IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.426 of 2015

1) Smt. Shobhana w/o Prabhakar
Bacchav, Age: 41 Yrs.,
occu. Household.

2) Mr.Vijay s/o Prabhakar Bacchav,
Age: 22 Yrs., occu. Education.

3) Harish s/o Prabhakar Bacchav,
Age: 20 yrs., occu. Education.

All R/o Juni Shemli,
Tq. Satana, Dist. Nasik. = **APPELLANT (orig.Applicants)**

VERSUS

1) Mr.Sachin s/o Shivaji Marne,
Age: Major, occu.Business.
R/o 39/15, Ganeshnagar,
Karve Road, Pune, Tq. Pune,
District Pune.

2) The New India Assurance Co.Ltd.
Divisional Office at Abet Bldg.
Kings road, Ahmednagar. = **RESPONDENTS (Orig.Respondents)**

Mr.CV Bhadane, Advocate for Appellants;
Respondent No.1 served.
Mr.MM Ambhore, Advocate for Respondent No.2

CORAM : P.R.BORA, J.

DATE : 13th April,2016.

ORAL JUDGMENT:

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

final disposal.

2) In the present appeal, the appellants are seeking enhancement in the amount of compensation awarded to them by Motor Accident Claims Tribunal, Ahmednagar (for short, the Tribunal) in MACP No. 382/2005 decided on 26th August, 2009.

3) Appellant No.1 is widow of deceased Prabhakar Bacchav; whereas appellant Nos. 2 and 3 are brothers of the deceased, who died in a vehicular accident happened don 18th February, 2005, having involvement of a Tempo bearing registration No. MH-12-RA-8130 owned by Respondent No.1 and insured with Respondent No.2. At the relevant time, the deceased was proceeding in a Maruti Esteem Car bearing registration No.MH-15-F-4427 and it was dashed by the aforesaid tempo and in the accident so happened, deceased Prabhakar suffered grave injuries and ultimately died in the hospital on the same day.

The appellants, therefore, filed the aforesaid claim petition, claiming compensation of Rs.25,00,000/- from the owner and insurer of the offending tempo.

4) The aforesaid claim petition was resisted by the insurance company on several grounds. The insurance Company had raised defence of contributory negligence also. Age and income of the deceased was also disputed. Before the Tribunal, appellant No.1 adduced oral evidence and filed certain documents on record including the police papers pertaining to the accident in question. She had also placed on record the salary certificate of deceased Prabhakar. The learned Tribunal, on its assessment of the oral as well as documentary evidence, brought on record, held the appellants entitled for the total compensation of Rs.10,20,760/- inclusive of compensation under no fault liability jointly and severally from the owner and insurer of the offending tempo along

with interest thereon @ 6% p.a. from the date of application till actual realization of the amount.

5) The learned Counsel appearing for the appellants submitted that the Tribunal has grossly erred in determining the amount of compensation. The learned Counsel submitted that while determining the dependency compensation, the Tribunal has applied the multiplier of 9; whereas as per the age of the deceased, multiplier of 13 was liable to be applied. The learned Counsel further submitted that the Tribunal has totally overlooked the aspect of the future prospects of deceased Prabhakar and that has resulted in determining the amount of compensation on lower side. The learned Counsel further submitted that the Tribunal has awarded very meager amounts under the heads of loss of love and affection; pains and suffering etc. The learned Counsel further submitted that towards the loss of consortium, appellant No.1 has not

been granted a single pai. The learned Counsel further submitted that the rate of interest awarded by the Tribunal is also inadequate. On above counts, according to learned Counsel, the amount of compensation, needs to be proportionately enhanced.

6) Shri Ambhore, the learned Counsel appearing for the respondent/insurance company, resisted the submissions made on behalf of the appellants. The learned Counsel submitted that the Tribunal has correctly determined the amount of compensation considering the evidence, which was before it and hence, impugned judgment requires no interference. The learned Counsel further submitted that the appellants/claimants did not adduce any evidence as regards the future prospects of deceased Prabhakar and as such, there was no reason for the Tribunal to consider the said aspect while determining the amount of compensation. The learned Counsel, therefore, prayed for dismissal of the appeal.

7) I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and the oral as well as documentary evidence adduced in the mater. In so far as the first objection raised by the appellant that the Tribunal has applied a wrong multiplier is concerned, the same deserves to be accepted. Age of deceased Prabhakar was admittedly 47 years at the time of his death. As such, the appropriate multiplier would have been of 13 for determining the amount of dependency compensation. The Tribunal has determined the said amount by applying the multiplier of 9. It is thus evident that to that extent the Award will have to be modified.

