IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 540 OF 2015

1. Dattatraya Ishwarlal Deshmukh
Age : 41 Yrs., Occ. Transport,
R/o : Shivneri Chowk,
Station Road, Ahmednagar.

2. Swati Dattatraya Deshmukh
Age : 37 Yrs., Occ. Household,
R/o : Shivneri Chowk, **.... APPELLANTS/**
Station Road, Ahmednagar. **[ORI. CLAIMANTS]**

V E R S U S

1. Ramhari Babasaheb Ubhedal
Age : 45 Yrs., Occ. Transport
Business, R/o : Lakhephal,
Tq. Shevgaon, Dist.:
Ahmednagar.

2. The Manager
New India Assurance Co. Ltd.
M.P.Society Building,
Market Yard, Rahuri,
Tq. Rahuri, Dist.: **.... RESPONDENTS/**
Ahmednagar. **[ORI. RESPONDENTS]**

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Mr. A.C.Darandale, Advocate for Appellants.
Mr. P.A.Bharat, Advocate for R.No. 1.
Mr. A.G.Kanade, Advocate for R.No. 2.

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CORAM : T.V.NALAWADE, J.
DATE OF JUDGMENT : 17th FEBRUARY, 2016

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JUDGMENT :

1. The Appeal is '**admitted**'. Notice after admission made returnable forthwith. Heard by consent for final disposal.

2. The Appeal is filed by the original claimants to challenge the Judgment and Award of M.A.C.P. No. 731/2010, which was pending before the Motor Accident Claims Tribunal, Ahmednagar. The claimants have disputed the quantum of compensation.

3. Deceased Monika was daughter of claimant Nos. 1 and 2. She was aged 13 years and she was studying in 7th standard at the relevant time. The accident took place on 02/11/2010. It is the case of the claimants that they were

required to spend around ₹ 40,000/- on medical expenses. It is their case that the deceased would have given support to them in their old age. On various counts, they had claimed the compensation of ₹ 4,00,000/-.

4. The claim was contested by the owner and insurance company of the offending vehicle.

5. Before the Tribunal, father of the deceased gave evidence which is in accordance with the aforesaid contentions. Some bills of treatment and medicines were produced before the Tribunal, but they were not proved.

6. In view of the age of the deceased, the Tribunal presumed that the notional income per annum was ₹ 15,000/-. 15 was adopted as multiplier for calculation of loss of dependency. The amount of ₹ 24,391/- was held as the amount spent on treatment and medicines and the total amount of ₹ 2,49,391/- is awarded as compensation under the principle of 'fault'.

7. The learned counsel for claimants placed reliance

on the case reported in ***(2014) 1 Supreme Court Cases 244 – [Kishan Gopal & Anr. Vs. Lala & Ors.]*** and submitted that in a similar case the Apex Court had presumed notional income as ₹ 30,000/- per annum, amount of ₹ 50,000/- was given under conventional heads and total amount of ₹ 5,00,000/- was given as compensation. In subsequently decided cases, the Apex Court has held that in a proceeding u/s 163-A of the Motor Vehicle Act, fixed compensation of ₹ 1,00,000/- can be given when the age of the deceased is up to 5 years and fixed compensation of ₹ 1,50,000/- can be given when the age of the deceased is above 5 years and there is no evidence on the point of income. However, it is also laid down, if the claimants are entitled to get more compensation under Schedule II given u/s 163-A of the Motor Vehicles Act, that compensation can be given.

8. The present proceeding is filed u/s 166 of the Motor Vehicles Act. In view of the circumstances of present case, this Court holds that it can be presumed that the deceased would have earned at least ₹ 3,000/- per month within 4 – 5 years and she would have given support to the parents. As she was unmarried, 50% amount could

have been deducted towards personal expenses and it could have been presumed that there is monthly loss of ₹ 1,500/- to the parents. In view of the age of the deceased, 15 can be adopted as multiplier for calculation of loss of dependency and under the head of loss of dependency, ₹ 2.7 Lakh can be given [1500x12x15]. Amount of ₹ 1,00,000/- can be given under the head of loss of love and affection as the deceased was the only daughter of the claimants. It is contended that some amount was spent on treatment and medicines, but the bills are not produced. For funeral expenses and other expenses, amount of ₹ 25,000/- can be given. Thus, under all the heads, amount of ₹ 3.95 Lakh can be given as compensation.

9. The Tribunal has given the interest @ 7.5% per annum. In view of the rate of interest given by the nationalized banks on fixed deposits, this Court holds that interest @ 9% per annum needs to be given.

10. In the result, following order is made.

[i] First Appeal No. 540 of 2015 is allowed.

[ii] The Judgment and Award of the Tribunal is modified to make the compensation amount as ₹ 3.95 Lakh with interest @ 9% per annum. Interest is payable from the date of petition till the date of realization.

[iii] Award be drawn accordingly.

[T.V.NALAWADE, J.]

KNP/F.A. 540.2015 - [J]