

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

First Appeal No.3173 of 2008

- 1) Shahanajabi w/o Rauf Shaikh,
Age 46 years,
Occupation: Household,
R/o Kumtha, Taluka Ausa,
District Latur.
- 2) Salim s/o Rauf Shaikh,
Age 16 years,
Occupation: Education,
R/o As above,
Under guardianship of
appellant No.1.
- 3) Makbool s/o Yakubsab Shaikh,
Age 68 years,
Occupation: Nil,
R/o As above.
- 4) Zaidabi w/o Makbool Shaikh,
Age 66 years,
Occupation: Nil,
R/o As above.

.. Appellants.

Versus

- 1) Tatyarao s/o Ratan Rathod,
Age Major,
Occupation: Business,
R/o Sirsaltanda,
Taluka Ausa, District Latur.
- 2) The Oriental Insurance Co. Ltd.
Through its Branch Manager,
Main Road, Latur,
District Latur.

.. Respondents.

Shri. Shrikishan S. Shinde, Advocate, for appellants.

Shri. S.P. Urgunde, Advocate, for respondent No.1.

Shri. U.S. Malte, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 3rd MARCH 2016

JUDGMENT:

1) The appeal is filed by the original claimants to challenge the judgment and award of Claim Petition No.201/2007 which was pending before the Claims Tribunal Latur. The decision is challenged on the point of quantum of compensation Both sides are heard.

2) The proceeding was filed by the present appellants under section 163A of the Motor Vehicles Act in respect of death of Rauf Shaikh. Age of the deceased was 50 years. The claim was filed by widow, minor sons and parents of the deceased. It is the case of the claimants that the deceased was working as labour and his annual income was around Rs.30,000/-. They had contended that they were fully dependent for their livelihood on the income of the deceased. They had claimed compensation

of Rs. Three lakh. The matter was contested by insurance company.

3) To substantiate the claim, the widow gave evidence which is as per aforesaid contentions. Employer Dnyanoba is examined. He has given evidence as per the aforesaid contentions of the claimants. Revenue record of agricultural land of the employer is produced. There is no record of date of birth. Claimants have placed reliance on post mortem report in which opinion is given about age as 50 years.

4) The claim was filed under section 163A of the Motor Vehicles Act but the judgment of the Tribunal shows that the Tribunal presumed that the case was filed under section 166 of the Motor Vehicles Act. Further when deceased was present in jeep as occupant and there was collision between this jeep and one tempo vehicle, the Tribunal presumed that the tempo owner was necessary party to the proceeding. By making such observations the Tribunal has reduced the compensation payable by 50%.

5) The Tribunal has presumed that annual income was Rs.30,000/- on the basis of un rebutted evidence. In view of schedule given to section 163A of the Motor Vehicles Act and the aforesaid age of the deceased the compensation as per the table comes to Rs. 3 lakh. One-third can be deducted towards personal expenses as per the schedule and so the amount of Rs. Two lakh needs to be given under the head of loss of dependency. Under the same table, amount of Rs.5,000/- needs to be given under the head of loss of consortium and amount of Rs.2,000/- needs to be given under the head of funeral expenses. Thus, the claimants are entitled to get compensation of Rs.2,07,000/-. In the result, following order is made :-

6) The appeal is allowed. Judgment and award of the Tribunal is modified to make total amount of compensation as Rs.2,07,000/- (Rupees Two Lakh & Seven Thousand only) under section 163-A of the Motor Vehicles Act. The distribution is altered. Out of the total amount of Rs.30,000/- is to be given to the father and mother together. It is to be equally distributed between them along with interest.

7) Amount of Rs.30,000/- is granted to Salim, son of the deceased. Remaining entire amount along with interest is to be given to claimant No.1, widow of the deceased. Amounts are to be paid by account payee cheques. Award be prepared accordingly.

Sd/-
(T.V. NALAWADE, J.)

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