IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 446 OF 2005

United India Insurance Co.Ltd.
Through it's Divisional
Manager and Authorised Representative and
Signatory, Nanded Divisional Office,
Guru Complex, G.G.Road, Nanded,
District Nanded.

...APELLANT

VERSUS

1. Asifunnisa w/o Syed Wahid,
Aged 40 years, Occ. Household;

and others. **...RESPONDENTS.**

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Advocate for Appellant : Mr.A B Gatne
Smt.A N Ansari, Adv., for respondent nos. 1 to 9.

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CORAM : P.R. BORA, J.
Dated: November 28, 2016

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PER COURT :-

1. The present Appeal is filed against the judgment and award passed in M.A.C.P.No.39/2003, decided by the Additional District Judge and the Member, Motor Accident Claims Tribunal at Biloli, on 15th of July, 2004.

2. The present respondent had filed the aforesaid

Claim Petition seeking compensation on account of death of one Sayyad Wahid on 25th June, 2003, in a vehicular accident, having involvement of a Jeep bearing registration No. MH 26/B/8514 owned by Original respondent no.1 Abdullah Ali Shibibi, and insured with the present appellant. As stated in the petition, the age of the deceased, at the time of his accidental death, was 49 years. The deceased was stated to be serving as Assistant Teacher and his monthly salary was stated to be Rs.9569/-. The petition was contested by the Insurance Company on certain grounds, however, learned Tribunal, after having assessed the oral and documentary evidence brought on record, awarded compensation amounting to Rs.8,87,500/- to the claimants, inclusive of No Fault Liability compensation, jointly and severally from the owner and insurer of the Jeep involved in the alleged accident. Aggrieved thereby, the Insurance Company has filed the present appeal.

3. Shri A.B.Gatne, learned Counsel appearing for the appellant Insurance Company, submitted that though

the salary and income of the deceased was not duly proved by the claimants, the learned Tribunal has implicitly relied on the salary slip produced on record by the claimants and has determined the amount of compensation. Learned Counsel submitted that the Tribunal has erred in assessing the amount of compensation on the basis of the aforesaid salary slip. Learned Counsel further submitted that the Tribunal has failed in not considering that the amount of Income Tax, Profession Tax, Conveyance Allowance, etc., were liable to be deducted from the monthly salary of the deceased so as to assess the amount of dependency compensation.

4. Learned Counsel submitted that initially though appellant Insurance Company had also raised the objection as regards to the application of multiplier, in view of the subsequent judgments and legal position settled by those judgments, the said objection is not pressed.

5. In sum and substance, the controversy is only to the limited extent of assessing the dependency

compensation by the Tribunal without considering the deductions from the salary of the deceased.

6. Learned Counsel for the original claimants has supported the impugned judgment and has prayed for dismissal of the appeal.

7. I have carefully gone through the record of the case. It is true that the salary slip has not been proved by examining any witness in that behalf. However, in the examination in chief, the widow of the deceased i.e. original claimant No.1 has specifically deposed that the monthly salary of the deceased was Rs.9569/-. She has also deposed that she has placed on record copy of the salary slip. In the cross examination, of course, a suggestion is given to the said witness that the monthly salary of the deceased was Rs.4,000/- per month. However, merely on such suggestion the statement made on oath by the claimant, which is also supported by a salary slip on record, cannot be outrightly rejected. It would have been better if the claimants had examined a

witness and got proved the salary slip. It, however, does not appear to me that the said evidence is to be outrightly rejected. Nevertheless, there is substance in the further submissions made by Shri Gatne that while determining the amount of dependency compensation, the Tribunal ought to have considered that some amount was liable to be deducted from the salary towards Income Tax, Conveyance Allowance, etc. which is included in the gross salary. All such deductions, if considered, come to few hundreds of rupees. On perusal of the impugned judgment, it is revealed that the Tribunal, while assessing the amount of dependency compensation, has applied multiplier of 11 and has deducted one third amount towards the personal expenses. It need not be stated that according to the legal position, which now stands settled, if the number of dependents is more than five, the deduction towards personal expenses of the deceased shall be one fourth of the total income, and if the age of the deceased is below 50 years, the multiplier of 12 is to be applied. If these two factors are considered vis-a-vis the mistakes committed by the Tribunal in assessing the amount of compensation, it does not appear to me that even if the compensation is assessed by deducting the amount of Income Tax, etc., as has been argued, there would be much difference in the amount of compensation. The amount of compensation may possibly remain the same.

8. In the circumstances, no interference is called for in the judgment and award so passed. The First Appeal, therefore, stands dismissed. The amount, if any, deposited by the appellant Insurance Company in this Court shall be permitted to be withdrawn by the respective claimants in terms of the award passed by the Tribunal along with the interest accrued thereon.

(P.R. BORA, J.)

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