IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 631 OF 2004

1. Md. Farhat s/o. Abdul Raheman Deshmukh,
Age: 55 years, Occu. Agri & Business,
(Deceased his L.Rs.)

1.1 Md. Rafat s/o. Mohd. Farhat Deshmukh,
Age: 35 years, Occu. Agri.,

1.2 Md. Firasat s/o. Md. Farhat Deshmukh,
Age: 26 years, Occu. Agri.,

1.3 Md. Azmat s/o. Md. Farhat Deshmukh,
Age: 20 years, Occu. Agri,

All r/o Khori Galli, Latur.
Ta. And Dist. Latur. **= APPELLANTS CLAIMANTS**

VERSUS

1. Hazrat Dastagir Kazi,
Age: 35 years, Occu. Truck Driver,
R/o. Akluj, Tq. Malshiras Dist. Solapur

2. The Managing Director Sakhar Maharshi
Shankarrao Mohite Patil Sahakari Sakhar
Karkhana Ltd. Shankar Nagar, Akluj,
Tq. Malshiras.

3. The United India Insurance Co. Ltd.
Through it's Branch Manager,
Main Road, Latur,

4. Jiya Ahmed Khan s/o. Gulamali Khan
Age: 35 years, Occu. Business,
R/o. Paithan Road, Aurangabad
R/o. Silk Mills Compound.

5. The New India Assurance Co. Ltd.
Chandra Nagar, Latur

...RESPONDENTS

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Mr. R.B. Deshmukh, Advocate for the Appellants;
Mr. D.H. Jadhavar & Mr. R.K. Jadhavar, Advocate for Respondent Nos. 1 & 2
Mr. A.D. Soman Adv. h/f. Damodar Soman, Advocate for Respondent No.3
Adv. S.Y. Mahajan for Respondent No.4.
Mr. Dhananjay Deshpande, Advocate for Respondent No.5.

CORAM : P.R.BORA, J.

DATE : 27th July,2017.

ORAL JUDGMENT:

1) Heard. Legal heirs of Mohammad Farhat s/o Abdul Raheman Deshmukh, who had filed the original claim petition before the Motor Accident claims Tribunal, at Latur (hereinafter refereed to as the Tribunal), have filed the present appeal dissatisfied with the amount of compensation as has been awarded in the MACP No. 213/2001, vide the Judgment and Award passed on 13th October, 2003.

2) Deceased Mohammad had filed the aforesaid claim petition claiming compensation of Rs.5,00,000/- on account of the injuries caused

to him in a vehicular accident happened on 12th April, 1999 having involvement of a tanker bearing Registration No.MH-13-G-178 and Tata Sierra jeep bearing registration No.MH-01-R-4847. The alleged accident had happened when the original appellant – Mohammad was travelling in a Tata Sierra jeep on Pune - Solapur road and was dashed by the aforesaid tanker. In the said accident, appellant Mohammad had received severe injuries which resulted in making him permanent disable to the extent of 40%.

3) Original appellant – Mohammad died during pendency of the claim petition and even before his evidence was recorded in the claim petition. The petition was, therefore, decided on the basis of the documents placed on record pertaining to the medical expenses incurred on the medical treatment of deceased Mohammad and the permanent disability which was incurred by him in the alleged accident.

4) It was the contention of the original appellant – claimant that in the accident so happened, he received several severe injuries and also incurred permanent disablement It was also contention of the appellant that, he was required to spend huge amount on his medical treatment. The appellant had, therefore, claimed compensation of Rs.5,00,000/- from the owner and insurer of the tanker as well as owner and insurer of the Tata Sierra jeep. The appellant had placed on record the permanent disability certificate and the medical papers pertaining to his treatment along with hospital and medicine bills.

5) The Tribunal, on consideration of the oral and documentary evidence brought on record awarded the compensation of Rs.95,000/-. According to the appellants, the amount of compensation as has been awarded is unjust and improper and, therefore, the present appeal has been filed seeking enhancement in the amount of

compensation.

