Tribunal has also committed mistake in considering the loss of agriculture income to the extent of Rs.2500/- p.m. The loss of supervision charges towards agriculture land can be considered only. Thus, applying the multiplier 11, total loss of dependency/income comes to Rs.7,53,324/-.

7. The Tribunal has also not awarded compensation under non pecuniary heads. The claimant No.1 was 42 years old at the time of accidental death of her husband Tatyrao. Thus, she is entitled for amount of Rs.15,000/- as loss of consortium. The claimants are entitled for Rs.10,000/- for loss of estate. The claimant Nos. 2, 3 and 4 are entitled for Rs.10,000/- each for love and affection. The claimants are also entitled for Rs.5000/- towards funeral expenses. In

view of this, the compensation awarded by the Tribunal is required to be re-calculated. Thus, the break up of compensation, which can be broadly categorized, is as under:-

i)	Loss of income/dependency	Rs. 7,53,324.00
ii)	Loss of consortium	Rs. 15,000.00
iii)	Loss of estate	Rs. 10,000.00
iv)	Loss of love and affection for claimant nos. 2 to 4 (Rs.10,000/- each)	Rs. 30,000.00
v)	Towards funeral expenses	Rs. 5,000.00

		Rs. 8,13,324.00
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8. The claimants are thus entitled for Rs.8,13,324.00 (Rupees eight lacs thirteen thousand three hundred twenty four only). Hence, I proceed to pass the following order:-

O R D E R

- I. The judgment and award dated 10.7.2001 passed by the Chairman, M.A.C.T. Ahmednagar in M.A.C.P. No. 1219 of 1994 is modified in the following manner;-

The opponent Nos. 3 to 5 shall pay compensation of

Rs.8,13,324.00 (Rupees eight lacs thirteen thousand three hundred twenty four only) inclusive of no fault liability to the claimants with interest @ 9% p.a. from the date of application till realization of amount.

- II. Rest of the judgment and award passed by the Tribunal stands confirmed.
- III. Award be drawn up in tune with the above modification.
- IV. Appeal is accordingly disposed of.
- V. Civil application No. 1534 of 2002 is also disposed of.

(V. K. JADHAV, J.)

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