IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO.:167 OF 2017

SURLEKHA TULSHIRAM BHUMKAR AND OTHERS
VERSUS
MRS. SUNITA NITIN BHALEKAR AND OTHERS

***

Mr. Ram B. Deshpande, Advocate for Appellants.
Mr. V. M. Lomte, Advocate for Respondent Nos.1 & 2.
Mr. S. S. Patil, Advocate for Respondent No.3.

***

AND

FIRST APPEAL NO.:3780 OF 2016

RELIANCE GENERAL INSURANCE CO.
VERSUS
SUREKHA TULSHIRAM BHUMKAR AND OTHERS

***

Mr. S. S. Patil, Advocate for Appellant.
Mr. Ram B. Deshpande, Advocate for Respondent Nos. 1 to 5.
Mr. Vivek M. Lomte, Advocate for Respondent Nos. 6 & 7.

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CORAM : **V. K. JADHAV, J.**
DATE : 04th April, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Newasa dated 4th April, 2016 in MACP No.300 of 2014, the original Claimants have preferred appeal to the extent of quantum as awarded by the

Tribunal and original Respondent No.3 / Insurer has also preferred the appeal to the extent of quantum.

3 Brief facts giving rise to these two appeals are as follows:

i) On 25th June, 2012, deceased Tulshiram was proceeding on his motorcycle from Shevgaon towards Mali Chinchora in moderate speed keeping left side of the road. At that time, one another motorcycle bearing registration No.MH-17/AS-4439 driven by Respondent No.2 in speed gave dash to the motorcycle of deceased Tulshiram by coming to the wrong side of the road. In consequence of which, deceased Tulshiram died on the spot.

ii) The Claimants / legal representatives of deceased Tulshiram approached to the Motor Accident Claims Tribunal by filing MACP No.300 of 2014 for grant of compensation under the various heads. It has been contended in the claim petition that deceased Tulshiram was LIC agent and he was earning Rs.2,50,000/- per annum from LIC business and was also earning Rs.25,000/- per annum from milk business. The Claimants were depending on his income. Respondent Nos.1 and 2 have not contested the claim petition. Respondent No.3 / Insurer has contested the claim petition mainly on the ground of quantum.

iii) The learned Member of the Tribunal has directed the Respondents to pay jointly and severally the compensation of Rs.25,35,000/- with interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the entire amount. The Claimants as well as the Respondent / Insurer preferred these two separate appeals to the extent of quantum as awarded by the Tribunal.

4 The learned counsel for the Claimants submits that as per the copies of income tax returns filed on record before the Tribunal alongwith list Exhibit – 31, the average income for preceding three years of the death of deceased Tulshiram is Rs.2,92,923/-. Even the learned Member of the Tribunal in para 17 of the judgment has observed that the income of deceased Tulshiram constantly increased since the year 2009-10. However, instead of considering the average

income as mentioned above, the Tribunal even though observed about the consistency in the income, erroneously held that deceased Tulshiram was earning Rs.2,00,000/- per annum. The learned counsel submits that deceased Tulshiram was 42 years of age at the time of his accidental death and in view of the ratio laid down in the cases of ***Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another***, reported in, ***(2009) 6 Supreme Court Cases 121***, ***Santosh Devi Vs. National Insurance Co. Ltd***, reported in, ***(2012) 6 SCC 421*** and ***Rajesh Vs. Rajbir Singh***, reported in, ***(2013) 9 SCC 54***, the Tribunal ought to have made addition of 30% in the income of deceased Tulshiram towards future prospects. However, the learned Member of the Tribunal has considered the addition to the extent of 10% towards future prospects without any justifying reason. The learned counsel submits that the Tribunal has awarded the compensation with interest at the rate of 6% instead of 9%.

