IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 1740 OF 2008

1. Smt. Komal Shankarlal Keswani,
Age : 36 years, Occu.: Household

2. Chi. Jaikumar Shankarlal Keswani,
Age : 14 years, Occu.: Education

3. Chi. Amar Shankarlal Keswani,
Age : 12 years, Occu.: Education

(Appellant no.1 is the natural guardian
and mother of the respondent no.2 and 3)
All are residing at Ganesh Nagar,
Jillha Peth, Jalgaon.

… **APPELLANTS**
(Ori. Claimants)

VERSUS

1. Shri Pandharinath Shankar Patil,
Age : 51 years, Occu.: Agriculture,
R/o.: Pilode, Taluka-Amlner,
District : Jalgaon.

2. The United India Insurance Company Ltd.,
Divisional Office, Post Box No. 55,
Manbsingh Market, 2nd Floor, In front of
Atul Dairy, Near Railway Station,
Jalgaon.
(Summons may be served on The Divisional
Manager)

…. **RESPONDENTS**.
(Ori. Opponents)

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Advocate for Appellants : Shri. M. M. Bhokarikar
Advocate for Respondent no2. : Shri. A. B. Gatne.

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CORAM : P. R. BORA, J.
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Reserved on : 13-06-2017.
Pronouncement on : 07/08/2017

<u>JUDGMENT</u> :

1) Dissatisfied with the compensation as awarded by the Motor Accident Claim Tribunal, Jalgaon in Motor Accident Claim Petition No. 218/2003 decided on 29th January, 2008, the claimants therein have preferred the present appeal seeking enhancement in the amount of compensation as awarded.

2) The claimants had filed the aforesaid petition claiming compensation on account of the death of Shankarlal Sadhulal Keswani who died in a road accident happened on 17th February, 2003 having involvement of Tata Sumo bearing registration No. Mh-19-Q-0856, owned by present respondent No.1 and insured with present respondent no.2. It was the contention of the claimants before the Tribunal that the alleged accident had happened because of the negligence on the part of the driver of offending Tata Sumo. As was stated in the petition, deceased Shankarlal Keswani, on the date of accident was 37 years old and was running a dry fruit shop and earning around Rs.1,00,000/- p.a. It was the further contention of the claimants that they all were depending upon the income of deceased Shankarlal. Petitioners had, therefore, claimed the compensation of Rs.12,38,000/- from the owner and insurer of the offending Tata Sumo. The petition was resisted by the Insurance Company on various grounds. The Insurance Company had taken the plea of breach of policy condition by the insured. According to Insurance Company deceased was being carried as a fare paying passenger in the said Tata-Sumo. The income of the deceased was also disputed.

3) In order to substantiate the claim so raised by them, the claimants produced on record the Shop Act License of the shop which was being run by the deceased and the income tax returns of the preceding years.

4) The learned Tribunal after having considered the oral and documentary evidence brought on record before it, held the claimants entitled for the compensation of Rs.2,75,500/- excluding the NFL compensation jointly and severally from the owner and insurer of the offending Tata Sumo. Aggrieved by, the claimants have filed the present appeal.

5) Shri Bhokarikar, the learned Counsel appearing for the appellants, who are hereinafter referred to as the claimants, submitted that the Tribunal has failed in appreciating the evidence adduced by the claimants as about the income of deceased Shankarlal. The learned Counsel submitted that the Shop Act license of the shop being run in the name as 'Preetam Dry Fruit Center' was filed on record by the claimants and was duly proved. The learned Counsel submitted that the claimants have also placed on record the income tax returns pertaining to the said shop for the year 2002-2003 as well as two years preceding to the said period. The learned Counsel submitted that for the year, 2002-2003 the income of deceased Shankarlal was shown as Rs.83,700/-. The learned Counsel submitted that the income tax returns of the previous years show a concrete and steady increase in the income of deceased Shankarlal. The learned Counsel further submitted that in future the business of deceased Shankarlal was definitely to prosper. In the circumstances, according to the learned Counsel the Tribunal must have assessed the amount of dependency compensation holding the income of the deceased at least to the tune of Rs.1,00,000/- p.a. The learned Counsel submitted that the Tribunal has however, wrongly held the

income of the deceased to the tune of Rs.36,000/- p.a. The learned Counsel further submitted that through the age of deceased Shankarlal was 37 years, while determining the amount of compensation the Tribunal has held the age of deceased Shankarlal to be 48 years, which has resulted in applying the multiplier of 13 by the Tribunal. The learned Counsel submitted that sufficient evidence was available on record to show that the age of the deceased on the date of accident was less than 37 years and as such appropriate multiplier for assessing the amount of compensation would have been of 15. The learned Counsel further submitted that while deciding the amount of compensation, the tribunal has also not considered the future prospects of the deceased. The learned Counsel further submitted that the Tribunal has also failed in awarding just and fair compensation towards the non-pecuniary damages. The learned Counsel, therefore,prayed for adequate enhancement in the amount of compensation.

