

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 2548 OF 2015

1. Sangita w/o Kantilal Kalwane
Age : 39 Yrs., Occ. Household,
R/o : G-8, Gurusahani Nagar,
Tirupati Park, N-4, CIDCO,
Aurangabad.
2. Ganesh s/o Kantilal Kalwane
Age : 22 Yrs., Occ. Education,
R/o : G-8, Gurusahani Nagar,
Tirupati Park, N-4, CIDCO,
Aurangabad.
3. Sachin s/o Kantilal Kalwane
Age : 20 Yrs., Occ. Education,
R/o : G-8, Gurusahani Nagar,
Tirupati Park, N-4, CIDCO,
Aurangabad.
4. Rahibai w/o Vishnu Kalwane
Age : 67 Yrs., Occ. Household,
R/o : G-8, Gurusahani Nagar,
Tirupati Park, N-4, CIDCO,
Aurangabad.
5. Vishnu s/o Raghoji Kalwane

Age : 72 Yrs., Occ.

R/o : G-8, Gurusahani Nagar,

Tirupati Park, N-4, CIDCO,

Aurangabad.

.... APPELLANTS/

[ORI. CLAIMANTS]

V E R S U S

1. Sudam s/o Kashinath Mavas

Age : Major, Occ. Driver and

Business, R/o : C/o Wada of

Uttam Tatya Ugale, Near

Canal, Datta Nagar, Panchvati,

Nashik.

2. United India Insurance Co.Ltd.

Through its Divisional Manager

Office near Gopal Cultural Hall,

New Osmanpura, Kranti Chowk

to Railway Station road,

Aurangabad.

.... RESPONDENTS/

[ORI. RESPONDENTS]

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Mr. R.V.Gore, Advocate for Appellants.

Mr. M.K.Bhosale, Advocate for R.No. 1.

Mr. S.G.Chapalgaonkar, 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. By consent heard for final disposal.

2. Original claimants have filed the Appeal to challenge the Judgment and Award of M.A.C.P. No. 587/2013, which was pending before the Motor Accident Claims Tribunal, Aurangabad on the point of quantum of compensation.

3. The accident took place on 06/07/2013 at about 4.00 p.m. within the local jurisdiction of Shillegaon police station, district Aurangabad [Rural]. Deceased Kantilal Vishnu Kalwane was aged about 35 years. It is contended that he was working as off-set operator, doing private service, and was earning monthly income of ₹ 11,500/-. The claim was filed by the widow, 2 issues and parents of the deceased. It is their case that they were totally depending for their livelihood on the income of the deceased.

4. For proving the claim, widow of the deceased

gave evidence on the point of income and the evidence is as per the aforesaid contentions. She has deposed that at the relevant time, the age of her husband was 40 years. She has no record to prove the age and so the claimants have relied on postmortem report, in which option about age of the deceased is given as 40 years. The employer Suryabhan Rambhau Jadhav is examined by the claimants to prove that the deceased was working as off-set printing operator with him and he was giving ₹ 11,500/- per month to the deceased. He has given evidence that he was making payment of over-time also to the deceased in case there was more work. The certificate is proved at Exh. 37 and the 3 receipts issued by the deceased in favour of the employer are proved as Exhs. 38 to 40. The record in respect of account of the employer is produced.

5. The Tribunal has compared the signatures appearing on the receipts and has observed that there is possibility that some false record is created to show more income. The Tribunal presumed that the monthly income of the deceased was ₹ 4,000/-. The Tribunal presumed that the age of the deceased was more than 50 years and used 11 as

multiplier. $1/5^{\text{th}}$ amount was deducted towards personal expenses and then the compensation was calculated. The amount of ₹ 2 Lakh is given under the head of loss of love and affection and amount of ₹ 75,000/- is given under the head of loss of consortium. Towards funeral expenses, amount of ₹ 25,000/- is given. Total amount of ₹ 7,22,400/- is awarded as compensation and the interest @ 9 % per annum is given.

6. Even if it is presumed that the monthly income of the deceased was ₹ 4,000/-, in view of the number of members in his family, at the most amount of ₹ 500/- could have been deducted towards personal expenses and it could have been presumed that there is monthly loss of ₹ 3,500/-. There is no reason to disbelieve the case of the claimant that the age of the deceased was between 40 and 45 years in view of the opinion given by the Doctor. Thus, 14 can be adopted as multiplier for calculation of loss of dependency which comes as ₹ 5,88,000/- [3500x12x14]. Under other different heads, non pecuniary heads, the Tribunal has granted compensation of ₹ 3 Lakh and this amount appears to be just and proper. Thus, the total amount of

compensation comes to ₹ 8,88,000/-.

7. In the result, following order is made.

[i] First Appeal No. 2548 of 2015 is allowed.

[ii] The Judgment and Award of the Tribunal is modified to make the compensation amount as ₹ 8.88 Lakh.

[iii] Interest @ 9% per annum is payable on the entire amount of compensation from the date of petition till the realization of amount.

[iv] Disbursement of the amount is to be made in the same proportion as made by the Tribunal.

[v] Award be prepared accordingly.

[T.V.NALAWADE, J.]