IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.25 OF 2003

1. Asha W/o Kishan Badne,
   Age: 24 years, Occu: Nil

2. Soni D/o Kishan Badne,
   Age: 5 years, Occ : Nil

   Through Natural Guardian
   Asha Kishan Badne

3. Baburao S/o Namdeo Badne,
   Age: 48 years, Occu: Agri.

4. Namdeo Krushnaji Badne,
   Age: 69 years, Occu: Nil,

5. Bhimabai W/o Namdeo Badne
   Age: 66 years, Occu: Nil.

   All R/o Deokara, Tq. Ahmedpur,
   District :- Latur. … **APPELLANTS.**

VERSUS

1. Subhash S/o Baburao Navale
   Age: 30 years, Occu: Driver,
   C/o Narayan Sadhu Gaikwad,
   Sukhwani residency, Adinathnagar,
   Bhosari, Pune – 39.

   (Deleted as per leave granted by
   Hon’ble Court vide order dated

01.03.2016)

2. Narayan S/o Sadhu Gaikwad,
Age: 35 years, Occu: Business,
R/o Sukhwani Residency,
Adinath-nagar, Bhosari,
Pune -39.

3. The Oriental Insurance Co. Ltd.
Arjun Towers, IIIrd floor,
Gokhle Road, Nampada, Thane,
Through its Branch Manager,
Branch office in front of Bus Stand
Latur.

4. New India Insurance Co. Ltd.
Sharda Center, 11/1, Erandwane,
Pune – 411 004
Through its, Branch Manager,
Branch Office Chandranagar,
Latur. … **RESPONDENTS**

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Mr. B.R. Kedar, Advocate for Appellant;

Mr.Dhananjay Deshpande, Advocate for Respondent No.3;

Mr. Mandar Deshmukh, Advocate h/f Mr. S.G. Chapalgaonkar, Advocate for Respondent No.4

CORAM : P.R.BORA,J.

DATE OF RESERVING JUDGMENT : 30th March,2016
DATE OF PRONOUNCING JUDGMENT: 2nd MAY, 2016

JUDGMENT

1) Heard. Original claimants have filed

the present appeal seeking enhancement in the amount of compensation granted by the Motor Accident Claims Tribunal, at Latur (for short, the Tribunal) in MACP No.640/1997, decided on 28th February, 2001. The appellants are herein after referred to as the claimants.

2) The claimants had filed the aforesaid claim petition seeking compensation on account of death of one Kishan Baburao Badne, who died on 4.12.1996 in a motor accident having involvement of a tempo bearing registration No. MH-14-F-1475 and a jeep bearing registration No. MVM 9155. The claimants had claimed the compensation of Rs. 4,00,000/-. claimant No.1 – Aasha is the widow; claimant No.2 – Soni is the daughter, claimant No.3-Baburao is father, whereas claimant No.4 – Namdeo and claimant No. 5 – Bhimabai are grand-parents of deceased Kishan.

3) It was the contention of the claimants before the Tribunal that while deceased Kishan

was proceeding by driving his jeep from Pune to Nashik near Borwadi Math, the tempo bearing registration No. MH-14-F-1475 coming from the opposite direction in a high speed, gave a dash to the jeep being driven by deceased Kishan and in the accident so happened, Kishan suffered serious injuries and ultimately succumbed to the said injuries. The claimants had alleged that the accident in question happened because of the rash and negligent driving of driver of the offending tempo. The claimants had, therefore, claimed compensation from the driver, owner and insurer of the offending tempo. The offending temp was owned by Respondent No. 2 – Narayan s/o Sadhu Gaikwad and was insured at the relevant time with Respondent No.3 – Oriental Insurance Co.Ltd. The claimants had also impleaded the insurance company of the jeep as Respondent No.4. However, no relief was claimed against the said insurance company.

4) As stated in the claim petition, age of

the deceased was around 24 years on the date of the accident. As further stated in the petition the deceased was serving as a mechanic and was earning Rs. 2,500/- per month as the wages and Rs.500/- by doing extra work. The claimants had also claimed the compenation for damages caused to the jeep in the alleged accident..

