

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.115 OF 2002

- 1) Sahebrao s/o Baburao Lokhande
Age: 40 Yrs., occu. Agril. & Labour
- 2) Bandu Sahebrao Lokhande
Age: 14 Yrs.,
- 3) Alka Sahebrao Lokhande,
age: 11 Years.
- 4) Jaishree Sahebrao Lokhande
Age: 8 Yrs.,
- 5) Savita Sahebrao Lokhande,
Age: 6 Yrs.,

Appellants are minors, through
their Guardian Appellant No.1.

All residents of Bahirwadi,

Tq.Pathardi, Dist. Ahmednagar.= **APPELLANT/S**
(Orig.Petitioners)

VERSUS

- 1) Mahesh Dhanlal Shivde
age: 40 Yrs., occu.Transport
Business, r/o Bhoigalli,Taloda,
District Dhulia.
- 2) United India Insurance Co.Ltd.
Through Divisional Manager,
2, Kishan Keranti Building,
Market Yard, Ahmednagar. = **RESPONDENT/S**
(Orig.Opponents)

Mr.DR Markad, Adv. h/for Mr. AN Kakade, Advocate for
Appellants;

Mr. R.Y. Yadav, Advocate for Respondent No.1
(Absent);

Mr. SG Chapalgaonkar, Adv.for Respondent No.2.

CORAM : P.R.BORA, J.**DATE : 6th June, 2017.****ORAL JUDGMENT:**

1) Heard. By filing the present appeal, the appellants are seeking enhancement in the amount of compensation as awarded by the Motor Accident Claims Tribunal, at Ahmednagar (for short, the Tribunal) in MACP No.289/1997.

2) The Tribunal has awarded the compensation of Rs.75,000/- inclusive of NFL compensation. The award has been passed only against the owner of the vehicle and the insurance company has been exonerated from its liability to indemnify the insured on the ground that the owner has committed the breach of policy conditions by allowing the person not holding valid driving license to drive the offending vehicle.

3) The learned Counsel appearing for the

appellants though raised several grounds in exception to the impugned judgment, the only issue, which needs consideration is correctness in application of multiplier. Though as about the income of the deceased, the appellants' counsel has submitted that the trial court has not properly considered the income of the deceased, after having gone through the discussion made by the trial court, it does not appear to me that the trial court has committed any error in holding the income of the deceased to the tune of Rs.1,000/- per month for the purposes of determining the amount of compensation.

4) Apparent mistake, however, seems to have been committed by the Tribunal in respect of application of the multiplier. Age of the deceased was admittedly 32 years at the time of her death. In the circumstances, the appropriate multiplier of 16 ought to have been applied, whereas the Tribunal has applied the multiplier

of 8 while determining the amount of compensation. It appears to me that only to the said extent, the impugned Award needs to be modified and the amount of compensation needs to be enhanced accordingly. By applying the multiplier of 8, the amount of dependency compensation was determined to the tune of Rs. 62,400/-. The same needs to be doubled since the multiplier of 16 is to be applied.

5) Though the learned Counsel was persuasive in his submission that the insurance company needs to be directed to first pay the amount of compensation and then to recover the same from the owner of the vehicle, I am not convinced with the argument so advanced by the learned Counsel. I have carefully perused the grounds of objections. Appellant has not raised any objection in regard to the exoneration of the insurance company from its liability to indemnify the insured. At this juncture, the submission so made, therefore, cannot be accepted.

6) After having considered the entire material on record, as I mentioned earlier, the judgment needs to be interfered with only on the point of the multiplier and the amount of compensation needs to be enhanced by Rs.62,400/-. Hence, the following order, -

ORDER

- i) The appeal is partly allowed.
- ii) The amount of compensation as awarded by the Tribunal is enhanced by Rs.62,400/-.
- iii) Respondent No.1 shall pay the enhanced amount of compensation to the appellant/s together with the interest accrued thereon @ 6% per annum from the date of filing of the Claim Petition till its realization.
- iv) The Award be drawn accordingly.

(P . R . BORA)
JUDGE

bdv/