6) Learned Counsel appearing for the appellants submitted that the Tribunal has grossly erred in awarding compensation of only Rs.15,000/- for the loss of income suffered by deceased Mohammad because of the injuries caused to him. The learned Counsel further submitted that the document of income tax clearance which was placed on record, was clearly evidencing that the firm of deceased Mohammad was earning a sumptuous income since last few years. The learned counsel, taking me through the document at Exhibit-41-C, submitted that the total contract amount received to the firm of the deceased in the year 1997-1998 was Rs.1,25,77,809/-. The learned Counsel submitted that the Tax deducted at source for the said year was Rs.7,62,239/-. The learned Counsel submitted that this evidence has been ignored by the Tribunal and a meager sum of Rs. 15,000/- has been awarded to the claimant towards loss of

income. The learned Counsel further submitted that even on account of pains and suffering permanent disability caused and the medical expenses, the Tribunal has not awarded the just and fair compensation. The learned Counsel, therefore, prayed for adequate enhancement in the amount of compensation.

7) Learned Counsel appearing for the insurance company, opposed the submissions made on behalf of the appellants. The learned Counsel pointed out that age of the deceased Mohammad was 55 years when he met with the alleged accident. The learned counsel submitted that nothing has been brought on record to show that deceased Mohammad was active in performing the contract work. The learned Counsel further submitted that even the documents placed on record by the claimants themselves were showing that his three sons were working with Mohammad Farhat. The learned Counsel submitted that in such circumstances, the income of the firm has to be

treated and no personal income of deceased Mohammad can be considered. The learned Counsel further submitted that nothing has been brought on record to show that after death of Mohammad, the firm, which was taking the contracts, has stopped working. The learned Counsel submitted that from the evidence on record, there is every reason to believe that there was no loss of income since three sons of deceased Mohammad were continuing with the contract work. The learned Counsel further submitted that there was no evidence on record showing the personal income of deceased Mohammad or the income tax paid by the deceased for his personal income. In such circumstances, according to the learned Counsel, the Tribunal has rightly awarded the amount of Rs.15,000/- under the head of Loss of income. The learned Counsel submitted that in so far as the compensation awarded under the other heads is concerned, the Tribunal has awarded the just and fair compensation. The learned counsel, therefore, prayed for dismissal of the appeal.

8) After having heard the arguments of learned Counsel appearing for the parties, the only issue, which needs consideration in the present appeal is, whether the compensation of Rs.15,000/- awarded by the Tribunal under the head of Loss of income, can be said to be just and fair compensation ?

9) In so far as the compensation awarded under other heads, I do not see any reason to cause interference in view of the fact that during pendency of the claim petition, original claimant – Mohammad died.

10) I have gone through the discussion made by the learned Tribunal on the issue of grant of compensation on account of loss of income. Admittedly, the income tax clearance certificate was placed on record by the claimants so as to show the income of deceased Mohammad. The Tribunal has, however, seems to have misread and mis-interpreted the said document, holding that

the amounts which were shown in the said document, were pertaining to the limits of the contract to be awarded to the firm of deceased Mohammad. Perusal of the document at Exh. 41 shows that there was a firm by name M/s Mohmad Farhat Deshmukh & Sons, Latur District Latur and it was being run by Mohamad and his three sons. The said document further reveals the particulars as about the total contract amount received to the said firm in the preceding five years, i.e. from 1994-1995 to 1998-1999. The document further shows that in the year 1997-1998, the contract amount received to the said firm was Rs.1,21,77,809/-. The document further reveals that in the said year, the income tax of Rs.7,62,239/- was deducted at source. Even if it is accepted that it was a firm, and the sons of Mohammad were partners in the said firm, the role of deceased Mohammad being the Head of the partnership firm, cannot be ignored and kept out of consideration. Even if it is accepted that it was the income of the firm, due credit will have to be given to original claimant – Mohammad for his contribution in the said firm.

11) Having considered the evidence on record, it is unreasonable to hold that the income of deceased Mohammad will be around Rs. 15,000/- a month. From the evidence on record, there is reason to believe that at least for few months, deceased Mohammad could not have been participated in the firm's activities and even thereafter till his death, may not have effectively participated in the working of the firm, the loss of income suffered on that count was certainly more than Rs. 15,000/- Though it is difficult to reach to any conclusion as about the actual personal income of Mohammad, I have no doubt in my mind that it was certainly more than Rs. 15,000/- and loss caused was much more than that. From the evidence on record, I deem it appropriate to enhance the amount of compensation under the said head from Rs.15,000/- to Rs. 50,000/-. The total compensation payable will be

thus Rs.1,30,000/-. The appellant shall be entitled to receive the interest on the enhanced amount of compensation at the rate as has been awarded by the Tribunal from the date of the claim petition till its realization. Award be modified accordingly.

12) The appeal stands disposed of in aforesaid terms. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/