IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 671 OF 2003

1. Madhumala s/o Harischandra Yermal,
Age 39 years, Occ. Household
R/o. Hingoli, Taluka Hingoli
District Hingoli

2. Pallawai d/o Harischandra Yermal,
Age 20 years, Occ. Education
R/o. Hingoli, Taluka Hingoli
District Hingoli

3. Pranoti d/o Harischandra Yermal,
Age 17 years, Occ. Education
R/o. Hingoli, Taluka Hingoli
District Hingoli

4. Shubham s/o Harischandra Yermal,
Age 5 years, Occ. Nil
R/o. Hingoli, Taluka Hingoli
District Hingoli

(Appellant Nos. 3 and 4 are minors
and under guardianship of their
mother i.e. appellant No.1) ...Appellants

versus

1. Nakshatra Singh s/o Jalan Singh,
Age 47 years, Occ. Business,
(Truck owner) resident of Telibhandha
Raipur (Madhya Pradesh)

2. Vishwanath s/o B.Keshwani,
Age 48 years, Occ. Business,
Resident of 7 Kherdi Road,
Amrawati

3. National Insurance Company
through its Divisional Manager
Hajari Chamber, Station Road
Aurangabad ...Respondents

Mr. P.S. Paranjape, advocate for the appellants
Mr. Rupesh Bora h/f Mr. P.P. Bafna, advocate for respondent No. 3

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CORAM : V. K. JADHAV, J.
DATED : 17th JULY, 2017

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and award dated 19.6.2002, passed by the learned Member, M.A.C.T. Hingoli, in M.A.C.P. 121 of 1998 (old) and 119 of 2000 (new), the appellants-original claimants have preferred this appeal to the extent of quantum of compensation as awarded by the Tribunal.

2. Learned counsel for the appellants submits that deceased Harischandra was having three independent sources of income. He was having cloth shop at Hingoli and he was one of the partner in partnership firm named and styled as 'Jain Sales Corporation'. Deceased Harischandra was owner in possession of agricultural land admeasuring more than 32 acres at Hingoli. The appellants claimants have lost income of deceased from his cloth shop as well as income of his partnership firm. Learned counsel submits that though the appellants have placed on recored the extract of profit and loss account, balance sheet and the income tax returns of the relevant years, the Tribunal has not considered the same. Learned Member of the Tribunal has not considered the said evidence and

awarded the compensation under the head of loss of future income by considering the income of deceased at Rs.3000/- per month. Learned counsel submits that even the Tribunal has awarded meager amount of compensation under non pecuniary heads, such as loss of consortium for appellant-claimant No.1 and loss of love and affection for minor claimant Nos. 2 to 4, further the Tribunal has also not awarded any compensation under the head of funeral expenses. Learned counsel submits that even the Tribunal has erroneously deducted 1/3rd of amount from the income of deceased towards his personal and living expenses instead of 1/4th which is in consonance with number of dependents/claimants.

3. Learned counsel for respondent No.3 insurer submits that so far as the income of deceased from his cloth shop is concerned, as per the licence issued under the Bombay Shops Act, the said shop is standing in the name of father of deceased, who was alive at the time of accidental death of deceased. It is a part of record that income tax returns placed on record were filed on 31.1.2002. The appellants claimants have examined income tax practitioner P.W.3, whose evidence was recorded before the Court on 9.5.2002. it is thus clear that those returns were filed just before four months of recording of evidence of P.W.3 Nandkishor. The Tribunal has therefore, rightly discarded the said income tax returns, which were submitted

belatedly and that too after filing of the claim petition. Learned counsel submits that so far as the extract of profit and loss account and balance sheet are concerned, the said witness P.W.3 Nandkishor has admitted in his cross examination that those extract does not bear the date, signature, name of establishment etc. and also there is no record available whether those documents were submitted before the income tax authorities to consider the income of deceased from all available sources. Learned counsel submits that so far as the income of deceased from his partnership firm is concerned, there is no documentary evidence on record to indicate that deceased Harischandra was one of the partner of said partnership firm prior to his accidental death. P.W.3 Nandkishor has also admitted in his cross examination that no record is available to show that deceased Harischandra was one of the partner of the said partnership firm and the documents placed on record merely indicate that the appellant-claimant No.1 is one of the partner of the said partnership firm.