5) The claim petition was contested by Respondent No.3 – Oriental Insurance Company. It was the contention of the Oriental Insurance Company that in occurrence of the alleged accident, there was negligence on the part of the deceased also. The insurance company had also disputed the averments as regards to the age and income of the deceased.

6) In order to prove the contentions raised in the claim petition, widow of the deceased, viz. Aasha deposed before the Tribunal and one Shivaji Dnyanoba Chate also examined on behalf of the claimants to prove the income of the

deceased. The respondents did not adduce any oral evidence.

7) The learned Tribunal on its assessment of the oral and documentary evidence brought before it, held the claimants entitled for the total compensation of Rs. 2,65,000/- inclusive of NFL compensation jointly and severally from the driver, owner and insurer of the tempo. The claim petition wad dismissed against Respondent No.4, i.e. New India Insurance Company.

8) Shri Kedar, learned counsel appearing for the appellants-claimants submitted that the Tribunal has failed in awarding a just and fair compensation. The learned Counsel submitted that the income of the deceased was duly proved by the claimants and in absence of any contrary evidence, the Tribunal ought to have assessed the compensation on the basis of the said proved income. The learned counsel further submitted that considering the number of dependents on the

income of the deceased, only 1/5th of the total income of the deceased was liable to be deducted while computing the amount of dependency compensation, whereas the Tribunal has deducted 1/3rd of the total income of the deceased towards the personal expenses. The learned counsel further submitted that the Tribunal has not taken into account the future prospects of deceased Kishan while determining the amount of compensation. The learned counsel further submitted that the compensation awarded by the Tribunal towards the loss of consortium is inadequate. The learned counsel submitted that the Tribunal must have awarded separate compensation to the minor daughter and the parents of the deceased towards loss of love and affection. It was further argued by the learned counsel that the Tribunal has failed in not awarding the damages caused to the jeep in the alleged accident. The learned counsel, therefore, prayed for enhancement of the amount of compensation and to modify the Award to that extent.

9) Shri Dhananjay Deshpande, learned counsel appearing for Oriental Insurance Company (Respondent No.3), opposed the submissions advanced on behalf of the claimants. The learned Counsel submitted that the Tribunal has awarded the just and fair compensation and no interference is required in the impugned Judgment and Award.

10) I have carefully considered the submissions advanced on behalf of the claimants and the contesting insurance company. I have also perused the impugned judgment and evidence adduced before the Tribunal. In order to prove the income of the deceased the claimants have examined the employer of the deceased viz. Shivaji Dyanoba Chate. In his evidence, the said witness has deposed that he used to pay Rs.2,500/- per month to deceased Kishan by way of his monthly salary. The salary certificate issued

by said Shivaji Chate was duly proved during the course of his evidence and was marked as Exhibit-34. It is true that in the cross-examination of said Shivaji, it has come on record that he did not keep any muster of his employees and that he had not brought with him any Account Register in the Court. However, according to me, the aforesaid facts were not sufficient to discard or disbelieve the evidence of the said witness. It has not been denied by the contesting insurance company that deceased Kishan was working as Mechanic. In the circumstances, the learned Tribunal ought to have held the income of the deceased to the tune of Rs.2,500/- per month. In so far as the other contentions of the claimants that he used to earn Rs.500 extra per month by doing the mechanic work privately, since there was no evidence at all, the Tribunal was right in not considering the said income. However, there was no reason for the Tribunal to hold the income of the deceased to the tune of Rs.2,000/- per month when through evidence of PW 2 – Shivaji

Chate, the claimants had sufficiently proved the income of the deceased to the tune of Rs. 2,500/- per month. Secondly, having regard to the number of dependents on the income of the deceased, only $1/4^{th}$ of the total amount of his income was liable to be deducted towards the personal expenses of the deceased. It is thus evident that the amount of compensation is liable to be enhanced to the aforesaid extent. Having regard to the fact that the income of the deceased was Rs.2,500/- per month, i.e. Rs.30,000/- per annum, if $1/4^{th}$ of the same is deducted towards the personal expenses of the deceased, the balance amount of Rs. 22,500/- can be said to be available with the deceased to be spent on the maintenance and welfare of his dependents. It is not in dispute that the deceased was 24 years old at the time of his death. The appropriate multiplier would be thus 18. By applying the said multiplier, the amount of dependency compensation comes to Rs.4,05,000/- (22,500/- X 18).

