

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 1714 OF 2012

- 1] Anita w/o Netaji Bhong,
Age : 31 years, Occ. Household,
- 2] Pratiksh d/o Netaji Bhong,
Age: 14 years, Occ. Education,
- 3] Somnath s/o Netaji Bhong,
Age: 11 years, Occ. Education,
- 4] Jeevan s/o Rangnath Bhong,
Age: 61 years, Occ. Nil,
- 5] Indubai w/o Jeevan Bhong,
Age: 55 years, Occ. Nil.

All r/o: Jayphal, Tq. Ausa, Dist: Latur.
[Appellant 2 and 3 are since minors
under guardianship of applicant no.1
their natural mother.]

... **APPELLANTS**
[Original Claimants]

VERSUS

- 1] Shrikrishna Construction Company,
Through its Manager, R/o: Mitra Nagar,
Near Post Office, Latur, Tq. Dist. Latur.
- 2] ICICI Lombard General Insurance Company,
Through its Branch Manager,
above Parijat Mangal Karyalaya,
Ausa Road, Latur. Tq. Dist. Latur.

... **RESPONDENTS**

...

Mr. S. S. Shinde, Advocate for the Appellant.
Mr. Abhijeet Choudhari, Advocate for Respondent No.2.

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CORAM : **P. R. BORA, J.**

DATE : 22nd August, 2016.

JUDGMENT:

. Heard.

2 Admit.

3 By consent of the learned counsel appearing for the respective parties, the appeal is taken up for final disposal.

4 The Appellants have filed the present appeal seeking enhancement in the amount of compensation awarded by the Motor Accident Claims Tribunal, Latur, in Motor Accident Claim Petition No.119 of 2011.

5 The Appellants had filed the aforesaid claim petition under Section 163 (A) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") seeking compensation on account of death of one Netaji Jeevan Bhong, who died in a vehicular accident on 7th March, 2011, having involvement of a Bajaj motorcycle and a Telco Tipper bearing registration No.MH.24.A.3963. The Appellants had claimed the compensation of Rs.4,00,000/-. As was averred in the claim petition, the age of deceased Netaji at the time of his death was 35

years and his income was stated to be Rs.5,000/- per month. The learned Tribunal after having assessed the oral and documentary evidence brought before it, awarded the compensation of Rs.2,45,000/- to the Claimants jointly and severally from the owner and the insurer of the Tipper alongwith interest thereon at the rate of 7.5% per annum from the date of petition till the realization of the compensation amount. Dissatisfied by the amount of compensation so awarded, the original Claimants have filed the present appeal.

6 The following facts are not disputed by the Respondents :

- i. That Netaji Jeevan Bhong died in vehicular accident occurred on 7th March, 2011, having involvement of Telco Tipper bearing registration No.MH.24.A.3963.
- ii That Tipper was validly insured with Respondent No.2 – Insurance Company and the insurance policy was in force.

7 The learned counsel for the Appellants submitted that though there was evidence as about the income of deceased Netaji,

the learned Tribunal has failed in appreciating the evidence. The learned counsel submitted that even in absence of any evidence as about the income of deceased Netaji, the Tribunal ought to have determined the amount of compensation on the basis of notional income to the tune of Rs.36,000/- per annum. The learned counsel submitted that the Tribunal has held the annual income of deceased to the tune of Rs.21,000/- and had accordingly awarded the compensation. The learned counsel further submitted that the Tribunal has also awarded inadequate amount towards non-pecuniary damages. The learned counsel, therefore, prayed for enhancement in the amount of compensation and to accordingly modify the award, impugned in the present appeal.

8 Shri Choudhari, the learned counsel for Respondent No.2 – Insurance Company supported the impugned judgment. The learned counsel submitted that despite due opportunity given to the Appellants, they did not produce any cogent and sufficient evidence as about the income of deceased Netaji and also did not produce 7/12 extract of the agricultural land stated to be under cultivation of deceased Netaji when he was alive. In the circumstances, according to the learned counsel, whatever compensation has been awarded by

the Tribunal is just and fair and no interference is required in the impugned judgment. The learned counsel, therefore, prayed for dismissal of the appeal.

9 After having heard the arguments advanced by the learned counsel for the respective parties and on perusal of the impugned judgment, it is apparently revealed that the amount of compensation as awarded by the Tribunal is inadequate and cannot be said to be just and fair compensation in the facts and circumstances of the case. Even if it is accepted that the Claimants could not bring on record any documentary or other evidence so as to prove the actual income of deceased Netaji, the Tribunal must have held the income of deceased Netaji notionally to the tune of Rs.3,000/- per month i.e. Rs.36,000/- per annum. The Tribunal has grossly erred in holding the income of deceased Netaji to the tune of Rs.21,000/- per annum.

10 I hold the income of deceased Netaji to the tune of Rs.36,000/- per annum. 1/3rd of the said amount will have to be deducted towards the personal expenses of the deceased. It has to be assumed that deceased Netaji must be spending the balance

amount of Rs.24,000/- per annum on the maintenance and/or welfare of his family members. It is not in dispute that the age of deceased Netaji was around 35 years at the time of his death. The multiplier of 17 thus will be applicable for determining the amount of compensation. By applying the said multiplier, the amount of dependency compensation comes to Rs.4,08,000/- ($24,000 \times 17 = 4,08,000$). The Tribunal has awarded the compensation of Rs.7,000/- towards non-pecuniary damages. The Appellants / Claimants are thus entitled for the total compensation amounting to Rs.4,15,000/-. In the facts and circumstances of the case, it appears to me that this would be the just and fair compensation payable to the Appellants / Claimants.

11 The Appellants had admittedly claimed the compensation of Rs.4,00,000/- in the motor accident claim petition before the Tribunal and have accordingly paid the Court fees on the said amount. In view of the fact that the compensation being determined by this Court is in excess to the amount claimed by the Appellants / Claimants, they will have to pay the deficit Court fees on the excess amount before preparation of the modified award. As I have noted earlier, the Respondents have not disputed their liability to pay the

amount of compensation. In the result, the following order is passed:

ORDER

- I. The Appellants / Claimants are held entitled for the total compensation amounting to Rs.4,15,000/- inclusive of N.F.L. compensation.
- II. Respondent Nos.1 and 2 shall jointly and severally pay the aforesaid amount of compensation to the Appellants / Claimants with interest thereon at the rate of 7.5% per annum from the date of petition till the date of realization of the compensation amount.
- III. The amount of compensation be divided in four equal shares and one share each be given to Claimant Nos.1 to 3 and one share jointly to Claimant Nos.4 and 5.
- IV. The amount of compensation falling to the share of Claimant Nos.2 and 3 be deposited in any nationalized bank of the choice of Claimant No.1,

till they attain majority with liberty to withdraw
accrued quarterly interest.

V. Modified award be drawn accordingly after
payment of the deficit Court fees by the
Appellants / Claimants.

VI. Appeal stands allowed in the aforesaid terms.

[P. R. BORA, J.]

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