5 The learned counsel for Insurer submits that as per the income tax returns submitted alongwith the list Exhibit – 31 before the Tribunal, the income of deceased Tulshiram was fluctuating and there was no consistency as such. Even though in the financial year 2008-09 deceased Tulshiram shown to have earned the commission to the extent of Rs.4,00,000/-. In the financial year 2009-10, his income

came to be drastically reduced and he had earned only Rs.2,81,835/- compare to his income in the year 2008-09. The learned counsel submits that on careful perusal of those returns of the preceding three years submitted alongwith the list Exhibit – 31, it appears that for the financial year 2008-09, the gross total income of deceased Tulshiram from his LIC business was Rs.1,67,506/- and after necessary deductions, the total income is mentioned as Rs.1,44,000/- from LIC business. For the financial year 2009-10, the gross income is shown as Rs.2,10,060/- and after deductions the net income is shown as Rs.1,36,550/-. For the financial year 2010-11, the gross total income from LIC business is shown as Rs.2,20,382/- and after deductions, the net income is shown as Rs.2,09,570/-. The learned counsel submits that considering the above figures, the Tribunal has taken into account the loss of income of Rs.2,00,000/- per annum, which is more than the average income of preceding three years. Deceased Tulshiram was working as LIC agent. The Tribunal has rightly observed that his job was not of a definite nature and accordingly added 10% amount in the income of deceased Tulshiram towards future prospects. The learned counsel submits that considering the fluctuation in the income of deceased Tulshiram, the Tribunal ought not to have added even 10% of the amount towards future prospects.

6 On careful perusal of the pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the Tribunal has rightly considered the income of deceased Tulshiram at Rs.2,00,000/- per annum. On perusal of the income tax returns submitted alongwith the list Exhibit – 31, it appears that deceased Tulshiram had earned his commission from LIC business for the preceding 3 years in the following manner:

Financial year	Gross income	Net income
2008-09	Rs.1,67,506/-	Rs.1,44,000/-
2009-10	Rs.2,10,060/-	Rs.1,36,550/-
2010-11	Rs.2,20,382/-	Rs.2,09,570/-

7 The learned Member of the Tribunal has rightly observed that the income of deceased Tulshiram was constantly increasing since the year 2009-10. I do not find any fault in the finding recorded by the Tribunal about the income of deceased Tulshiram from his LIC business. However, the learned Member of the Tribunal without any justifying reason, only added 10% in the income of deceased Tulshiram towards future prospects. Even though the Tribunal has observed about the constant increase in the income of the deceased and the consistency of his income from his LIC business, added only 10% in the income of deceased Tulshiram towards future prospects.

In view of the ratio laid down in the cases of *Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another* (supra) *Santosh Devi Vs. National Insurance Co. Ltd.* (supra) and *Rajesh Vs. Rajbir Singh* (supra), the Tribunal ought to have considered 30% of the addition in the income of deceased Tulshiram towards his future prospects in consonance with his age at the time of his accidental death. The Claimants are thus, entitled for the said increase and in view of the same, the judgment and award passed by the Tribunal requires modification. The Claimants are also entitled for the compensation with interest at the rate of 9% per annum instead of 6% per annum as awarded by the Tribunal.

8 In vie of the above, the appeal filed by the Insurer is liable to be dismissed and the appeal filed by the Claimants is required to be allowed partly. Hence, the following order:

<u>O R D E R</u>

I. First Appeal No.3780 of 2016 (Reliance General Insurance Company Vs. Surekha Tulshiram Bhumkar and others), is hereby dismissed. No costs.

II. First Appeal No.167 of 2017 (Surekha Tulshiram Bhumkar and others Vs. Mrs. Sunita Nitin Bhalekar and others), is hereby partly allowed with proportionate costs.

III. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Newasa dated 4th April, 2016 in MACP No.300 of 2014, is hereby modified in the following manner:

> "Opponent Nos.1 to 3 do pay jointly and severally the compensation amount of Rs.29,55,000/- (Rupees Twenty-Nine Lacs and Fifty-Five Thousand only) (inclusive of the amount paid under Section 140 of the Motor Vehicles act) to the Petitioners with interest at the rate of 9% per annum from the date of institution of this application i.e. from 3-9-2012 till realization of the entire amount of compensation."

IV. Rest of the judgment and award stands confirmed.

V. Award be drawn up as per the above modification.

VI. Needless to say that if any amount is paid as per the judgment and award passed by the Tribunal, the same shall be the part of the award after modification.

VII. The Claimants are entitled to withdraw the amount, if deposited before this Court in tune with the modified award.

VIII. Both the appeals are accordingly disposed of.

IX. Pending civil application stands disposed of.

[V. K. JADHAV, J.]

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