IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 185 OF 2002
WITH CA/1533/2002 IN FA/185/2002 WITH X-OBJST/8552/2016 IN FA/185/2002

1. United India Insurance Co Ltd. Chenni
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. Sumitrabai Manikrao Patil,
Age 42 years, Occ. Household

2. Arvind Manikrao Patil,
Age 23 years, Occ. Education

3. Pradeep Manikrao Patil,
Age 21 years, Occ. Education

All R/o. Peth, Tq. Latur,
District Latur

4. Ashokkumar Nagsheeti Appa
Age 42 years, Occ. Truck Driver
R/o. Malikarjun Street,
Basavkallyan, District Bidar ...Respondents

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

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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. 1220 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 Manikrao 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 the road. In consequence of which, all three including the driver, were seriously injured in the accident. Deceased Manikrao died on the spot. Legal representatives of deceased Manikrao filed claim petition bearing M.A.C. No. 1220 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 for the appellants submits that the Tribunal has not considered the correct income of deceased Manikrao and thus committed error in assessing the compensation. The Tribunal has erroneously considered the income of Rs.2000/- p.m. from agriculture source. Learned counsel submits that even after accidental death of deceased Manikrao, the corpus of agriculture land remained as it is and there cannot be any loss in agriculture income as such. Learned counsel submits that deceased Manikrao till his death was cultivating the agriculture land jointly with his three

brothers and there was no partition as such. In view of this, even the loss on account of lack of experience or skill in the agriculture income cannot be considered in the present case. Learned counsel submits that considering the age of deceased, appropriate multiplier would be 14 instead of 15. The Tribunal has erroneously applied the multiplier 15 instead of 14.

4. Learned counsel for the respondents claimants submits that though the salary certificate produced before the Tribunal, Exh. 44 and since admitted by the other side, the Tribunal has not considered the salaried income of deceased Manikrao as stated in the salary certificate. The Tribunal has rightly considered the loss of agriculture income and accordingly assessed the compensation. Learned counsel submits that the Tribunal has not awarded compensation under the head of non pecuniary loss. Learned counsel submits that even the respondents claimants have filed civil application for taking on record the cross objection alongwith the application for condonation of delay. Learned counsel submits that it is always open to consider whether the Tribunal has awarded just and reasonable compensation in accordance with law.

5. It appears that the Tribunal has not considered the salary certificate Exh.44. Even though the gross salary of Rs.6012/- p.m. is

mentioned in the said certificate, the Tribunal has considered the income of deceased Manikrao as per the certificate Exh.43. In fact the salary certificate Exh.44 is for the month of June, 1994. Deceased Manikrao met with an accidental death in the month of July and thus, this certificate shows the last pay drawn by him prior to his death. Thus, the Tribunal ought to have considered the same.

6. It appears that the Tribunal has considered loss in agriculture income to the tune of Rs.2000/- p.m. Learned counsel for the appellant has rightly pointed out that corpus of land remained as it is and there cannot be any loss in the income as such. On perusal of the 7x12 extract at Exh. 45 to 49, it appears that deceased Manikrao was cultivating the land Gat No.54, 103 and 254 alongwith his real 3 brothers and no partition had taken place in respect of agriculture land amongst brothers. So far as the land Gat No. 254 is concerned, the claimant Arvind has admitted in his cross examination that said land was purchased in the name of his deceased father. In view of this, I do not think that any case is made out to award supervisory charges so far as agriculture income is concerned. It appears that the Tribunal has incorrectly applied multiplier 15 instead of 14. The school leaving certificate of deceased Manikrao is placed on record and P.W.1 Arvind Patil has also deposed that as per the transfer certificate, issued by the school, the date of birth of his father is

7.4.1949. Thus on the date of accident, the age of deceased Manikrao was 45. Thus, the correct multiplier is 14 instead of 15. So far as the compensation under the head of non pecuniary loss is concerned, the Tribunal has not awarded any compensation. Thus the claimants are entitled for compensation under various heads for Rs.50,000/-.

7. In view of the above discussion, by deducting the amount of professional tax and income tax, the loss of salary income comes to Rs.5742/-. Deceased Manikrao was 45 years of age at the time of his accidental death. Considering the future prospectus, 30% amount can be added in his income. In view of the above, on said 30% amount, total loss in the salaried income comes to Rs.7,464/-. The amount equal to 1/3rd is thus liable to be deducted towards personal expenses of deceased Manikrao. Thus, loss of income/dependency comes to Rs.4,976/- p.m. rounded off to Rs.4,970/-, corresponds to Rs.59,640/- per year. By applying the multiplier 14, the loss of income/dependency of deceased comes to Rs.8,34,960/-.

8. In view of this, the break up of compensation, which can be broadly categorized, is as under:-

i)	Loss of income/dependency	Rs.	8,34,960.00
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 and 3 (Rs.10,000/- each)	Rs.	20,000.00
v)	Towards funeral expenses	Rs.	5,000.00
		Rs.	8,84,960.00

The claimants are thus entitled for Rs.8,84,960.00 (Rupees eight lacs eighty four thousand nine hundred sixty only).

9. The Tribunal is duty bound to award the just and reasonable compensation in accordance with law. In the case in hand, the Tribunal has considered the loss in agriculture income erroneously and further committed error in considering the salaried income of deceased Manikrao as per the salary certificate Exh.44. It is also matter of record that the Tribunal has committed mistake in applying the multiplier 15 instead of 14. In view of this, the compensation is required to be re-calculated. In my considered opinion, for this purpose, no cross objection is required. Hence, I proceed to pass the following order:-

ORDER

I. The judgment and award dated 10.7.2001 passed by the Chairman, M.A.C.T. Ahmednagar in M.A.C.P. No. 1220 of 1994 is modified in the following manner;-

The opponent Nos. 3 to 5 shall pay compensation of Rs.8,84,960.00 (Rupees eight lacs eighty four thousand nine hundred sixty only) inclusive of no fault liability to the claimants with interest @ 9% p.a. from the date of application till realization of amount of Rs.7,00,000/- as per the award prior to the modification and interest @ 9% p.a. from the date of this order till realization of entire amount on the compensation as per the modification of award.

II. The respondents-claimants shall deposit the deficit court fees within a period of six weeks from today.

III. Civil application for condonation of delay caused in filing cross objection is disposed of. In view of disposal of said civil application, the respondents-claimants are entitled for refund of court fees as per Rules, if paid on cross objection.

IV. The statutory amount deposited by the appellants shall be transferred to M.A.C.T. Ahmednagar and the same shall be adjusted as per modification in the award and the claimants are permitted to withdraw the same.

V. Award be drawn up in tune with the above modification.

VI. Appeal is accordingly disposed of. Civil application No. 1533 of 2002 is also disposed of.

(V. K. JADHAV, J.)

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