

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

21 FIRST APPEAL NO. 4211 OF 2016

SAU. MANGALABAI DILEEP MAHAJAN AND ANOTHER
VERSUS
M/S. B. N. AGRAWAL, THROUGH PROPRIETOR
JAGDISH TULSHIRAM AGRAWAL AND ANOTHER

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Advocate for Appellants : Mr. Madhav M. Bhokarikar.

Advocate for Respondent No.2 : Mr. Dhananjay P. Deshpande.

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CORAM : **V. K. JADHAV, J.**

DATE : 24th April, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Jalgaon dated 12th August, 2016 in MACP No.542 of 2009, the original Claimants have preferred this appeal to the extent of quantum of compensation.

3 The learned counsel for the Appellants / Claimants submits that in terms of the ratio laid down by the Supreme Court in the case of **Kishan Gopal and Anr. Vs. Lala and Ors.**, reported in, **AIR 2014 SC (Supp) 173**, the Tribunal should have considered the notional income of deceased at Rs.30,000/- instead of Rs.15,000/- and determined the compensation. The learned counsel submits that the

Tribunal has awarded the compensation with interest at the rate of 7.5% instead of 9%.

4 The learned counsel for Respondent / Insurer submits that in para 18 of the above cited case, the Supreme Court has referred the earlier judgment of **Lata Wadhwa and Ors. Vs. State of Bihar and Ors.**, reported in, **AIR 2001 SC 3218** and in the facts of the said cited case, considered the notional income of the deceased at Rs.30,000/- per annum and accordingly awarded the compensation. No ratio as such laid down.

5 In the facts of the present case, deceased Vaibhav was 9 years of age at the time of his accidental death and he was taking education in IIIrd standard. The Appellants / Claimants have nowhere claimed that deceased Vaibhav was assisting them in their agricultural occupation.

6 In the case of *Lata Wadhwa and Ors. VS. State of Bihar and Ors.* (supra) in para 6 of the judgment, the Supreme Court has considered the age group of the children between 5 to 10 years at one place and the children of the age group between 10 to 15 years at other place.

7 In the case *Kishan Gopal and Anr. Vs. Lala and Ors.* (supra) relied upon by the learned counsel for the Appellants / Claimants, in the facts of the said case, the Supreme Court has observed that the deceased was 10 years of age assisting the Appellants in their agricultural occupation, which is an undisputed fact and thus, felt it just and reasonable to take his notional income at Rs.30,000/-. In the instant case, deceased Vaibhav was 9 years of age at the time of his accidental death and in terms of the observations made by the Supreme Court in the case of *Lata Wadhwa and Ors. VS. State of Bihar and Ors.* (supra), the Tribunal has awarded just and reasonable compensation by applying the relevant multiplier. I do not find any fault in the impugned judgment and award passed by the Tribunal. There is no merit in the appeal. However, the Tribunal has erroneously awarded the interest at the rate of 7.5% per annum instead of 9%. The judgment and award thus, requires modification to that extent only. Hence, the following order.

ORDER

- I. The appeal, is hereby partly allowed. No costs.
- II. The judgment and award passed by the Chairman,
Motor Accident Claims Tribunal, Jalgaon dated 12th

August, 2016 in MACP No.542 of 2009, is hereby modified in the following manner to the extent of rate of interest only:

“Respondent Nos.1 and 2 being jointly and severally liable, do pay to the petitioners compensation of Rs.2,75,000/- (Rupees Two Lacs and Seventy-Five Thousand Only) (inclusive of interim amount of Rs.50,000/- paid under the principle of no-fault liability) with interest @ 9% per annum from the date of filing of the petition till realization.”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up as per the above modification.
- V. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]