

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1200 OF 2008

National Insurance Co.Ltd., having
it's Head Office & Registered Office
at 3, Middleton Street, Kolkata, a
Branch Office Office at Lature and a Divisional
Office at Hazari Chambers, Station Road,
Aurangabad.

**...APPELLANT
(Orig.Respdt.No.3)**

VERSUS

1. Smt. Haryabai w/o Ramrao Shelke,
Age 42 years, Occu. Household,
R/o Kokanga, Tq. Ahmedpur, Dist.
Latur.
2. Madhav s/o Ramrao Shelke, Age 22
years, Occu. Agriculture & Labour,
r/o. Kokanga, Tq. Ahmedpur, Dist.
Latur.

**...RESPONDENTS
(Orig.Claimants 1 & 2)**

3. Mrs. Uma Sanjay Limaye,
Age Major, Occu. Business,
r/o Karad-Nagar, Ahmedpur,
Dist. Latur.

**...Respondent
(Orig.Respdt.No.2)**

4. Haridas s/o Naryan Kendre,
Age Major, Occu. S.T. Driver,
R/o. S.T. Depot, Ahmedpur.

**...Respondent
(Orig.Respdt.No.4)**

5. The Divisional Controller,
M.S.R.T.C., Latur.

**...RESPONDENT
(Orig.Respdt.No.5)**

6. Raghunath s/o Dagdu Sapkal,
Age Major, occu. Driver of
Mini-Travel Bus (DELETED)

**...RESPONDENT
(Orig.Respdt.No.1)**

...
Mr. Mr. R.C.Bora, Advocate, h/f Mr.P.P.Bafna, Advocate,
for the appellant.
Mrs. R.D.Reddy, Advocate for respondent nos. 4 & 5.
Respondent no.2 served.

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CORAM: P.R.BORA, J.

DATE : JUNE 6th, 2017

JUDGMENT:

1. The appellant has filed the present appeal against the judgment and award passed in Motor Accident Claim Petition No.2/2004, passed by the Motor Accident Claims Tribunal at Udgir on 11.11.2005.

2. Respondent nos. 1 and 2 had filed the aforesaid claim petition claiming compensation on account of death of Ramrao Shelke in a vehicular accident happened on

10th of May, 2001, having involvement of Mini Bus bearing registration No. MH-26-C-4584 and S.T.Bus having registration No. MH-20-D-1773. The learned Tribunal has awarded the compensation of Rs.1,34,000/- excluding the amount of No Fault Liability compensation and held the owner and insurer of the Mini Bus liable to pay the said amount of compensation to the claimants along with interest thereon at the rate of 9 per cent per annum from the date of application till realization of the amount. The Tribunal has dismissed the petition against the driver of the State Transport Bus and the State Transport Corporation.

3. Shri R.C.Bora, learned Counsel, holding for Shri P.P.Bafna, learned Counsel for the appellant Insurance Company, at the outset submitted that though the Insurance company has raised various grounds in exception to the impugned award, the Insurance company is now restricting its challenge to the impugned judgment only to the extent of quantum of compensation.

4. Learned Counsel submitted that without any

cogent and sufficient reasons, the Tribunal has awarded compensation of Rs.1,34,000/- excluding No Fault Liability compensation. Learned Counsel submitted that when the claimants had failed to bring on record any cogent evidence as about the income of the deceased, the Tribunal must have determined the amount of dependency compensation on the basis of notional income. Learned Counsel further submitted that the Tribunal has also grossly erred in awarding the compensation of Rs.10,000/- under the head of pain and agony. Learned Counsel, therefore, prayed for modification of the award.

5. I have carefully perused the impugned judgment and the other material on record. There appears no substance in the objection raised on behalf of the appellant Insurance Company that the amount of dependency compensation has been determined by the Tribunal on higher side. The discussion made by the Tribunal reveals that the Tribunal has held the monthly income of the deceased to the tune of Rs.1,500/- and deducting one third of it towards the personal expenses of the deceased has determined the amount of dependency

compensation. It does not appear to me that the Tribunal has committed any error in determining the amount of dependency compensation. However, there appears substance in the objections raised on behalf of the appellant Insurance Company that the Tribunal has wrongly awarded the compensation of Rs.10,000/- under the heads of pain and agony. No such amount could have been awarded by the Tribunal. Present was not the petition filed by an injured claiming compensation on account of injuries caused to him or disablement sustained by him in the accident. In fact, when the Tribunal has awarded compensation towards love and affection and towards consortium, the Tribunal could not have again awarded the compensation towards pain and sufferings. To the aforesaid extent, the impugned award needs to be modified.

6. In view of the discussion made above, I hold the appellants entitled to the total compensation of Rs.1,24,000/-, excluding the No Fault Liability compensation, instead of the compensation awarded of Rs.1,34,000/- by the Tribunal. Save and except the

decrease in the amount of compensation as aforesaid, the remaining part of the impugned award is kept as it is. The revised award be prepared accordingly. The Appeal is, thus, partly allowed. No costs.

(P.R.BORA)
JUDGE

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AGP/1200-08fa