

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3342 OF 2015

MALTABAI RAJU ALIAS RAJABHAU DESHMUKH AND OTHERS
VERSUS
BALASAHEB BABANRAO HENDRE AND ANOTHER

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Advocate for Appellants : Mr. S.V. Suryawanshi
Advocate for Respondent No.2 : Mr. V.N.Upadhye

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CORAM : V. K. JADHAV, J.
DATED : 6th JUNE, 2017

PER COURT:-

1. By consent, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 01.09.2014, passed by learned Member, M.A.C.T. Hingoli, in M.A.C.P. No. 228 of 2009, the original claimants have preferred this appeal to the extent of quantum of compensation.
3. Learned counsel for the appellants-claimants submits that the Tribunal has not considered the income of deceased Raju from agricultural sources and also from the transportation business. The appellants have produced before the Tribunal alongwith the list Exh.36, the document and on the basis of which in para 25 of the judgment, the Tribunal has observed that deceased Raju was having a tempo, however, the Tribunal even then considered the notional

income of deceased Raju at Rs.5000/- p.m. Learned counsel submits that the Tribunal has not considered addition in income of deceased Raju towards future prospectus.

4. Learned counsel for the respondent-insurer submits that the claimants have failed to substantiate their contentions about income of deceased Raju from agricultural sources. The claimants have not produced any documentary evidence, such as revenue record to prove holding of 90 acres of land by deceased Raju. Learned Member of Tribunal has therefore, rightly ignored the said contention of the claimants. So far as the income of deceased Raju from transportation business is concerned, the appellants have failed to produce any documentary evidence on record to substantiate their contention about specific income of deceased Raju from transportation business. Learned Member of the Tribunal has therefore, rightly considered notional income of deceased Raju at Rs.5000/- p.m. Learned counsel submits that the Tribunal has awarded just and reasonable compensation. No interference is required.

5. On careful perusal of the pleadings, evidence and the impugned judgment and award passed by the Tribunal, it appears that even though the appellants have claimed income of deceased

Raju from agricultural sources, however, failed to substantiate the same by filing on record 7x12 extracts. According to the claimants, deceased Raju was holding 90 acres of irrigated land, however, the claimants have failed to substantiate the same by producing on record 7x12 extract. So far as transportation business is concerned, as per the documents submitted alongwith the list Exh.36, it appears that deceased Raju was the owner in possession of one tempo, however, in absence of any specific evidence about his income from transport business, the Tribunal has rightly considered his income at Rs.5000/- p.m. from the transportation business. Deceased Raju was 33 years of age at the time of his accidental death. Learned Member of the Tribunal ought to have considered his future prospectus. Thus, considering the age of deceased Raju at the time of his accidental death, it would be appropriate to add 50% of the said income towards future prospectus. Learned Member of the Tribunal has awarded just and reasonable compensation under non pecuniary heads except love and affection. The appellants-minor claimant Nos. 2 and 3 are entitled for an amount of Rs.15,000/ each for love and affection. Thus, the impugned judgment and award is required to be modified to that extent.

6. In view of above, the break up of compensation under various heads which can be broadly categorized is as under:-

i)	Loss of income (Rs.5625x12x16) (As against Rs.7,20,000/- as awarded by the Tribunal)	Rs.10,80,000.00
ii)	Loss of consortium (As awarded by the Tribunal)	Rs. 1,00,000.00
iii)	Loss of love and affection for for minor claimant 1 and 2 Rs.15,000/- each	Rs. 30,000.00
iv)	Funeral expenses	Rs. 25,000.00

		Total Rs.12,35,000.00
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7. Thus, the claimants are entitled for total compensation of Rs.12,35,000/-. The impugned judgment and award therefore, requires modification. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed with proportionate costs.
- II. The judgment and award dated 01.09.2014 passed by the learned Member, M.A.C.T. Hingoli in M.A.C.P. No. 228 of 2009 is modified in the following manner:-

“The respondents shall pay jointly and severally the compensation of Rs.12,35,000/- (Rupees Twelve lacs thirty five thousand only) inclusive of amount under 'no fault liability'

to the appellants-claimants together with simple interest @ 8% p.a. from the date of filing of petition till realization of entire amount.”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up as per above modification.
- V. Deficit court fees, if any, be paid within a period of four weeks.
- VII. Appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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