11) It was sought to be canvassed by the learned Counsel for the claimants that future prospects of the deceased ought to have been considered while determining the amount of compensation. It was urged by the learned counsel that having regard to the age of the deceased, 50% of the income ought to have been added in his proved income while determining the amount of compensation. In support of his contentions, the learned counsel has relied upon the Judgments of the Hon'ble Supreme Court in the cases of **Smt. Sarala Verma and Ors. Vs. Delhi Transport Corporation and Ors. - AIR 2009 SC 3104** and **Rajesh and Ors. Vs. Rajbir Singh and Ors. - 2013 (6) Scale 563.** There cannot be a dispute that the future prospects of the deceased are to be taken into account while computing the amount of compensation. However, as has been held by the Division Bench of this Court in the case of **The New India Assurance Co. Ltd. Vs. Smt. Alpa Rajesh Shah and Ors. - 2014 (4) ALL.M.R. 172,** the claimants must produce satisfactory evidence to

show that there were genuine prospects of increase or enhancement in the earnings of the deceased. The Division Bench has further held that only when there is a strong and positive evidence on record to show that there were definite prospects of increase in the income of the deceased in future, such a case can be treated as an exceptional case in which future prospects of increase in the earning can be considered by the Tribunal. In the instant matter, the claimants have not brought on record any such evidence. In the circumstances, the submission made on behalf of the claimants, for enhancement of the amount of compensation, considering the prospects of the deceased and consequent increase in his income, does not deserve any consideration.

12) It was also sought to be canvassed that the Tribunal has failed in not awarding the damages caused to the jeep in the alleged accident. The Tribunal in para 9 of the judgment

has given elaborate reasons for not granting any amount towards the damages caused to the jeep. It is stated that the claimants had not placed on record any document showing ownership of the deceased over the said jeep. It is further stated that the expenses for repairs of the jeep were incurred by the claimants. It is also stated that there was evidence on record showing that the jeep was repaired by Shivaji Chate and not by any of the claimants. It has also come on record that the said jeep was subsequently sold by said Shivaji Chate and not by any of the claimants. In view of the material on record, as above, it does not appear to me that the Tribunal has committed any error in not awarding any amount towards the damages caused to the jeep.

13) The claimants have also raised the grievances that the Tribunal has awarded inadequate amount towards loss of consortium and has not awarded any compensation towards the funeral expenses and towards the loss of love and

affection to the daughter and parents of the deceased. The Tribunal has awarded a sum of Rs.15,000/- to the widow of the deceased towards loss of consortium. It appears inadequate. I enhance the said amount to Rs.35,000/-. I am also inclined to award further sum of Rs.25,000/- to the other claimants towards loss of love and affection. Amount of Rs.5,000/- also deserves to be granted to the claimants towards the funeral expenses. The claimants are thus entitled to the total compensation of Rs.4,65,000/-.

14) In the facts and circumstances of the case, it appears to me that this would be the just and fair compenation payable to the claimants. The impugned Judgment and Award thus needs to be modified to the aforesaid extent. It be modified accordingly. It is directed that Respondent Nos. 2 and 3 in the present appeal shall jointly or severally pay to the appellants enhanced amount of compensastion together with interest thereon @ 6% p.a. From the date of

filing of the petition till actual realization of the amount. It is further directed that the aforesaid amount of enhanced compensation be paid to appellant Nos.1 and 2 in equal proportion.

15) The First Appeal stands disposed of in aforesaid terms.

sd/-
(P.R.BORA)
JUDGE

bdv/

fldr 27.4.2016