IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1139 OF 2015

Sarika W/o. Rupesh Bansode .. Appellants
and others

Versus

Abdulbari Mohammad Ayub .. Respondents
and others

Mr.V.R.Autade, Advocate for the appellants
Mr. S.G.Chapalgaonkar, Advocate for the respondent No.2.

CORAM : A.V.NIRGUDE, J
DATED : 30.08.2016

P.C. :-

1. Heard the learned counsel for the parties.

2. **Admit.**

3. By the consent of the learned counsel for the parties the appeal is taken up for final hearing.

4. This appeal challenges quantum of compensation awarded vide impugned judgment dated 08.01.2013 passed by learned Member of the M.A.C.T. Ahmednagar in M.A.C.P.No.692/2009.

4. The facts leading to this litigation, in short can be stated as under:-

5. Rupesh was husband of Appellant No.1 and son of Appellant No.2. He possessed a car. On 24.09.2009, at about 2.15 p.m. while Rupesh was driving his car on a public street respondent No.1's truck collided on the car. Rupesh got serious injured. He was hospitalized. After two days he died. Rupesh was 32 years old.

6. In support of the claim for compensation of Rs.10,00,000/- appellant No.1 entered witness box and stated that Rupesh was working as Petrol Pump Manager and was getting Rs.6,000/- per month. She also stated that Rupesh was getting income from dog breading. She also asserted that Rupesh also worked as a Agent of Life Insurance corporation. According to her Rupesh's monthly income was more than Rs.10,000/- per month. In support of her claim she also examined witness Kailas who stated that Rupesh was his employee as Manager of his Petrol Pump and was getting Rs.6,000/- per month as salary.

7. Despite of this evidence on record learned Member of the M.A.C.T. Ahmednagar almost rejected it and preferred to assumed that Rupesh's monthly income was not more than Rs.5,000/-.

8. Learned counsel for the appellant asserted that learned Member committed gross error in appreciating the evidence on record. The first question that should be decided in this appeal is “Whether the claimant/appellants proved the income of deceased Rupesh was over Rs.10,000?

9. There is unassailable evidence on record to indicate that Rupesh's monthly salary as Manager of Petrol Pump Rs.6,000/- per month and that he was getting this salary for last three years since 2006. Other sources of income are not properly proved. Rupesh's side business of 'dog breading' is not properly explained in evidence. Such unusual occupation is required to be brought before the Court with proper evidence. All details are required to be given.I am therefore inclined to hold that monthly income of Rupesh was Rs.6,000/- per month.

10. Second point that arises in this Appeal is “whether in this case compensation on account of future prospect was payable? The learned Member of the M.A.C.T. Ahmednagar did not award any compensation for future prospect. Law of future prospect is now developing and at the moment through various judgments of Supreme Court it

is indicated that in case of a deceased having a stable job where increments are also provided, having regard to his or her age, certain addition to actual income is permissible. The question in this case is whether Rupesh had any future prospect and whether the appellants/claimants are entitled to any addition to Rupesh's actual monthly income. Rupesh was only 32 years old when he died. He was thus in his prime youth. He had a long career. For last three years he had a stable job and was earning Rs.6,000/- per month as Manager of Petrol Pump. This evidence is trustworthy. It can be assumed that Rupesh would have made progress in his career. So while calculating the compensation Rupesh's income should be increased in my view by 30%. In addition to this appellant No.1 is entitled to compensation for loss of consortium which should be quantified to Rs.1,00,000/- instead of Rs.5,000/- which was awarded by the learned Member of the M.A.C.T. Ahmednagar. In addition to this, funeral expenses Rs.25,000/- are required to be awarded in place of Rs.5,000/- which was awarded by the learned Member of the M.A.C.T. Ahmednagar.

11. In view of this the following calculation is made.

I hold that Rupesh's yearly annual income was of Rs.6,000 x 12 = 72,000. 1/3rd income should be deducted on account of personal expenses i.e. 72,000 – 24,000 = 48,000. The multiplicand comes to Rs.48,000/- per annum. The multiplier 16 is applicable as the deceased was 32 years of the age. Thus, the total loss of income comes to Rs.7,68,000/- (Rs.48,000/- x 16). The appellants are also entitled to get 30% towards future prospect i.e. 7,68,000 + 2,30,400 = 9,98,400. Appellant No.1 is awarded Rs.1,00,000/- towards consortium. The appellants are also awarded funeral expenses amounting to Rs.25,000/-. Thus, in all the appellants are awarded compensation of Rs.11,23,400/-. The method prescribed by the Tribunal for apportionment etc shall remain unchanged.

12. In view of this the Appeal stands partly allowed. A new award shall be drawn up.

[A.V.NIRGUDE,J.]