IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1447 OF 2004
WITH
CIVIL APPLICATION NO. 6810 OF 2005

1. Smt. Sheela Govind Bansode
Age. 22 years, Occu. Household,

2. Yogeshwar Govind Bansode
Age. 2 years, Occu. Nil,

3. Shri. Dagdu Dadarao Bansode
Age. 47 years, Occu. Nil,

4. Sau. Rahyabai Dagdu Bansode
Age. 42 years, Occu. Household,

(Applicant No.2 Minor through his
guardian mother applicant No. 1)

All R/o. Malegaon, Tal. Nilanga,
District. Latur. ...Appellants

Versus

1. Asir Channubhai Shaikh
Age. Major, Occu. Business,
R/o. Gunshan Bungalow,
Burudgaon Road, Ahmednagar,
District. Ahmednagar.

2. The Divisional Manager
The New India Assurance Company Ltd.
(Notice to be served on Branch Manager,
The New India Assurance Company Ltd.,
Abat Building, Near Ashoka Hotel,
Ahmednagar. ...Respondents

...
Advocate for Appellant : Mr. N.C. Garud
Advocate for Respondent No.2 : Mr. M.M. Ambhore
.....

CORAM : V. K. JADHAV, J.
DATED : 25th APRIL, 2017

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Ahmednagar dated 1.7.2004 in M.A.C.P. No. 349 of 2002, the original claimants have preferred this appeal to the extent of quantum of compensation.

2. Learned counsel for the appellants/original claimants submits that deceased Govind was working as supervisor in Mudrik Enterprises, M.I.D.C. Ahmednagar. As per certificate Exh.36, deceased Govind had undergone certified course from August 1996 to July, 1998 for Trade "Surveyor". Deceased was getting salary of Rs.6000/- p.m. Learned counsel submits that deceased was working as Supervisor with the said firm for three years prior to the accident and the work was in progress in Rahuri Krishi Vidyapeeth at the time of accident. Near about 15 workers were also working with the deceased Govind and deceased Govind was supervising the said work. The employer has issued salary certificate which is marked at Exh.34, wherein it has been specified that the last drawn salary of the deceased was Rs.4500/- p.m. Learned counsel submits that the Tribunal has discarded the above evidence and considered notional income of deceased Govind at Rs.1500/- p.m. and thus, awarded very meager amount of compensation. Learned counsel submits that even the Tribunal has awarded very meager amount under non pecuniary heads, such as loss of consortium, loss of love and affection and also for funeral expenses. The Tribunal has also

erroneously applied the multiplier 17 instead of 18. Learned counsel submits that the Tribunal has not at all considered the future prospects of deceased Govind.

3. Learned counsel for the respondent/insurer submits that so called salary certificate Exh.34 speaks about the approximate monthly gross salary of deceased at Rs.4500/-. The claimants have examined one witness Dayanand, who happened to be the partner of said Mudrik Enterprises. He has admitted in his cross examination that muster of the labourers and supervisor is maintained and his firm is registered one. He further admitted in his cross examination that provisions of Labour Act stand applicable to his firm. However, he has not produced any record before the Tribunal pertaining to the salary being paid to deceased Govind. He has even not produced before Tribunal the pay roll or certificate regarding payment. Furthermore, the appointment letter and other related documents are also not produced on record. Learned counsel submits that the Tribunal has therefore, rightly discarded the so called salary certificate Exh.34 and accordingly considered the notional income of deceased at Rs.1500/- p.m.. Learned counsel submits that the Tribunal has awarded just and reasonable compensation under other heads. No interference is required.

4. On careful perusal of evidence and the judgment and award passed by the Tribunal, though I find that the Tribunal has correctly

discarded certificate Exh.34 from consideration. However, the Tribunal has considered notional income of deceased Govind at lower side. It appears from certificate Exh.36 that deceased Govind has completed the course in Industrial Training Institute, Nilanga and passed the prescribed test in the trade “Surveyor”. Furthermore, the certificate of his “Secondary School Certificate” examination is also produced on record and the same is marked at Exh.37. However, the Tribunal has considered the income of deceased Govind as if he was doing labour work on daily wages of Rs.50/- per day. In my considered opinion, the Tribunal ought to have considered the notional income of deceased Govind at Rs.3000/- p.m. Thus, the compensation under the loss of future income, as awarded by the Tribunal, requires re-determination. It further appears that the Tribunal has awarded very meager amounts under the heads of loss of consortium and loss of love and affection. The date of birth of deceased Govind, as per certificate Exh.37, is 20.10.1978 and date of accident is 4.6.2002. Thus, on the date of accident, deceased Govind was 24 years of age. The appellant-claimant No.1 was 20 years of age at the time of accidental death of her husband. The appellant-claimant No.2 was just 2 months old at the time of death of his father. After deducting 1/3rd amount from the income of deceased towards his personal and living expenses, the relevant multiplier would be 18 in consonance with the age of deceased at the time of his accidental death.

5. In view of above, the appellant-claimant No.1 is entitled for Rs.50,000/- for loss of consortium, appellant No.2-minor son is entitled for Rs.25,000/- for loss of love and affection and appellant Nos. 3 and 4, old aged parents of deceased Govind, are entitled for Rs.10,000/- each for love and affection. The appellants claimants are also entitled for an amount of Rs.15,000/- towards funeral expenses.

6. Thus, the breakup of compensation under various heads, which can be broadly categorized is as under:-

I)	Loss of future income/dependency (Rs.2000x12x18) (As against Rs. 2,04,000/- as awarded by the Tribunal)	Rs. 4,32,000.00
II)	Loss of consortium for appellant No.1 (As against Rs.5000/- as awarded by the Tribunal)	Rs. 50,000.00
III)	Loss of love and affection for appellant No. 2 (As against Rs.5000/- as awarded by the Tribunal)	Rs. 25,000.00
IV)	Loss of love and affection for appellant Nos. 3 and 4 Rs.10,000/- each. (As against Rs.6000/- as awarded by the Tribunal)	Rs. 20,000.00
V)	Funeral expenses (As against Rs.3000/- as awarded by the Tribunal)	Rs. 15,000.00
	Total	Rs.5,42,000.00

The appellants-claimants are entitled for compensation of

Rs.5,42,000/- (Rupees Five lacs forty two thousand) as worked out herein-above.

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

O R D E R

I. The first appeal is hereby partly allowed with proportionate costs.

II. The judgment and award dated 1.7.2004 passed by the learned Chairman, M.A.C.T. Ahmednagar in M.A.C.P. 349 of 2002 is hereby modified in the following manner:-

"The opponent Nos. 1 and 2 do pay, jointly and severally, to the appellants-claimants, an amount of Rs.5,42,000.00 (Rupees Five lacs forty two thousand only) inclusive of "no fault liability" amount with proportionate costs and future interest @ 9% p.a. from 29.6.2002 till realization of entire amount."

III. Rest of the judgment and award stands confirmed.

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

V. Needless to say that if any amount is paid as per the judgment and award passed by the Tribunal, the same shall be the part of modified award.

VI. First appeal is accordingly disposed of.

VII. In view of disposal of first appeal, pending civil application is also disposed of.

(V. K. JADHAV, J.)

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