IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.733 OF 2006

National Insurance Co.Ltd.
Having its Head office and
Registered office at 3,Middleton
Street, Kolkata, a branch office at
Latur and a Divisional office at
Hazari Chambers, Station road,
Aurangabad, now through the
Asstt. Divisional Manager, at
Aurangabad. = **APPELLANT/S**
(orig.Resp.No.4)

VERSUS

1) Balasaheb s/o Kishanrao Phulari
Age: 40 Yrs., occu. Service,
R/o Malke Galli, Latur.

2) Ashwini d/o Balasaheb Phulari,
Age: 10 yrs.,

3) Arti d/o Balasaheb Phulari,
Age: 8 Yrs.

4) Swati d/o Balasaheb Phulari,
Age: 6 yrs.

(Resp.Nos. 2 to 4 being minors,
are Under Guardianship of their
natural father, Resp.No.1 -
Balasaheb Phulari) = **RESPONDENTS**
(orig.claimant Nos.
1 to 4)

5) Haridas s/o Narayan Kendre,
Age: 33 Yrs., occu. Bus driver
R/o ST Depot, Ahmedpur. = RESPONDENT
(orig.Resp.No.1.)

6) Divisional Controller,
Maharashtra State Regional
Transport Corporation, Laatur = RESPONDENET
(orig.Resp.No.2.)

7) Sow. Uma w/o Sanjiv Limaye
Age: 40 Yrs., occu. Business,
R/o Karad Colony, Infront of
Rest House, Ahmedpur. = RESPONDENT
(orig.Resp.No.3.)

Mr.RC Bora, Adv. h/for Mr. PP Bafna,Advocate for Appellant;

Respondent Nos.1 to 4 are served through paper publication;

Ms.RD Reddy, Adv.for Resp.Nos. 5 & 6.

Mr.DA Mane, Adv. h/for Mr. Shri Milind Patil, Adv. For Resp.No.7;

CORAM : P.R.BORA, J.

DATE : 6th June,2017.

ORAL JUDGMENT:

1) Heard. The appellant has filed the present appeal against the Judgment and Award dated 18th March, 2006 passed by the Motor Accident Claims Tribunal, at Latur (for short, the Tribunal) in MACP No.159/2002.

2) Respondent Nos. 1 to 4 had filed the aforesaid claim petition claiming compensation on account of death of Premala @ Vijaymala w/o

Balasaheb Phulari in a motor vehicle accident happened on 10th May 2002 having involvement of an ST bus bearing registration No.MH-20-D 1773 and a mini bus bearing registration No. MH-26-C 4586.

3) The learned Tribunal vide the impugned Award partly allowed the claim petition against the owner of the mini bus and the present appellant, i.e. insurer of the said mini bus. The Tribunal has awarded the compensation amounting to Rs.2,90,000/- to Respondent Nos.1 to 4, i.e. the original claimants.

4) Shri R.C.Bora, holding for Shri Bafna, learned Counsel appearing for the appellant – Insurance company, at the outset, submitted that though in the memo of appeal, the impugned award has been challenged on several grounds, the insurance company is pressing only one ground and disputing the impugned award only to the extent of quantum of the compensation. The learned Counsel further submitted that the Tribunal has

grossly erred in holding that deceased Premala, at the time of her death, was earning the income of Rs.2250/- per month. The learned Counsel further submitted that there is absolutely no evidence in regard to the income of deceased Premala.

. According to the learned Counsel, in the circumstances, the Tribunal must have assessed the amount of dependency compensation by holding the monthly income of deceased Premala on the notional basis i.e. Rs.15,000/- per annum and deducting 1/3rd from the said amount towards the personal expenses of the deceased, should have determined the amount of dependency compensation. The learned Counsel further submitted that the Tribunal has also grossly erred in awarding the huge sum of Rs.20,000/- towards the funeral expenses. The learned Counsel, therefore, prayed for modification of the impugned award by assessing the dependency compensation by holding the income of deceased Premala on the notional basis and reducing the amount of compensation awarded towards the funeral expenses.

5) Learned Counsel appearing for the respondents resisted the submissions made on behalf of the appellant – insurance company. The learned Counsel supported the impugned award. The learned Counsel submitted that in fact, sufficient evidence was adduced by the claimants showing that the deceased Premala was doing business of making flowers and preparing garlands and from the said work, was earning around Rs.10,000/- to Rs.15,000/- per month. The learned Counsel further submitted that the Certificate was also produced on record by the claimants, evidencing that deceased Premala was running a shop of flowers. The learned Counsel submitted that since the Tribunal has awarded the reasonable amount of compensation, no interference is called for in the impugned award. The learned Counsel, therefore, prayed for dismissal of the appeal.

6) I have carefully considered the submissions made on behalf of the learned Counsel for the respective parties. I have also perused the impugned judgment, the evidence on record and the material placed on record. As has been clarified by the learned Counsel appearing for the appellant – insurance company, the challenge to the impugned award is restricted to the quantum of the compensation only, as has been awarded by the learned Tribunal.

7) The first objection raised by the appellant/insurance company is that there was no sufficient evidence as about the income of deceased Premala and in absence of any such evidence, her income must have been held to be Rs.15,000/- per annum on the notional basis. As was submitted by the learned Counsel for the appellant, the dependency compensation shall have been determined by the Tribunal by taking the multiplicand of Rs.10,000/-.

8) From the material on record, it is difficult to accept the contention raised by the

learned Counsel. In Para 14 of the impugned judgment, the learned Tribunal has observed that the claimants have placed on record the Certificate issued by the Chief Officer, Municipal Council, Udgir, demonstrating that deceased Premala was running a shop of flowers. The claimants have thus sufficiently proved that deceased Premla was running a flower shop. It was the contention of the claimants that deceased Premala was earning from her flower shop the income of Rs.10,000/- to Rs.15,000/- per month. The Tribunal in absence of sufficient evidence in that regard, has, however, declined to hold the income of deceased Premala to the said extent. The Tribunal by making due discussion has held the monthly income of deceased Premala to the tune of Rs.2250/-. It does not appear to me that the Tribunal has committed any error in holding the income of the deceased Premala to the tune of Rs. 2250/- per month. The Tribunal has then rightly deducted 1/3rd amount from the said income towards personal expenses and has assessed the dependency compensation by applying appropriate multiplier. Having regard to the age of the deceased Premala, the Tribunal has rightly applied the multiplier of 15 and has determined the amount of compensation to the tune of Rs. 2,70,000/-. I see no reason to interfere in the amount of compensation so determined by the Tribunal.

9) It was the further objection of the appellant/insurance company that the amount of Rs.20,000/-, as awarded by the Tribunal towards the funeral expenses, is on unreasonably higher side, also has not impressed me much. The tribunal has in its discretion awarded the amount of Rs.20,000/- not only towards the funeral expenses, but also for loss of love and affection, company and consortium. The objection so raised by the appellant – insurance company is thus liable to be rejected.

10) After having considered the entire material on record, it does not appear to me that any interference is required in the impugned

Judgment and Award. The appeal being devoid of any merit, deserves to be dismissed and is accordingly dismissed, however, without any order as to costs. Pending civil application, if any stands disposed of.

11) The original claimants are permitted to withdraw the amount of compensation, if any, deposited by the appellant – insurance company in this Court together with interest accrued thereon.

(P.R.BORA)
JUDGE

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