IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 2786 OF 2008

1. Smt. Kalabai Balasaheb Manjare,
Age 48 years, Occu. Household,

2. Ajay s/o. Balasaheb Manjare,
Age 20 years, Occu. Education,

3. Babasaheb Balasaheb Manjare,
Age 22 years, Occu. Education,

4. Sow. Sunand Sanjay Shinde,
Age 24 years, Occu. Household,

All R/o. Village Guha, Tq. Rahuri,
Dist. Ahmednagar. **....Appellant.**
(Ori. Claimant Nos. 1 to 3 & 5)

Versus

1. Smt. Khalidabano Shafiq Ahmed,
Age Major, Occu. Business,
R/o. 631, Islampura, Malegaon,
Tq. Malegaon, Dist. Nashik.

2. The Divisional Manager,
The National Insurance Co. Ltd.,
Branch Raj Chamber, Kotla Stand,
Ahmednagar. **....Respondents.**
(Ori. Respondents)

Advocate for Appellants : R. A. Tambe

Advocate for Respondent No. 2 : S. V. Kulkarni

CORAM : T.V. NALAWADE, J.
DATED : 27th January, 2016.

JUDGMENT :

1) The appeal is filed by the original claimants of Claim

Petition No. 608/2003, which was pending before the Claims Tribunal, Ahmednagar for enhancement of compensation. Both the sides are heard.

2) The accident took place on 26.8.2003. The deceased - Balasaheb, husband of original claimant No. 1 was aged about 47 years and he was present as a pillion rider on a motorcycle. Tempo of original respondent No. 1 - Smt. Khalidabano gave dash to the motorcycle and Balasaheb, pillion rider, died in the accident. The claim was made only against the owner and Insurance Company of the tempo. The claim was made by the widow, aged about 45 years, mother aged 65 years and three issues of the deceased and out of them one issue was minor. It was contended that the two sons were still receiving education and they were depending on the income of the deceased for their livelihood. Daughter was married at the relevant time.

3) It is the case of claimants that the deceased was a Government Contractor and he was accepting the works of construction from Government. It is contended that the deceased was member of a Labour Society and he was working as a Labour Contractor also. It is contended that the deceased was cultivating the family land and his monthly income from all

the sources was more than Rs. 10,000/-. They had claimed the compensation of Rs. 5,00,000/-.

4) To substantiate the claim, one son of the deceased has given evidence and it is as per the aforesaid contentions. The record like identity card issued by the Labour Society is produced. Some receipts of making payment of earnest money deposit in respect of tender filled for getting construction work of Government are produced at Exh. 28 and one certificate showing the credibility of the deceased is produced at Exh. 29. Another certificate at Exh. 30 is produced to show that he was supplying labour as a Contractor. He had purchased shares of Co-operative Ginning Mill and the said record is also produced. There is proforma in respect of cheque issued in favour of B.R. Manjare (the name of the deceased was Balasaheb Rambhau Manjare) of Rs. 28,720/- dated 24.3.1992, but it is not considered by the Tribunal. Copies of some work orders are also produced showing that in the year 1991, there were two work orders issued and value of two work orders was more than Rs. 70,000/-. In the year 1992-93 there was work order of Rs. 16,058/- issued in favour of deceased. He was having share in one agricultural land, having area of 1.56 Hectors and he was having share in agricultural land of 3 Acres 39 Gunta in land Gat No. 205.

5) The Tribunal has not considered most of the aforesaid record properly. The Tribunal has presumed that the annual income of the deceased was around Rs. 60,000/-. The Tribunal has held that 1/3rd amount needs to be deducted from the aforesaid amount for personal expenses. It is necessary to mention that in the family of deceased there were three adult members like deceased, his wife, his mother and there was atleast one minor member Ajay. There was one more son by name Babasaheb, who has contended that he was receiving education and so, he was depending for livelihood on the income of the deceased. Thus, on one hand, the Tribunal could have presumed that yearly income was more than 60,000/- and on the other hand, the Tribunal could not have deducted 1/3rd amount for personal expenses of the deceased. This Court holds that even if it is presumed that the yearly income was Rs. 60,000/-, it can be presumed that the deceased was spending Rs. 45,000/- per annum on his family and so, there is loss of dependency of such amount per annum. The Tribunal has held that the deceased was aged between the age group of 45 and 50 years, but the Tribunal has used 9 as a multiplier. This Court holds that on this point also, error is committed and 13 can be used as a multiplier. The Tribunal has given total amount of Rs. 30,000/-

under the heads like loss of consortium, loss of love and affection and loss of estate. The Tribunal has given total amount of Rs. 10,000/- under the head of funeral expenses and amount spent on conveyance for taking the dead body to residential place. This Court holds that atleast amount of Rs. 50,000/- needs to be given under the heads like loss of consortium and loss of love and affection. Thus, the amount of Rs. 5,85,000/- needs to be given under the head of loss of dependency (45,000/- x 13). Amount of Rs. 50,000/- needs to be given under the head of loss of consortium and loss of love and affection and amount of Rs. 10,000/- needs to be given as amount spent on funeral expenses and conveyance. Thus, the claimants are entitled to get compensation of Rs. 6,45,000/-. The Tribunal has granted interest at the rate of 7.5% p.a. and the matter was decided in the year 2007. This Court holds that in view of the rate of interest of nationalised banks, the claimants are entitled to get interest at the rate of 9% p.a. Thus, the appeal needs to be allowed. In the result, following order is made.

O R D E R

1. The appeal is allowed. The compensation is enhanced to make it Rs. 6,45,000/- as compensation under the principle of fault. This amount is inclusive of the amount awarded under the principle of fault. The interest will be payable

at the rate of 9% p.a. and the interest is to be calculated after deducting the amount paid under the principle of no fault. Disbursement is to be made as per the award made by the Tribunal. Apportionment is to be made in the same proportion. Award is to be prepared accordingly. Claimants are to pay deficit court fees.

[T.V. NALAWADE, J.]

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