6) Shri A. B. Gatne, the learned Counsel appearing for respondent no.2, the Insurance Company, opposed these submissions made on behalf of the appellants/claimants. The learned Counsel submitted that the Tribunal has appropriately considered the evidence on record and has awarded the just and fair compensation payable to the claimants. The learned Counsel submitted that the evidence brought on record by the claimants as about the income of deceased Shankarlal was insufficient and could not have been depended by the Tribunal. The learned Counsel submitted that the income tax returns were in the name of the shop and could not have been accepted as the proof for the individual income of deceased Shankarlal. The learned Counsel further submitted that the last income tax returns which is emphasized by the claimants was in fact not submitted by the deceased and was submitted after his death by the claimants. The learned Counsel submitted that in such circumstances, the Tribunal has rightly held the income of deceased

to the tune of Rs.36,000/- p.a. applying the criteria of notional income. The learned Counsel submitted that no case is made for enhancement of compensation. He, therefore, prayed for dismissal of the appeal.

7) I have carefully considered the submissions made on behalf of the learned Counsel appearing for the appellants and the learned Counsel appearing for the respondent Insurance Company. I have perused the impugned judgment, the evidence adduced in the matter and the documents existing on record.

8) It was the specific contention of the claimants that the deceased was running the dry fruit shop in the name and style as "Preetam Dry Fruit Center". Inviting my attention to the Shop Act license pertaining to the shop of the deceased it was submitted by the learned Counsel for the claimants that father of deceased Shankarlal was initially petitioner was shown as a proprietor of the said shop. I do not see any reason to disbelief the contention of the claimants that after the death of his father, deceased Shankarlal Keswani was running the said dry fruit shop. Moreover, if the income tax returns are perused, deceased Shankarlal is shown as the proprietor of said Swami Preetam Dry Fruit Centere. It, therefore, can be reasonably held that deceased Shankarlal was running the said dry fruit shop. The income tax return are at Exh-42, 43 & 44. The income tax returns at Exh-44 is for the assessment year 1-04-2002 to 31 March of 2003. The income of the said year is shown to be Rs.83,6,70/-. For the earlier year the income was shown to the tune of Rs.81,2,42/- and before that it was Rs.47,6,10/- i.e. for the assessment year 2001-2002. The Tribunal though has referred to the said income tax returns while determining the amount of compensation does not seem to have fully relied upon the same. It is stated by the Tribunal that taking into consideration the nature of business run by deceased Shankarlal it would be proper to hold that the

deceased was getting Rs.3,000/- per month i.e. Rs.36,000/- per year as income from the said business. It is discernible that finding so recorded by the Tribunal is not in consonance with the evidence on record. As noted herein above, the income tax returns were showing the income of deceased Shankarlal for the year 2000-2001 was Rs.47,608/- and in 2001-2002 it as shown to be Rs.81,2,42/- and for the year 2002-2003 it was shown to be Rs.83,700/-. Though it is accepted that there may be fluctuations in the business, considering the average income which was being earned by deceased Shankarlal from the dry fruit shop, in no case it could have been held less than Rs.48,000/- p.a. the claimants had also claimed the same income of deceased Shankarlal (in the petition filed by them) and there was no reason to discard the said contention.

9) On the basis of the evidence on record, I hold the income of deceased Shankarlal to the tune of Rs.48,000/- p.a. The tribunal has assessed the amount of compensation by applying the multiplier of 13 holding the age of deceased Shankarlal to be 48 years as was shown in the Post-Mortem Report. The age of deceased Shankarlal, however was less than 37 years. In the Income tax returns the date of birth of deceased Shankarlal is shown as 01-06-1966. In the appeal the claimants have also placed on record the birth date certificate of deceased Shankarlal which shows the date of birth of deceased as 01-06-1966. The learned Counsel for the Insurance Company was fair enough in submitting that the same may be accepted as the date of birth of Shankarlal. Having regard to the age of deceased Shankarlal on the date of accident, the appropriate multiplier to be applied in the present matter, would be thus, of 15 and not of 13 as was applied by the Tribunal. I have already held the income of deceased Shankarlal to the tune of Rs.48,000/- p.a. Deducting 1/3rd of the said income toward the personal expenses of the deceased, the dependency of the claimants can be assessed on the balance amount of Rs.32,000/- by multiplying the

same with the multiplier of 15, which comes to Rs.4,80,000/-. The Tribunal has awarded Rs.10,000/- to the claimants towards love and affection, Rs.2,000/- towards loss of estate, Rs.2,500/- towards funeral expenses i.e. total sum of Rs.14,500/- is awarded by the Tribunal towards the non-pecuniary damages. The amount so awarded by the Tribunal is apparently unjust and inadequate. Though the alleged accident is of the year 2003, I deem it appropriate to enhance the amount of compensation towards the non-pecuniary damages to Rs.2,50,000/-.

10) The appellants are thus, held entitled for the total compensation of Rs.7,30,000/-. In the facts and circumstances of the case, it appears to me that this would be the just and fair compensation payable to the claimants inclusive of the amount of NFL compensation. I also hold the claimants entitled for the interest on the enhanced amount of compensation at the rate of Rs.6% p.a. as was awarded by the Tribunal in the impugned award from the date of filing of the petition till realization. Award be modified accordingly. Appeal stands allowed in the aforesaid terms.

(P. R. BORA)
JUDGE

VSM