

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

FIRST APPEAL NO. 454 OF 2017

SHOBHABAI BALAJI ILEGAVE AND ANOTHER
VERSUS
SK. ATEEQ RAHEMAN ABDUL RAHEMAN AND
ANOTHER

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Advocate for Appellants : Mr S. V. Suryawanshi
Advocate for Respondents : Mr Maniyar Irfan D. And V.
N. Patil For R/1, Bodade S.R. For R/2.

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CORAM : V.K. JADHAV, J.

Dated: June 22, 2017

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award passed by the Member, Motor accident Claims Tribunal, Biloli, dated 4.4.2015 in MACP No.39/2014, the original claimants have preferred this appeal to the extent of quantum of compensation.
3. The learned counsel for the appellant-original claimants submits that deceased Santosh was 25 years of age at the time of his accidental death. Though he was doing the labour work and earning Rs.3,000/- p.m.

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the Tribunal has not made addition in his income towards future prospects. The learned counsel submits that the tribunal has also awarded a very meager amount for funeral expenses and towards love and affection.

4. The learned counsel for the appellant-original claimant in order to substantiate his contentions, places his reliance on following judgments.

- 1. The Manager United India Assurance Co. Ltd., Vs. Smt. Suman Anandrao Patil and another in FA No.1187/2016.*
- 2. Neeta w/o Kallappa Kadolkar and ors ETC (Smt.) versus Div. Manager, MSRTC, Kolhapur and ors Etc. (Smt.) reported in 2015 AIR (SC) 3577.*

5. The learned counsel for respondent-insurer submits that, the appellants-claimants themselves stated about income of deceased Santosh as Rs.3,000/- p.m. Deceased Santosh was doing a labour work and in absence of any evidence about his daily wages, the Tribunal has considered his notional income at Rs.3,000/-p.m. Learned counsel submits that, deceased

Santosh was not having any fixed income/employment and therefore, there is no question of addition in his income towards future prospects. Learned counsel submits that, the tribunal has awarded just and reasonable compensation. No interference is required.

6. The Tribunal has considered notional income of deceased Santosh at Rs.3,000/- p.m. Deceased Santosh was young and unmarried person at the time of his accidental death. The learned Member of the tribunal ought to have considered addition in his income towards future prospects. It is also a part of record that deceased Santosh had passed 10th standard examination. It is thus not possible to conclude that deceased Santosh was not having any future prospects. Thus, the income of the deceased Santosh is taken at Rs.3,000/- p.m. and considering his age, addition of 50% is made towards his future prospects. Further, deceased Santosh being unmarried son, 50% of his income is deducted towards his personal and living expenses, and as such, the monthly loss of income

comes to Rs.2,250/- corresponding to Rs.27,000/- per annum. The Tribunal has also awarded meager amount of Rs.5,000/- towards funeral expenses. The appellants-claimants are entitled for an amount of Rs.25,000/- towards funeral expenses. In a case of *Neeta w/o Kallappa Kadolkar and ors ETC (Smt.) versus Div. Manager, MSRTC, Kolhapur and ors Etc. (Smt.) (supra) reported in 2015 AIR (SC) 3577*, the Supreme Court by referring the earlier judgment in case of ***M. Mansoor and anr. Vs. United India Insurance Co. Ltd., reported in (2013) 12 Scale 324*** awarded compensation of Rs.50,000/- to the parents of the deceased for loss of love and affection of their deceased son. In view of the same, the appellants-claimants are entitled for an amount of Rs.50,000/- each for loss of love and affection of their deceased son.

7. Thus, the break up of compensation under different heads awardable to the claimants which can be broadly categorized is as under :-

1.loss of income/dependency : Rs.4,59,000/-
(as against Rs.3,60,000/-
awarded by the Tribunal.)

2.Funeral expenses Rs.0,25,000/-
as against Rs.5,000/-
awarded by the Tribunal)

3.Loss of love and affection
Rs.50,000/- each to the claimants.
(as against Rs.5,000/- awarded
by the Tribunal) Rs.1,00,000/-
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Rs.5,84,000/-
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8. The claimants are entitled for total amount of
Rs.5,84,000/- (Rs. Five lacs eighty four thousand only).

9. It also appears hat the learned Member of the
Tribunal has unnecessarily stipulated the time and
further directed that the if the respondent fails to pay
the compensation within stipulated time, liable to pay
the interest @ 7.5% p.a. on the compensation amount
from the date of petition till realization. Said condition
is unwanted and uncalled for. The appellant-original
claimants are entitled for compensation with interest
from the date of application till realization of the entire
amount. Thus, the impugned judgment and award

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requires modification. Hence, following order.

O R D E R

1. Appeal is hereby partly allowed with proportionate costs.
2. The judgment and award passed by the Member, Motor Accident Claims Tribunal, Biloli, dated 4.4.2015 in M.A.C.P. No.39/2014 is hereby modified in the following manner.

A] The respondents no.1 and 2 are hereby directed to make the payment of Rs.5,84,000/- (Rs. Five lacs eighty four thousand only) to the petitioners inclusive of 'No Fault Liability', jointly and severally with interest @ 7.5% p.a. from the date of petition till realization of the entire amount.

3. The disbursement of the compensation amount as per the modified award shall be in the same manner as directed by the Tribunal.
4. Except the above modification, rest of the judgment and award stands confirmed.
5. Award be drawn up as per the above modifications.

6. Appeal is accordingly disposed of.
7. If any amount is paid as per the award passed by the Tribunal, the same shall be the part of the award after modification.
8. Pending civil application, if any, also stands disposed of.

(V.K. JADHAV, J.)

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