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

FIRST APPEAL NO. 2335 OF 2015
WITH
CIVIL APPLICATION NO. 11480 OF 2015

National Insurance Company Ltd.,
Divisional Office at Hazari Chamber,
Railway Station Road, Aurangabad.
Through its Divisional Manager. **....Appellant.**
(Ori. Resp. No.2)

Versus

1. Mohini Santosh @ Krushna Shelar,
Age 26 years, Occu. Household,

2. Sangram Santosh @ Krushna Shelar,
Age 10 years, Occu. Nil.,

3. Shreya Santosh @ Krushna Shelar,
Age 05 years, Occu. Nil.,

4. Vachhalabai Baban Shelar,
Age 45 years, Occu. Nil.,

Respondent No. 2 & 3 being Minor's,
through their natural Guardian
mother Res. No.1, All R/o. Ravish
Housing Society, Kinetick Chowk,
Ahmednagar, Tq. & Dist. Ahmednagar.

5. Machindra Lahanu Shinde,
Age 45 years, Occu. Business,
R/o. Nepti, Tq. Ahmednagar,
Dist. Ahmednagar. **....Respondents.**
(Resp. Nos. 1 to 4 - Original Claimants, Resp. No. 5 - Ori. Resp. 1)

Mr. S.P. Chapalgaonkar, Advocate for appellant.

Mr. S.D. Kotkar, Advocate for respondent No. 1.

CORAM : T.V. NALAWADE, J.
DATED : 25th February, 2016.

JUDGMENT :

1) The appeal is filed against judgment and award of Claim Petition No. 288/2011, which was pending before the Claims Tribunal, Ahmednagar. The Insurance Company has challenged the decision as it is made liable to indemnify the owner of the vehicle. Both the sides are heard.

2) The accident took place on 2.2.2011 at about 8.30 p.m. within local jurisdiction of Ahmednagar Tahsil Police Station. The deceased - Santosh alias Krushna Shelar was riding his motorcycle and as the driver of Indica car stopped the vehicle all of A sudden, without giving any indication or signal, the motor cycle of deceased dashed against the car. He died due to injuries sustained by him in the accident on 8.2.2011. It is the case of claimants that the accident took place due to fault of car driver.

3) The claim was filed by the widow, two minor issues and mother of the deceased. It is contended that deceased was aged about 30 years and by working as a cook in the hotel of Amrut Raskar, he was earning monthly Rs. 10,000/-. It was contended that all the claimants were depending on the income of the deceased for their livelihood. Under various heads, they had claimed compensation of Rs. 17.1 lakh.

4) The Insurance Company contested the matter by filing written statement. It contended that the accident took place due to the fault of deceased and so, claim cannot be allowed. Other contentions of the claimants were also denied by the Insurance Company.

5) For proving the claim, claimant No. 1 gave evidence and they relied on copies of police papers. Copy of F.I.R. shows that in respect of accident dated 2.2.2011, the report was given by brother of deceased on 7.2.2011 and the crime was registered against the driver of Indica car. Spot panchanama was prepared by police and but that time, only motorcycle was present on the spot. In the inquest panchanama, it was recorded that the death had taken place due to the injuries sustained in the accident. The record of City Care Trust Hospital was produced, where for about six days treatment was given to the deceased and in that record also, it was mentioned that it was a case of accident. During investigation, panchanama of the Indica Car was also prepared and it shows that damage was caused to Indica car at the backside and that portion was found pressed inside. On the basis of this record, the driver of Indica car was blamed for the accident. No evidence in rebuttal was given

before the Tribunal. As there was nothing in rebuttal, the Tribunal has held that the claimants have proved that the accident took place due to fault of Indica Car driver. It is not possible to interfere in the finding of the Tribunal on that point.

6) The claimants have examined employer of deceased, Shri. Raskar and he has given evidence that by working as a cook in his hotel, the deceased was earning Rs. 10,000/- per month. The record like total minimum wages fixed for skilled and unskilled labour was produced before the Tribunal and on that basis, the Tribunal has presumed that monthly income of deceased was atleast Rs. 7,000/-. The accident took place in the year 2011 and by presuming that he was unskilled employee, the Tribunal has made such presumption. Such rate for minimum wages was fixed by the Government for that year. 50% increase is given in this income as per the ratio laid down in the case reported as **(2009) 6 SCC 121 [Sarla Verma Vs. DTC].** As there were four dependents 1/3rd amount is deducted for personal expenses and the Tribunal has presumed that there is loss of Rs. 7,000/- per month to the claimants. 17 is used as a multiplier in view of the age of the deceased which was around 30 years. The Tribunal has given compensation of Rs. 50,000/- under the head of medical expenses. The deceased was alive for

about six days and he was under treatment in aforesaid hospital and so, such amount is given. The Insurance Company has objection in respect of that amount as no bills of treatment and medicines were produced. Even if these objections are considered, it can be said that, under other heads more amount of compensation could have been given by the Tribunal. Under the head of loss of consortium, amount of Rs. 10,000/- is given and under the head of compensation for loss of love and affection, amount of Rs. 10,000/- is given, amount of Rs. 10,000/- is given under the head of funeral expenses. The amount of Rs. 1,00,000/- could have been given under the head of loss of consortium and atleast amount of Rs. 1,00,000/- could have been given under the head of loss of love and affection. The interest at the rate of 7.5% is given when the interest could have been given at the rate of 9% p.a. In view of these circumstances, this Court holds that compensation awarded is on lower side.

7) In the result, the appeal is dismissed. Civil Application stands disposed of.

[T.V. NALAWADE, J.]

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