

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

FIRST APPEAL NO. 369 OF 2017

AVANTIBAI SUBHASH BARI AND ANOTHER
VERSUS
VILAS YASHVANT NEMADE AND ANOTHER

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Advocate for Appellants : Mr M M Bhokarika
Advocate for Respondents : Mr G.L.Kedarh/f D B Thoke
for Respondent no.1, R F Totala 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, Jalgaon dated 7.5.2015 in MACP No.72/2008, the original claimants have preferred this appeal to the extent of quantum of compensation as awarded by the Tribunal.
3. The learned counsel for the appellants-original claimants submits that, deceased Subhash was serving as a MailMajur on monthly salary of Rs.9,372/-. The

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claimants have produced on record salary certificate Exh.45 and proved it through witness no.2 Ramakant Surwade. Said witness Ramakant is Sub-divisional Engineer in PWD Department, and the claimants have duly proved the contents of the salary certificate Exh.45. Deceased Subhash was getting salary of Rs.9,372/- and after considering some deductions, he was getting net salary of Rs.7417/-, however, the amount under the head of professional tax is only liable to be deducted for considering the salaried income and as such, the Tribunal ought to have considered the last drawn salary of deceased Subhash at Rs.9,200/- however, without assigning any reason, the tribunal has considered salary at Rs.8,000/- p.m. After death of deceased Subhash, claimant no.2 was employed on compassionate basis and as such, the appellants-claimants are not pressing their claim in respect of addition in income by way of future prospects. Learned counsel submits that, however, the tribunal has awarded very meager amount under the heads of loss of consortium. Learned counsel submits that, deceased

Subhash was also earning from agricultural source, however, his income from agricultural source is not considered by the tribunal.

4. Learned counsel for respondent-insurer submits that, after considering the evidence on record, the Tribunal has awarded just and reasonable compensation. No interference is required.

5. I have also heard the learned counsel Mr Kedar holding the brief of Mr. D.B.Thoke for respondent no.1.

6. On perusal of the contents of the salary certificate exh.45, it appears that, after deducting the amount of Rs.175 under the head of professional tax, salaried income of deceased Subhash is required to be considered at Rs.9,200/-, however, the tribunal has considered the salaried income of deceased Subhash at Rs.8,000/- p.m. without assigning any reasons. The claimant no.1 has deposed about the agricultural land owned and possessed by deceased Subhash, however,

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she has not stated about any loss sustained on account of the lack of supervision by experienced skilled person like her husband deceased Subhash. Further, Seven Twelve extract exh.40 unmistakably points out that land is under cultivation even in the year 2012-2013 and the appellants-claimants have taken crop of cotton. Thus, the compensation as awarded by the tribunal under the head of loss of dependency/future income requires to be re-determined so far as salaried income is concerned. Furthermore, the tribunal has also awarded amount of Rs.25,000/- under the head of loss of consortium. In view of the ratio laid down in case of **Rajesh and others Vs. Rajbir Singh and others reported in (2013) 9 Supreme Court Cases 54**, the appellants/claimants are entitled for an amount of Rs.1.00 lac towards loss of consortium.

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 future income/dependency :
 after deducting 1/3rd of the amount
 towards personal expenses, salary
 comes to Rs.6134 X 12 x 11 Rs.8,09,688/-
 (as against Rs.7,04,000/-
 awarded by the Tribunal)

2.Loss of consortium Rs.1,00,000/-
 (as against Rs.25,000/-
 awarded by the tribunal)

3.Funeral expenses Rs.25,000/-
 (as awarded by the Tribunal) =====
 Rs.9,34,688/-
 =====

8. Learned counsel submits that, the tribunal has awarded interest @ 7.5% instead of 9%. The claimants are entitled for the interest @ 9% p.a. from the date of application, till realization of the entire amount. 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, Jalgaon, dated 7.5.2015 in MACP No. 72/2008 is hereby modified in the following manner.

A] The petitioner no.1 to recover an amount of Rs.9,34,688/- (Rs. Nine lacs thirty four thousand six hundred and eighty eight only) from the respondents jointly and severally with interest @ 9% p.a. from the date of petition till 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. Appeal is accordingly disposed of.

6. If any amount is paid as per the award passed by the Tribunal, the same shall be the part of the award after modification.

7. Deficit court fees, if any, shall be paid within a period of four weeks from the date of this order.

8. Pending civil application, if any, also stands disposed of.

(V.K. JADHAV, J.)

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