4. Learned counsel for respondent No.3 insurer submits that so far as the agricultural income is concerned, as per 7x12 extract produced on record, it appears that deceased Harischandra was owner in possession of 5 hectare 10 Are of land as against the oral evidence of the appellants-claimants that deceased Harischandra

was owner in possession of near about 32 acres of land. It also appears from 7x12 extract placed on record that appellant-claimant No.1 is owner in possession of agricultural land independently and she is personally cultivating it. Learned counsel submits corpus of the land remain as it is and loss in the income from agricultural source can be considered to the extent of loss on account of lack of personal supervision and skill. Learned counsel submits that the Tribunal has therefore, rightly considered the income of deceased Harischandra at Rs.3000/- p.m. and accordingly awarded just and reasonable compensation. So far as the income under non pecuniary heads are concerned, learned counsel submits that the accident had taken place way back in the year 1996 and as such, the Tribunal has rightly awarded the compensation under non pecuniary heads. No interference is required. There is no merit in the appeal.

5. On careful perusal of pleadings, evidence and the judgment and award passed by the Tribunal, it appears that though the licence issued under the provisions of Bombay Shops Act in respect of the said cloth shop was not exhibited, on perusal of the same, it appears that the said cloth shop is standing in the name of father of deceased i.e. Rakhoba Shantinath Yermal (Jain). The appellants-claimants have examined brother of deceased Harischandra as a witness and he had deposed in his examination in chief that their father resides

separately. Learned counsel for the appellants has vehemently submitted that name of deceased was given to the said cloth shop and considering the advance age of his father, inference could be drawn that deceased Harischandra was looking after the said cloth shop, exclusively. I am not going to consider the extract of profit and loss account and the balance sheet submitted belatedly and also for the reason that said extract does not bear the date, year and signature of any authority. Even considering the said document for limited purpose, I find that in the said extract, personal account of father of deceased viz. Rakhoba Shantinath Yermal has been referred. The appellants-claimants have not approached the Tribunal with specific pleadings that even though the said cloth shop is standing in the name of father of deceased Harischandra, deceased Harischandra exclusively was looking after the said business and he was getting income of said shop independently. In absence of any evidence, the income of deceased from his cloth shop cannot be considered. Even there is no document placed on record to show that after death of deceased the said licence under the Bombay Shops Act came to be transferred in the name of appellant-claimant No.1 as it was done in respect of agricultural land owned and possessed by deceased Harischandra.

6. Further, the income of deceased from his partnership firm

cannot be considered for the reason that there is no single document placed on record to show that deceased Harischandra was one of the partner of the said firm prior to his accidental death. P.W.3 Nandkishor, the income tax practitioner, has admitted in his cross examination that, though deceased Harischandra met with an accidental death in the year 1996, however, independent Hindu Joint family returns were filed on 31.1.2002. He has further admitted that no document was brought by him showing that deceased Harischandra was partner of said 'Jain Sales Corporation'. He has further admitted that besides the aforesaid returns, there is no document showing that deceased Harischandra was holding joint Hindu family. He has further stated that the balance sheet do not bear signature or stamp of income tax office. He has further admitted in his cross examination that he prepared the balance sheet at the time of submission of returns and besides the returns and balance sheet, no documents are produced by him showing actual income of deceased Harischandra. Even he has not brought before the court the register on the basis of which he has prepared the balance sheet and returns. He has also admitted that so far as income from cloth shop is concerned, no document is produced before him about the sales tax and even sales tax number is also not given to him. It appears that the appellants have not approached the Tribunal with clean hands so far as the income of deceased from said business is concerned.

