

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

FIRST APPEAL NO.: 2252 OF 2015

1. Meena W/o Prabhakar Pawar,
Age: 40 years, Occ.: Household,
2. Shivani D/o Prabhakar Pawar,
Age: 12 years, Occ.: Education,
3. Ravina D/o Prabhakar Pawar,
Age: 12 years, Occu.: Education.
4. Rohini D/o Prabhakar Pawar,
Age: 5 years, Occ.: Household.
5. Mahesh S/o Prabhakar Pawar,
Age: 6 years, Occu: Nil.

Applicant Nos.2 to 5 being minors
U/g Appellant No.1 ie. mother.

6. Tanhabai W/o Gunaji Pawar,
Age: 63 years, Occu: Nil.
7. Gunaji S/o Shivram Pawar,
Age: 68 years, Occu.: Nil.

All R/o Ghodka Rajuri,
Tq. & Dist: Beed.

... **APPELLANTS**
(ORIG. CLAIMANTS)

VERSUS

The Maharashtra State Road Transport
Corporation, Bus Depot Manager,
Bus Depot Parali, Tq. Parali, Dist. Beed.

Through Divisional Controller,
The Maharashtra State Road Transport
Corporation, Beed, Tq. & Dist. Beed.

... **RESPONDENT**
(ORIG. RESPONDENT)

Advocate for the Appellants: Mr. Mohit R. Deshmukh.
Advocate for the Respondent: Mr. D. S. Bagul.

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CORAM:-

T. V. NALAWADE, J.

DATED:-

18th JANUARY, 2016.

JUDGMENT:

1. Appeal is admitted. Notice, after admission, made returnable forthwith. Heard both sides by consent for final disposal.

2. The appeal is filed by original claimants to challenge the judgment and Award of Claim Petition No.229 of 2012 which was pending before Claims Tribunal, Beed. The decision is challenged on the ground of quantum of compensation.

3. Deceased Prabhakar was aged about 40 years and the claim was made by his widow, aged about 37 years, his four minor issues and his parents, aged about 60 and 65 years. It is the case of original claimants that the deceased was working as Agricultural Labour, on Salgadi basis and he was earning at-least Rs.60,000/- per year. The accident took place on 27th October, 2012. Under various heads the compensation of Rs.9 Lakh was claimed

4. To prove the income of the deceased, claimant No.1, widow gave evidence which is as per aforesaid contentions.

One Rajendra Ghodke, employer of the deceased was examined. He gave evidence that he was making payment of Rs.60,000/- per year to the deceased and the deceased was working with him for about 6 years on annual wages basis, as a Salgadi. It appears that the report in respect of this accident was also given by Rajendra. The evidence of the so called employer, Rajendra shows that he has no record with regard to the payments made to the deceased. Rajendra is working in a bank and his monthly salary is around Rs.9,000/-. No record of income of Rajendra from agriculture is produced.

5. In view of the aforesaid circumstances, the Tribunal has presumed that the monthly income of the deceased was around Rs.4,000/-. In view of the ratio of the case reported as **2009 (6) SCC 121 (Sarla Verma and others V/s Delhi Transport Corporation)** and subsequent decisions of Supreme Court, the increase of 30% is not given but 1/5th amount towards personal expenses is deducted and compensation is calculated.

6. Though the Tribunal has held that the monthly income was Rs.4,000/- this point can be considered by this Court

again in view of the power of this Court as Appellate Court and there is dispute about such income. In view of the aforesaid circumstance, it can be presumed that the monthly income was around Rs.3,000/-. 30% increase can be given in this income and it can be presumed that monthly income was around Rs.4,000/-. Considering the size of the family it can be said that there were 12 units in the family. In view of this circumstance, the income of 2 units, $\frac{1}{6}^{\text{th}}$ can be deducted from the monthly income for personal expenses and compensation can be calculated. This Court holds that deceased would have spent at the most Rs.700/- per month for himself and so there is monthly loss of Rs.3,300/- to the claimants. In view of the age of the deceased, 15 can be adopted as multiplier for calculation of total loss of dependency. So, the total loss of dependency comes to Rs.5,94,000/- ($3300 \times 12 \times 15$).

7. The Tribunal has given the amount of Rs.1 Lakh as the compensation under the head of loss of consortium, love and affection and the amount of Rs.10,000/- is given under the head of funeral expenses. To the minors also the amount of Rs.1 Lakh is given under the head of loss of care, guidance

and thus total amount of Rs.7,86,000/- is given. This Court holds that there are two minor children left behind by the deceased and so the amount of Rs.1 Lakh more needs to be given under the head of loss of love and affection. This Court holds that the claimants are entitled to get Rs.9,19,000/- as compensation on the principle of fault. Similarly, the interest at the rate of 9% p.a. needs to be given in view of the settled law on this point and on that point also the judgment and Award needs to be corrected.

8. The learned counsel for the claimant placed reliance of many cases reported as (i) ***AIR 2014 SC 1052 (Syed Sadiq etc. V/s Divisional Manager, United India Ins. Co.)*** (ii) ***2015 AIR SCW 3577 (Asha Verman and Ors. V/s Maharaj Singh and Ors.)*** (iii) ***AIR 2013 SC 2293 (Jiju Kuruvila and others V/s Kunjuamma Mohan and others)*** (iii) ***AIR 2014 SC (SUPP) 1004 (M. Mansoor and another V/s United India Insurance Co. Ltd. and another)*** (iv) ***AIR 2014 SC (SUPP) 34 (Kalpanaraj Ors. V/s Tamil Nadu State Transport Corpn.)*** and judgment of Supreme Court in ***Civil Appeal Nos. 348-349 of 2015 (Smt. Neeta W/o Kallappa Kadolkar & Ors. etc. V/s The Divl. Manager, MSRTC, Kolhapur)***. In some cases the

compensation was given to the parents also under the head of loss of love and affection, care and affection. In view of the age of the deceased as this Court has granted amount of Rs.3 Lakh to other dependents, this Court holds that no separate amount needs to be given to the parents under that head.

9. In the result, the following order is made:

Appeal is partly allowed. Judgment and Award of Tribunal is modified to make the compensation as Rs.9,10,000/-. The interest at the rate of 9% p.a. is allowed. Award is to be prepared accordingly.

(T. V. NALAWADE, J.)

Dated:18/01/2016.
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