

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

**FIRST APPEAL NO. 130 OF 2017**

LAXMIBAI CHHAGAN FULE AND OTHERS  
VERSUS  
SHRIRAM GENERAL INSURANCE CO. AND ANOTHER

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Advocate for Appellants : Mr Mayure Pramod C  
Advocate for Respondents : Mr Chapalgaonkar S.G. For  
R/1, Patil Ujwal Subhash For R/2.

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CORAM : V.K. JADHAV, J.

Dated: July 26, 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 Chairman, Motor Accident Claims Tribunal, Aurangabad dated 25.2.2015, in MACP No.197/2013, the original claimants preferred this appeal to the extent of quantum as awarded by the Tribunal.
3. Learned counsel for the appellants-claimants submits that, though the appellants-claimants have examined witness Salimoddin vide exh.29 to prove the

salary certificate of deceased vide exh.32 and even though contents of the salary certificate exh.32 are duly proved through this witness, the tribunal has not considered the income of the deceased Chhagan as mentioned in the salary certificate exh.32 and erroneously considered the notional income of the deceased at Rs.4,500/- per month. Learned counsel submits that, the tribunal has erroneously deducted  $1/3^{\text{rd}}$  of the amount instead of  $1/4^{\text{th}}$  towards personal and living expenses of the deceased. There are in all four claimants depending on the income of the deceased and as such, the Tribunal ought to have deducted  $1/4^{\text{th}}$  of the amount towards personal and living expenses of the deceased Chhagan. Learned counsel submits that, the tribunal has awarded meager amount under the heads of loss of consortium and funeral expenses and even the tribunal has not awarded any amount under the loss of love and affection.

4. Learned counsel for respondent-insurer submits that, though the appellants-claimants have examined

witness Salimoddin to prove the contents of the salary certificate exh.32, said witness Salimoddin has admitted in his cross-examination that he has not kept the attendance register, salary register and also account books. Though he is a income tax payer, he has not shown in his accounts the expenses incurred on account of the salary payments to the employees. Learned counsel submits that, the tribunal has, therefore, rightly considered the notional income of the deceased Chhahgan at Rs.4,500/- p.m. Learned counsel however fairly concedes that, the tribunal ought to have deducted 1/4<sup>th</sup> of the amount from the income of the deceased towards his personal and living expenses. Learned counsel submits that the tribunal has awarded just and reasonable compensation under the pecuniary heads as well as non-pecuniary heads. No interference is required.

5. I have also heard the learned counsel appearing for the respondent owner.

6. On perusal of the evidence, judgment and award passed by the tribunal, it appears that, though, deceased Chhagan was under the employment of witness Salimoddin as a watchman on his firm named and styled as M.S.Park Firm, the Tribunal has not considered the salary certificate exh.32, for the reason that, witness Salimoddin, who is the sole proprietor of the said firm has not kept the attendance register, salary register and account books. It appears from the evidence of witness Salimoddin that, he is dealing in the business of purchasing lands and selling the plots. His firm M.S. Park is a partnership firm having a licence issued under the provisions of The Maharashtra Shops and Establishment Act. He has also produced on record copy of the pan card issued by the income tax department. According to him, deceased Chhagan was doing said job in his firm since 4-5 years. In view of his oral evidence alongwith documentary evidence in the form of salary certificate Exh.32, copy of the licence under the Shop Act vide exh.34 and Pan Card exh.33, it would be just and proper to consider the salaried

income of deceased Chhagan at Rs.5,000/- p.m. After deducting  $1/4^{\text{th}}$  of the amount from the income of the deceased towards his personal and living expenses, annual dependency comes to  $\text{Rs.}3750 \times 12 = \text{Rs.}45,000/-$  and by applying the multiplier '18', the appellants-claimants would be entitled for compensation of Rs.8,10,000/- under the head of loss of income/dependency. The appellant-claimant no.1 is also entitled for an amount of Rs.1,00,000/- (Rs. One lac) towards loss of consortium, Rs.25,000/- towards funeral expenses. Claimant nos. 2 and 3 are entitled for amount of Rs.50,000/- each towards loss of love and affection and claimant no.4 is entitled for an amount of Rs.50,000/- for loss of shelter.

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

|   |                                                                                     |               |
|---|-------------------------------------------------------------------------------------|---------------|
| 1 | Loss of future income/dependency as against Rs.6,48,000/- awarded by the Tribunal.  | Rs.8,10,000/- |
| 2 | Loss of consortium to claimant no.1 as against RS.25,000/- awarded by the Tribunal. | Rs.1,00,000/- |

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|   |                                                                               |                |
|---|-------------------------------------------------------------------------------|----------------|
| 3 | Loss of love and affection for minor claimant nos. 2 and 3 (Rs.50,000/- each) | Rs.1,00,000/-  |
| 4 | Loss of Shelter to claimant no.4                                              | Rs.0,50,000/-  |
| 5 | Funeral expenses as against Rs.5,000 awarded by the tribunal                  | Rs.0,25,000/-  |
|   | <b>TOTAL</b>                                                                  | Rs.10,85,000/- |

8. The appellants-claimants are entitled for the total compensation of Rs.10,85,000/- (Rs. Ten lacs eighty five thousand only). Thus, the impugned judgment and award requires modification to that extent only. Hence, following order.

### **O R D E R**

1. The first appeal is hereby partly allowed with proportionate costs.
2. The judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Aurangabad, dated 25.2.2015 in MACP No.197/2013 is hereby modified in the following manner :-
  - a] The opponent nos. 1 to 3 are jointly and severally directed to pay the compensation of Rs.10,85,000/- (Rs. Ten lacs eighty five thousand only) to the petitioners alongwith interest @ 9% p.a. from the date of petition till the realization of the entire amount.

3. Rest of the judgment and award stands confirmed.
4. Award be drawn up as per the above modifications.
5. If any compensation is paid as per the judgment and award passed by the tribunal, the same shall be the part of the award after modification.
6. Appeal is accordingly disposed of.

**( V.K. JADHAV, J. )**

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