IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.203 OF 2016

1. Rashida Jafar Shaikh
   Age: 43 years, Occu.: Household

2. Amjad Jafar Shaikh
   Age: 25 years, Occu. Agril.,

3. Anis Jafar Shaikh,
   Age: 20 years, Occu.: Education,
   All R/o. Dhawalpuri, Tq. Parner,
   Dist. Ahmednagar,
   At present R/o. Onkar Colony,
   Nagapur MIDC, Ahmednagar,

...APPELLANTS
(Orig. Claimants)

VERSUS

1. The United India Insurance
   Company Ltd.,
   Through Branch Manager
   Sathe Chowk, Ahmednagar,
   Dist. Ahmednagar.

2. Anil Bhimaji Deokar,
   Age: Major, Occu.: Business
   R/o. At Post Chass,
   Tq. Nagar Dist. Ahmednagar

...RESPONDENTS

CORAM: P.R.BORA, J.
DATE : July 6th, 2017

Shri. V.P. Latange, Advocate for Appellants;
Shri. S.S. Rathi, Advocate for Respondent No.1;
Shri. A.T. Kanawade, Advocate for Respondent No.2.

ORAL JUDGMENT:

1. The present Appeal is filed against the judgment and order passed by the Motor Accident Claims Tribunal, Ahmednagar, in M.A.C.P. No. 27/2014, decided on 30th of September, 2015.

2. The present appellants had filed the aforesaid claim petition claiming compensation on account of the death of one Jafar Shaikh, alleging the same to have been caused in a motor vehicle accident occurred on 28th September, 2013 having involvement of a Tipper Truck bearing registration No. MH-16-AE-7399, owned by present respondent no.2 and insured with present respondent no.1. The appellants had claimed compensation of Rs.24,00,000/- (Rs. Twenty four Lakhs). It was the contention of the appellants that the deceased, at the time of his death, was 45 years and was earning around Rs.16,000/- per month by way of his salary and they were depending upon his income.

3. The Tribunal, after having considered the evidence on record, did award compensation of

Rs.8,28,872/- inclusive of No Fault Liability compensation. Aggrieved thereby, the appellants have preferred the present appeal.

4. Though in the memo of appeal, several grounds are raised in exception to the impugned judgment and award, learned Counsel for the appellants restricted his arguments and pressed only one objection as about the error committed by the Tribunal of determining the amount of compensation on the basis of the take home salary of the deceased. Learned Counsel submitted that the appellants have duly proved that deceased was serving in Crompton Greaves Ltd. and that his last drawn salary was Rs.15,511/- per month. Learned Counsel submitted that the learned Tribunal, while determining the amount of dependency compensation, has considered the net salary of the deceased to the tune of Rs.6,768/- as was shown in the salary slip of the deceased pertaining to the month of July, 2013. Learned Counsel submitted that, after deducting the amount of Provident Fund contribution, Professional Tax, LIC premium, Canteen expenses, Loan installment, society interest and society subscription from

the gross salary of the deceased, his net salary for the month of July, 2013, was Rs.6,768/- and the same has been held as a base by the Tribunal for determining the amount of dependency compensation. Learned Counsel submitted that except the amount deducted towards profession tax and the conveyance allowance, no other amounts could have been deducted by the Tribunal while assessing the amount of dependency compensation payable to the appellants. Learned Counsel relied upon the judgment of the Honourable Apex Court in the case of National Insurance Co.Ltd. Vs. Indira Shrivastava and others ((2008) 2 SCC 763) to support his contention. Learned Counsel submitted that the amount of compensation, as has been awarded by the Tribunal, under the head of dependency compensation, therefore, needs to be enhanced by holding the salary of the deceased to the tune of Rs.14,511/- per month.

5. Shri Rathi, learned Counsel appearing for respondent no.1 Insurance Company, was fair enough in submitting that in view of the judgment of the Honourable Apex Court in the case of Indira Shrivastava and others

(cited supra) relied upon by the Counsel for the appellant, the amount of compensation to be paid to the appellants under the head of dependency compensation will have to be redetermined. Learned Counsel, therefore, prayed for passing appropriate orders.

