

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 647 OF 2005

National Insurance Co. Ltd.,
having it's Head Office & Registered Office
at 3, Middleton Street, Kolkatta, a
Branch Office at Jalna and the Divisional
Office at Hazari Chambers, Station Road,
Aurangabad, Now through the Divisional
Manager at Aurangabad

.. APPELLANT

VERSUS

- 1] Vishwanath S/o Sampat Ghode,
Age : 40 years, Occu.: Labourer,
R/o Near T.V. Centre, Jalna (Orig. Claimant No.1)
- 2] Kantabai W/o Vishwanath Ghode,
Age : 38 years, Occu.: Household,
R/o Near T.V. Centre, Jalna (Orig. Claimant No.2)
- 3] Sayyed Hameed S/o Sayeed Jamal,
Age : 35 years, Occu.: Driver of
Tractor and Trailer; R/o Kumbhephal,
Now residing C/o Nawab Garrage,
Near Bhokerdan-Naka, Jalna (Orig. Resp. No.1)
- 4] Mohd. Naseem S/o Mohd. Ibrahim,
Age : Major, Occu.: Owner of Trolley
No. MH-21/6974, R/o Kumbhephal,
Now residing at C/o Nawab Garrage,
Near Bhokerdan-Naka, Jalna (Orig. Resp. No.2)
- 5] Harichandra alias Harischandra
S/o Baburao Kshirsagar, Age : Major,
Occu.: Owner of Tractor No. MVV/7485,
R/o Pir-Pimpalgaon, Tq. & Dist. Jalna
.. (Orig. Resp. No.4) .. RESPONDENTS

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Mr. Rupesh Bora, Advocate h/f. Mr. P.P. Bafna, Advocate for the appellant
Mr. Shrikishan S. Shinde, Advocate h/f. Mr. S.H. Joshi, Advocate for
respondent nos.1 and 2

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CORAM : V. K. JADHAV, J.
DATED : 18th APRIL, 2017

ORAL JUDGMENT:-

1. Heard.

2. Being aggrieved by the judgment and award dated 15.10.2004 passed by the learned Member, M.A.C.T., Jalna in M.A.C.P. No. 52 of 2003, the original respondent No.5 insurer has preferred this appeal to the extent of quantum of compensation.

3. Learned counsel for the appellant insurer submits that the Tribunal has considered the income of deceased on higher side. The learned Member of the Tribunal has also deducted $\frac{1}{4}$ th of the amount from the income of deceased towards his personal living expenses. The learned Member of the Tribunal ought to have deducted $\frac{1}{2}$ of the amount from the income towards personal living expenses since deceased was unmarried son. Learned counsel submits that it is well settled that in case of claim, on account of death of unmarried son, the relevant multiplier would be as per the average age of the parents and not the age of deceased at the time of his accidental death is required to be considered. In the instant case, the Tribunal has applied multiplier of 18 instead of 15.

4. The learned counsel for the respondents/original claimants submits that the Tribunal has awarded meager amount of compensation and failed to award any compensation under non pecuniary heads. The Tribunal has also not considered the future prospects of the deceased. Learned counsel submits that though the claimants have not preferred any cross appeal, they are entitled for just and reasonable compensation.

5. On perusal of evidence and the judgment and award passed by the Tribunal, it appears that the claimants have examined P.W.2 Jamil, who happened to be proprietor of Super Bakery. He has issued certificate Exh.42, wherein it has been specifically mentioned that he used to pay Rs.60/- per day as commission for sale of bakery products to the deceased. On the basis of the evidence of P.W.2 Jamil on oath and the commission certificate on record Exh.42, learned Member of the Tribunal has considered the income of the deceased Rs.1800/- p.m. However, the Tribunal has erroneously deducted $\frac{1}{3}^{\text{rd}}$ of the amount towards personal and living expenses of the deceased. The deceased was unmarried son and the Tribunal ought to have deducted $\frac{1}{2}$ of the amount toward his personal expenses living expenses. Furthermore, the Tribunal has erroneously applied multiplier of 18 instead of 15. The learned Member of the Tribunal ought to have applied the multiplier in consonance with the

average age of the parents and not in consonance with the age of the deceased at the time of his accidental death. In view of the same, the relevant multiplier would be 15 instead of 18 in this case.

6. Even though this appeal is of the year 2005 and admitted long back, the respondents/claimants have not bothered to file any cross appeal. In view of this, I am not inclined to accept the submissions made on behalf of the respondents-claimants in respect of enhancement of compensation amount as awarded by the Tribunal.

7. In view of the above discussion, the impugned judgment and award of the Tribunal requires modification. Hence, I proceed to pass the following order:-

O R D E R

- I. The first appeal is hereby partly allowed. No costs.
- II. The judgment and award dated 15.10.2004 passed by the learned Member, M.A.C.T. Jalna in M.A.C.P. No.52 of 2003 is hereby modified in the following manner:-

“The non-applicant No.1 Syed Hamid, No.2 Md. Nasik, No.3 national Insurance Co., No.4 Harchandra @ Harichandra and No.5 National Insurance Co. do jointly and severally pay an amount of Rs.1,62,000/- (Rupees One lacs sixty two thousand only) to the applicant, inclusive of no fault liability amount alongwith interest at the rate of 9% p.a. from the date of application till realization of entire amount.”

III. Rest of the judgment and award stands confirmed.

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

V. Needless to say that if any amount is deposited by the appellant insurer, as per the judgment and award passed by the Tribunal, the same shall be the part of the modified award and amount in excess, if any, shall be refunded to the appellant insurer.

VI. The appeal is accordingly disposed of.

(V. K. JADHAV, J.)