IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 1632 OF 2015

SHOBHA SAHEBRAO MHASKE AND OTHERS
VERSUS
M/S. BHANODYA TRADING COMPANY AND ANOTHER

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Advocate for Appellants : Mr. V. P. Latange.
Advocate for Respondent No.2 : Mr. S. G. Chapalgaonkar.

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CORAM : **V. K. JADHAV, J.**
DATE : 16th February, 2017.

ORDER:

. Heard finally with consent at admission state.

2 Being aggrieved by the judgment and award dated 7th February, 2015 passed by the learned Member of the Motor Accident Claims Tribunal, Ahmednagar in MACP No.491 of 2012, the original Claimants have preferred this appeal to the extent of quantum.

3 The learned counsel for the Appellants / Claimants submits that the Tribunal has not considered the income of deceased Sahebrao from the milk business and also not considered the income of the deceased from agriculture source. Though the Appellants / Claimants have produced on record the receipts issued

by the milk diary and proved those receipts by examining the witness of the said milk diary, the Tribunal has not considered the same and erroneously considered the notional income of deceased Sahebrao at Rs.3,000/- per month. The Tribunal has also not made addition in the income of deceased Sahebrao by considering the future prospects. The learned counsel submits that in all there are six Claimants / dependents. However, the Tribunal has erroneously deducted 1/3rd of the amount from the income of the deceased Sahebrao towards his personal and living expenses instead of 1/4th. The learned Member of the Tribunal has also awarded meager amount under the non-pecuniary heads.

4 The learned counsel for the Respondent / Insurer submits that the Claimants have not produced on record the documents indicating that deceased Sahebrao was personally cultivating his agricultural land. Further, there is no evidence about the income from the agricultural source. The learned counsel submits that so far as the income from the milk business is concerned, the Appellants / Claimants have failed to prove that on account of untimely death of deceased Sahebrao, the milk business was completely stopped. The Claimants failed to prove that

deceased Sahebrao was earning more than Rs.6,00,000/- per annum from all the sources. In absence of any positive evidence, the learned Member of the Tribunal has rightly considered the notional income of deceased Sahebrao at Rs.3,000/- per month. The learned counsel submits that the Tribunal has also awarded just and reasonable compensation under the non-pecuniary head. No interference is required.

5 On perusal of the record and proceedings and the impugned judgment and award, it appears that the Claimants have examined Witness No.2 Ashok Mandge, who happened to be a supervisor in Bhairavnath Milk Dairy. He has produced computerized bills of the said milk dairy at Exhibits – 33 to 35 respectively and deposed that deceased Sahebrao used to supply the milk to the said milk dairy and accordingly as per those computerized bills, the amount mentioned in those bills paid to deceased Sahebrao. There is nothing in the cross-examination to disbelieve his evidence or to draw any other inference. Claimant No.1 has also deposed that her husband deceased Sahebrao was looking after personally the cultivation of agricultural land owned and possessed by the family and also looking after exclusively the

milk business. She further stated in her affidavit of evidence that due to untimely death of deceased Sahebrao, the agricultural land is now remained uncultivated and the milk business is also almost stopped. On perusal of 7/12 extract, it appears that the agricultural land is owned jointly by the Claimants and the land is under cultivation. So far as the milk business is concerned, though there is no positive evidence about the stoppage of the said business on account of untimely death of deceased Sahebrao, it can be inferred that there must be a loss in the agricultural income as well as in the milk business. The said witness Ashok Mandge was not subjected to cross-examination on the point that at present no milk is supplied by the Claimants to the said milk dairy and the entire milk business has been stopped on account of the death of deceased Sahebrao. Furthermore, deceased Sahebrao met with an accidental death at the age of 40 years. In view of the 7/12 extract Exhibit – 30 and receipts Exhibits 33 to 35 respectively issued by Shri Bhairavnath Milk Dairy and considering the future prospects of deceased Sahebrao, in my opinion, it would be just and proper to consider the income of deceased Sahebrao inclusive of future prospects at Rs.6,000/- per month.

6 There are in all six members in the family and as per the ratio laid down in the case of ***Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another***, reported in, ***(2009) 6 Supreme Court Cases 121***, 1/4th of the amount is liable to be deducted on account of personal and living expenses of deceased Sahebrao instead of 1/3rd.

6 In view of the above, if the income of deceased Sahebrao is considered at Rs.6,000/- per month as discussed above, the annual income comes to Rs.72,000/- and after 1/3rd deduction towards personal and living expenses of deceased Sahebrao, the Claimants suffer the loss of future income / dependency to the extent of Rs.54,000/- per annum. Considering the age of deceased Sahebrao, the relevant multiplier would be 15. Thus, the Claimants are entitled for the compensation of Rs.8,10,000/- towards loss of future income / dependency. It appears that the learned Member of the Tribunal has awarded very meager amount under the non-pecuniary heads. The Tribunal has also not awarded any amount under the head of loss of love and affection and loss of estate. The Claimants are entitled for an

amount of Rs.75,000/- for loss of consortium, Rs.20,000/- each for minor Claimant Nos.2 and 3 for loss of love and affection and Rs.10,000/- each for Claimant Nos.4 and 5 for loss of shelter. The Claimants are also entitled for an amount of Rs.15,000/- towards loss of estate.

8 Thus, the total compensation under different heads can be broadly categorized as under:

Loss of future income / dependency (instead of Rs.3,60,000/- awarded by the Tribunal)	Rs.8,10,000/-
Funeral expenses (as awarded by the Tribunal)	Rs.15,000/-
Loss of consortium (instead of Rs.30,000/- awarded by the Tribunal)	Rs.75,000/-
Loss of love and affection (Rs.20,000/- each for Claimant Nos.2 & 3)	Rs.40,000/-
Loss of shelter (Rs.10,000/- each for Claimant Nos.4 & 5)	Rs.20,000/-
Loss of estate	Rs.15,000/-
Total =	**Rs.9,75,000/-**

9 The Claimants are entitled for the compensation of Rs.9,75,000/- as worked out hereinbefore. The impugned judgment and award thus, requires modification to the above effect. Hence, the following order:

ORDER

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

II. The judgment and award dated 7th February, 2015 passed by the learned Member of the Motor Accident Claims Tribunal, Ahmednagar in MACP No.491 of 2012, is hereby modified in the following manner:

> "Opponent Nos.1 and 2 do pay jointly and severally an amount of Rs.9,75,000/- (Rupees Nine Lacs and Seventy-Five Thousand only) inclusive of NFL amount Rs.50,000/- to the Applicants with interest at the rate of 7.5% per annum from the date of petition i.e. 18th July, 2012 till the payment of the entire amount in the Court"

III. Rest of the judgment and award stands confirmed.

IV. Award be drawn up as per the above modification.

V. If any amount is paid as per the award passed by the Tribunal, the same shall be adjusted in the award as per the above modification.

VI. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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