8) Though, the learned Counsel appearing for the appellants was persuasive in his submission that future prospects of deceased Prabhakar are not taken into account while determining the compensation, relying on the

judgment of the Hon'ble Apex Court in the case of *Sarala Verma Vs. Delhi Transport Corporation - 2009 (6) SCC 121; Rajesh and Ors. Vs. Rajbir Singh and Ors. - 2013 (9) SCC 54 and,* the learned Counsel could not bring to my notice that there was any evidence adduced by the appellants/claimants orally or documentary, showing the future prospects of deceased Prabhakar. In such circumstances, 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 and Ors. - 2014(4) ALL M R 172,* it is difficult to accept the submission made on behalf of the appellants that the Tribunal has committed an error in not considering the future prospects of deceased Prabhakar while determining the amount of compensation. The Division Bench in the aforesaid judgment has categorically held that the claimants must produce satisfactory evidence to show that there were genuine prospects of increase or enhance in the earnings of the deceased. The learned Division Bench has

further observed that only when there is 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 case, admittedly, no such evidence has been brought on record by the appellants/claimants. In the circumstances, it does not appear to me that the learned Tribunal has committed any error in determining the amount of compensation.

9) The learned Tribunal has granted a sum of Rs.20,000/- to the appellants/claimants towards loss of love and affection. It is true that the Tribunal has not awarded any amount to the widow of the deceased, i.e. appellant No.1, in the present case towards loss of consortium. The Tribunal must have awarded the compensation under the aforesaid head separately to appellant No.1. It appears to me that the appellant No.1

deserves to be awarded a sum of Rs.25,000/- towards loss of consortium in addition to what has been earlier granted to all the appellants towards loss of love and affection. Funeral expensed are granted @ Rs.5,000/- by the Tribunal. In so far as interest part is concerned, it does not appear to me that any interference is required to be caused in view of the fact that it is discretion to be exercised by the Tribunal. Though it has been argued that 9% interest ought to have been granted by the Tribunal, there is no such mandate. Thus, as discussed herein above, the amount of compensation needs to be enhanced as below.

10) As has come on record, deceased Prabhakar was receiving monthly salary to the tune of Rs. 14,728/-. Deducting Rs.900/- towards statutory deductions, the net salary of the deceased is held to the tune of Rs.13,829/-. In fact, there was no reason for the Tribunal to take into account the amount of Rs.700/-, which

was being deducted towards the PF contribution. The only amount which was liable to be deducted was towards the Profession tax. However, there is further no discussion as about the deductions towards the income tax. In the circumstance, I do not wish to go into the said details.

11) As stated above, the net monthly salary of deceased Prabhakar was Rs.13,829/- per month. 1/3rd of it will have to be deducted towards the personal expenses of the deceased. Deducting the same, the balance comes to Rs.9,220/-. There is a reason to believe that deceased Prabhakar may be spending the aforesaid amount for the welfare of his family members, i.e. present claimants. The claimants thus can be held to be dependent on the income of deceased Prabhakar to the aforesaid extent. The annual dependency of the claimants on the income of deceased Prabhakar thus can be assessed to the tune of Rs.1,10,640/- (i.e. Rs.9,220 x 12).

12) As mentioned herein above, having regard to the age of deceased Prabhakar, the appropriate multiplier would be 13. By applying the said multiplier to the aforesaid amount, the amount of dependency compensation comes to Rs.14,38,320/-. I have awarded Rs. 25,000/- to appellant No.1 towards loss of consortium. In the impugned Award, the Tribunal has already awarded a sum of Rs.20,000/- to the appellant towards the loss of love and affection and Rs.5,000/- towards the funeral expenses. Thus, the appellants are held entitled for the total compensation of Rs.14,88,320/-. The impugned Award needs to be modified to the aforesaid extent. Save and except, the total amount of compensation to the tune of Rs.14,88,320/- in place of Rs.10,20,760/- granted in the impugned Award, the other part of the Award shall remain unchanged. Modified Award be prepared accordingly. Deficit Court fees, if any, be recovered from the appellant before preparing the modified Award.

13) The appeal is allowed in the aforesaid terms. Pending Civil Application, if any, stands disposed of.

sd/-
(P.R.BORA)
JUDGE

bdv/