6. I have carefully considered the submissions made by the learned Counsel appearing for the appellants and the learned Counsel appearing for respondent no.1 Insurance Company. It is not in dispute that the gross last drawn salary of deceased Jafar Shaikh was Rs.15,511-00 and Paise Two. The salary slip for the month of July, 2013, i.e. of last drawn salary of the deceased was duly proved before the Tribunal. The salary slip shows following deductions:

DEDUCTIONS	Rs.
PF	964-00
PT	200-00
LIC	587-00
CANTEEN	25-00
L.Loan	4000-00
Society interest	2467-00

Society Sub.	500-00
TOTAL DEDUCTIONS	8743-00
NET SALARY	6768-02

After deducting the aforesaid amounts, the net salary of the deceased was shown as Rs.6768.02. The Tribunal has assessed the amount of dependency compensation on the basis of the said net salary. It is evident that the Tribunal has erred in assessing the amount of compensation. Honourable Apex Court in the case of National Insurance Co.Ltd. Vs. Indira Shrivastava and others (cited supra), has categorically held that the superannuation benefits, contribution towards gratuity, payment of insurance premium, premium paid towards medical policy for self and family and education scholarship, etc., shall not be deducted from the salary of the deceased while assessing the amount of compensation payable to the legal representatives of the deceased. The Honourable Apex Court has further held that only the statutory deductions i.e. towards profession tax, Income Tax and the amounts paid by the employer to the employee for his personal convenience e.g. conveyance allowance, etc. only can be deducted. As such, it is evident that the Tribunal has erred in deducting the amount of Provident Fund contribution, LIC premium, etc. from the gross monthly salary of the deceased while determining the amount of compensation. The mistake committed by the Tribunal has resulted in depriving the appellant from their right to receive just compensation. The impugned order, therefore, needs to be rectified to the aforesaid extent.

7. The last drawn salary certificate of deceased Jafar Shaikh shows that the amount received by him towards conveyance allowance is to the tune of Rs.799.62 and the amount deducted towards the profession tax is Rs.200/- i.e. in total Rs.999.62, rounded off to Rs.1,000/- was only liable to be deducted from the gross salary of the deceased. Thus, the salary of the deceased ought to have been held by the Tribunal, after aforesaid deduction, at Rs.14,511/- (Rs.15,511-1000=Rs.14,511/-). Deducting one third of the said salary towards personal expenses of the deceased, the remaining amount of Rs.9,674/- was for the benefit of the entire family of the deceased. The said amount annually comes to

Rs.1,16,088/-. Having regard to the age of the deceased, the appropriate multiplier in the present matter will be of 13. Applying the said multiplier, the amount of compensation comes to Rs.15,09,144/-. The Tribunal has awarded to the appellants a sum of Rs.1,25,000/- towards non pecuniary damages. Adding the said amount, the total compensation payable to the appellants comes to Rs.16,34,144/-. It appears to me that in the facts and circumstances of the case, this will be the just and fair compensation payable to the appellants / claimants. The impugned judgment and award, therefore, needs to be modified to the aforesaid extent.

8. For the reasons stated above, the following order is passed:

ORDER

1. The amount of compensation payable to the appellants is enhanced from Rs.8,28,872/- to Rs.16,34,144/-.

2. Respondent nos. 1 and 2 shall pay the enhanced amount of compensation to the appellants with interest thereon at the rate of 7 per cent per annum from

the date of filing the petition till its realization.

3. On realization of the enhanced amount of compensation, 70 per cent of the same shall be paid to appellant no.1 Rashida Jafar Shaikh; out of which 50 per cent amount shall be deposited in Fixed Deposit Receipt in any nationalized Bank in her name for a period of three years and the balance 50 per cent amount shall be paid to her by crossed account payee cheque.

4. 15 per cent each of the enhanced amount of compensation shall be paid by crossed account payee cheques to appellant no. 2 Amjad Jafar Shaikh and appellant no.3 Anis Jafar Shaikh.

5. Deficit Court fee, if any, be recovered.

Appeal stands allowed in aforesaid terms.

(P.R.BORA)
JUDGE

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