7. So far as the income from agricultural sources is concerned, though the 7x12 extract is placed on record, the same is not exhibited before the Tribunal. As it was certified copy of the 7x12 extract, I have perused the same with the assistance of learned counsel appearing for the respective parties. It appears that deceased Harischandra was the owner in possession of agricultural land admeasuring 5 H 10 R in total. Though as per the evidence of P.W.3 Nandkishor, deceased Harischandra had submitted returns under Hindu Joint Family category, there are no documents to show that he was owner in possession of the property of Hindu joint family. Even assuming that the said agricultural land is owned and possessed by deceased Harischandra exclusively, there cannot be a total loss in the agricultural income. The appellant No.1 has also admitted in her cross examination that even in the life time of deceased Harischandra, he was cultivating the said agricultural land though his servants and that even after his accidental death, appellant No.1 is cultivating the said land through servants. Under these circumstances, I think that the Tribunal has rightly considered the loss of future income of deceased from all sources to the extent of Rs.3000/- p.m.. I do not find any fault in the said observations.

8. In so far as the deduction of amount towards personal and living expenses of deceased Harischandra as 1/3rd instead of 1/4th is concerned, in my opinion, the learned Member has erroneously deducted 1/3rd of the amount towards personal and living expenses of deceased instead of 1/4th. There are in all four dependents claimants, as such the Tribunal ought to have deducted 1/4th towards the personal expenses of deceased Harischandra. Thus, the loss of future income/dependency required to be redetermined to that extent only.

9. So far as the compensation as awarded by the Tribunal under non pecuniary heads are concerned, I do not find any substance in the submission made on behalf of counsel appearing for the respondent-insurer that the appellants claimants are entitled for compensation under non pecuniary heads in the year 1995-96 and not as per the ratio laid down by the Supreme Court in the year 2010 onwards. Needless to say that the appeal is in continuation of the original proceedings and after considering the plight of widow and other dependents, the Supreme Court has laid down that the widow is entitled for the amount of Rs.1,00,000/- for loss of consortium whereas the minor claimants are entitled for Rs.50,000/- onwards towards loss of love and affection.

10. Thus, the appellants-claimants are entitled for amount of Rs.1,00,000/- for loss of consortium to appellant No.1 and Rs.50,000/- each for minor appellants-claimant Nos. 2 to 4. The appellants are also entitled for Rs.25,000- towards funeral expenses.

11. In view of above discussion, the appellants-claimants are entitled for total compensation of Rs.6,80,000/-. Thus, the break of compensation awardbale to the appellants-claimants, which can be broadly categorized is as under:-

I.	Loss of future income/dependency (Rs.27,000x15) (As against Rs.3,60,000/- as awarded by the Tribunal).	Rs.4,05,000.00
II.	Loss of consortium to claimant No.1 (As against Rs.10,000/- as awarded by the Tribunal).	Rs.1,00,000.00
III.	Loss of love and affection to claimant Nos. 2 to 4 Rs.50,000/- each. (As against Rs.10,000/- as awarded by the Tribunal).	Rs.1,50,000.00
IV.	Funeral expenses	Rs. 25,000.00
	Total	Rs.6,80,000.00

12. The judgment and award passed by the Tribunal, thus 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 19.6.2002, passed by the learned Member, M.A.C.T. Hingoli, in M.A.C.P. No. 119 of 2000 is hereby modified in the following manner:-

“The respondent Nos. 1 to 3, jointly and severally pay Rs.6,80,000/- (Rupees Six lacs eighty thousand only) with proportionate costs and interest at the rate of 9% p.a. from the date of claim petition i.e. from 14.05.1998 till its realization. The compensation shall include compensation towards 'no fault liability'”.

III. Rest of the judgment and award stands confirmed.

IV. The award be drawn up as per the above modification.

V. If any amount is paid as per the judgment and award passed by the Tribunal, the same shall be the part of award after modification.

VI. The appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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