

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

FIRST APPEAL NO.2012/2015

- 1) Sartajbee w/o Shahjama @ Bhandare
Fakir, Age: 38 yrs. occu. Household;
- 2) Tabasum d/o Shahjama Fakir,
Age; 18 Yrs., occu. Education
- 3) Chandbee w/o Motisha Fakir,
Age: 61 Yrs., occu. Household.

All R/o Maheboobganj peth,
Nilanga, Tq. Nilanga,
Dist.Latur.

= APPELLANTS

VERSUS

- 1) Vasant s/o Balaji Shinde,
Age: 38 Yrs., occu. Driver,
R/o Rathoda, Tq. Nilanga,
District Latur.
- 2) Netaji s/o Raghunath Jadhav,
Age: 51 Yrs., occu. Business,
R/o Rathoda, Tq. Nilanga,
District Latur.

3) The Br. Manager,
United India Insurance Co.Ltd.
Through its Br.office,
Opp.Gorakshan, Tilak Nagar,
Main Road, Latur,
Dist.Latur.

= **RESPONDENTS**

Mr. Santosh B. Gastagar, Advocate for
Appellants;

Mr.SB Ghute, Adv. for Resp.Nos.1 & 2;

Mr.SS Rathi, Adv.for Respondent No. 3.

CORAM : P.R.BORA, J.

DATE : 6th April, 2016.

ORAL JUDGMENT

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

2) The present appeal is filed by the
original claimants seeking enhancement of the
amount of compensation awarded by District
Judge-1 and Member, Motor Accident Claims

Tribunal, Nilanga (for short, the Tribunal) in MACP No. 06/2012 decided on 28.11.2014 and consequently modification of the Award to that extent.

3) It was the contention of the appellants before the Tribunal that deceased - Shahjaama Motisha Fakir @ Bhandare was working with one Ansar Engineering at Hyderabad and was earning monthly salary to the tune of Rs.15,000/-. Age of the deceased was stated to be 40 years. It was the contention of the appellants that they were depending upon the income of the deceased. Appellant had therefore claimed the compensation of Rs.10,00,000/-, but have restricted the claim for the purpose of Court fee to Rs. 1,00,000/-

4) The Claim Petition was resisted by the insurance company before the Tribunal on

various grounds. One of the defence taken by the insurance company was that the driver of the offending jeep was not holding the valid and effective driving licence. The age and income of the deceased was also disputed by the insurance company.

5) In order to prove the income of the deceased the appellants have examined the employer of the deceased. The learned Tribunal, however, did not find the said evidence dependable. The learned Tribunal from the available material on record held the income of the deceased to the tune of Rs. 5,000/- per month and accordingly assessed the compensation.

6) Shri Gastgar, the learned counsel appearing for the appellants/claimants submitted that for no valid reasons the learned Tribunal has rejected the evidence

adduced by the claimants on the point of income of the deceased. The learned Counsel submitted that even if the said evidence is kept out of consideration, the learned Tribunal ought to have taken into account that the deceased was residing in the city of Hyderabad and was maintaining his family and was a skilled worker and as such, ought to have adequately held the monthly income of the deceased and assessed the compensation accordingly. The learned Counsel further submitted that even if the Tribunal would have considered the average income of a skilled worker at the relevant time, compensation would have been assessed at much higher side. He, therefore, prayed for enhancement of the amount of compensation and to modify the Award to that extent.

7) The learned Counsel appearing for

Respondent Nos. 1 and 2 has supported the Award passed by the Tribunal.

8) Shri Rathi, learned Counsel appearing for Respondent No.3/insurance Company also supported the Award passed by the Tribunal. The learned Counsel submitted that in absence of any cogent and sufficient evidence brought on record by the appellants, there was no other option left with the Tribunal to assess the compensation on the basis of average income of a workman and accordingly the Tribunal has rightly assessed the compensation.

9) Considered the submissions advanced by the learned Counsel appearing for the respective parties, the only issue, which falls for my determination is, - "whether the compensation awarded by the learned Tribunal

is just and fair ?."

10) As has come on record, the deceased was residing at Hyderabad. In the judgment also it has been noted that the voter list pertaining to the city of Hyderabad was placed on record, containing therein the name of the deceased. In order to prove the income of the deceased, the claimants have examined the employer of the deceased. In his evidence, the said witness has deposed that the deceased had worked with him for about fifteen years and lastly he was paid salary at the rate of Rs.15,000/- per month. The Tribunal has, however, discarded the said evidence on the ground that the said witness in his cross-examination admitted that there was no Shop Act licence with him; no accounts were maintained at the shop; no muster roll was present and salary receipts or salary register

was also not produced. In such circumstances, the Tribunal declined to accept the said evidence and proceeded to assess the compensation by holding the income of the deceased to the tune of Rs. 5,000/-. However, the learned Tribunal has not made any discussion as to on what basis it held the income of the deceased as Rs.5,000/- per month. It appears to me that the Tribunal must have in such circumstances considered the minimum income of the skilled worker. The Tribunals are cast with the duty to see that just and fair compensation is awarded. Many times it may happen that the claimants may not be able to bring on record any concrete evidence as regards the income of deceased. In such situation, the Tribunal has to assess the compensation taking into account the overall circumstances and considering the rates of minimum wages prescribed for the

category of the workers to which the deceased may be belonging.

11) During the course of the arguments when a query was put by me to the learned Counsel appearing for the parties as to what was the rate of minimum wages for a skilled worker at the relevant time, the learned Counsel for the insurance company submitted that the minimum wages prescribed at the relevant time for a skilled worker were around Rs.8,000/- per month. It appears to me that the compensation must have been assessed on the basis of minimum wages as such. I am, therefore, inclined to enhance the compensation amount by holding the income of the deceased to the tune of RS.8,000/- per month, i.e. Rs.96.000/- per annum. Deducting $1/3^{\text{rd}}$ of the said amount towards the personal expenses of the deceased, it can be assumed

that the deceased must be spending the remaining $2/3^{\text{rd}}$ amount, i.e. Rs.64,000/- per annum for the welfare of his family members. Considering the age of the deceased, the appropriate multiplier would be of 15. By applying the said multiplier, the compensation amount comes to Rs.9,60,000/- under the head of dependency ($\text{Rs.64,000} \times 15 = \text{Rs.9,60,000/-}$). I do not wish to cause any interference in the amount of compensation awarded by the Tribunal under the head of loss of love and affection; hospital expenses and funeral expenses. Amount of Rs.1,50,000/- has been awarded by the Tribunal on the aforesaid counts. Thus, the total compensation payable to the petitioners comes to Rs.11,10,000/- ($\text{Rs.9,60,000/-} + \text{Rs.1,50,000/-}$). I, therefore, held Respondent Nos.1 to 3 jointly and severally liable to pay the aforesaid amount of compensation to the

appellants/claimants. It is clarified that the appellants/claimants are entitled to receive the interest @ 9% per annum on enhanced amount of compensation from the date of filing of the claim petition till its realization and also to the proportionate cost. The Award be modified to the aforesaid extent. Deficit court fee, if any, be recovered from the appellants/claimants before preparing the modified Award. The appeal thus stands allowed in the aforesaid terms.

sd/-
(P.R.BORA)
JUDGE

bdv/