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

FIRST APPEAL NO. 3200 OF 2015

SMT. RAMKANYA W/O LATE JUGALKISHOR BHUTADA
VERSUS
THE TRANSPORT MANAGER, PUNE MAHANAGAR PARIVAHAN MAHAMANDAL, SHANKAR SETH ROAD, SWARGATE AND ANOTHER

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Advocate for Appellant : Mr. Rahul Totala, h/f Mr. Rameshwar F. Totala.
Advocate for Respondent No.1 : Mr. S.N. Boiwar, h/f Mr. Prabhakar K. Joshi.

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CORAM : **V. K. JADHAV, J.**
DATE : 14th March, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Chairman of the Motor Accident Claims Tribunal, Parbhani dated 26th August, 2015 in MACP No.31 of 2011, original Claimant No.1 has preferred this first appeal to the extent of quantum.

3 Brief facts giving rise to the present first appeal are as follows:

i) The learned Chairman of the Motor Accident Claims Tribunal, Parbhani vide its impugned judgment and award dated 26th August, 2015 awarded the compensation of Rs.4,38,000/- alongwith interest at the rate of 7.5% per annum from the date of application till realization of the entire amount.

ii) On account of the accidental death of unmarried son, Appellant / Claimant No.1 alongwith her daughter claimed the compensation of Rs.10,00,000/- from the Respondent. Original Claimant No.2 got married after the judgment and award passed by the Tribunal and therefore, this appeal is preferred by original Claimant No.1 alone to the extent of quantum.

4 The learned counsel for the Appellant submits that deceased Suyog met with an accidental death at the age of 18 years and he was taking the eduction in first year of Bachelor of Computer Application in M.I.T. College, Pune. However, the Tribunal has considered the notional income of Rs.3,500/- per month of deceased Suyog corresponds to Rs.42,000/- per annum, which is less than even the minimum wages of a daily wager. The minimum wages are permissible to be taken as a notional income

where the deceased is illiterate and does not possess any professional or technical qualification. Deceased Suyog was pursuing his professional course and the Tribunal ought to have considered the same as a basis of his earning. The learned counsel submits that Appellant / Claimant No.1 is also a widowed woman and her husband died prior to the accidental death of deceased Suyog. Appellant / Claimant No.1 is doing household work and her hopes were on her deceased son Suyog. The learned counsel submits that the Tribunal has also awarded very meager amount for funeral expenses and other non-pecuniary heads. The learned counsel in order to substantiate his contentions placed reliance on the following cases:

a) ***ICICI Lombard General Ins. Co. Ltd. Vs. Archana Sethi & Ors.***, reported in, ***2012 SCC OnLine Del 5535***, decided by the Delhi High Court on 30th October, 2012 in MAC. APP. 797/2002 and MAC. APP. 848/2012.

b) ***Ramesh Chand Joshi & Anr. Vs. New India Assurance Co. Ltd.***, decided by the Delhi High Court on 20th January, 2010 in MAC. APP. No.212-13/2006.

5 The learned counsel for Respondent submits that the Claimant has failed to adduce any evidence about the reputation of the said college and placement of the students of the said college after completion of their eduction particularly in the branch of the computer application. In absence of any positive evidence in this regard, the Tribunal has rightly considered the notional income of deceased Suyog at Rs.3,500/- per month corresponds to Rs.42,000/- per annum. Though the Tribunal ought to have applied the multiple as per the age of Claimant No.1, erroneously applied the multiple 18 by considering the age of the deceased. The Tribunal has awarded just and reasonable compensation under all the heads. No interference is required.

6 On careful perusal of the pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the Claimants have produced on record the “admit card” of deceased Suyog in the MAEER's MITSOM College, Pune. The same is marked as Exhibit – 19. On perusal of the same, it appears that deceased Suyog had appeared for the examination of first year Bachelor of Computer Application in the year 2008-09. In absence

of any other evidence about the placement of such students after completion of said course, the Tribunal has taken the notional income of the deceased at Rs.3,500/- per month.

7 In the case of *Ramesh Chand Joshi & Anr. Vs. New India Assurance Co. Ltd.* (supra) relied upon by the learned counsel for the Appellant, in para 7 of the judgment, the Delhi High Court has made the following observations:

> “7. The learned Tribunal has taken the notional income of the deceased as Rs.22,500/- per annum i.e. Rs.1,875/- per month which is less than even the minimum wages of a daily wager. The approach and finding of the learned Tribunal is absurd and without any basis. The law in this regard is well settled by catena of judgments. The minimum wages are permissible to be taken where the deceased is illiterate and does not possess any professional or technical qualification. Where the deceased is educated or is pursuing the professional course, income has to be taken on the basis of his earning. Reference in this regard may be made to judgment of Oriental Insurance Company Ltd. Vs. Deo Pataudi, 2009 (8) Scale 194, in which case the deceased aged 22 years was a student having a brilliant career and offer of employment from a US Based Company at the time of accident. The learned Tribunal took his earning capacity to be Rs.18,000/- per month.

> The High Court in appeal upheld the earning capacity of the deceased at 18,000/- per month. The Hon'ble Supreme Court enhanced the earning capacity of the deceased from Rs.18,000/- to Rs.25,000/- per month."

8 In a case *ICICI Lombard General Ins. Co. Ltd. Vs. Archana Sethi & Ors.* (supra) relied upon by the learned counsel for Appellant, the Delhi High Court has observed that it is no longer *res integra* that the potential income of a student pursuing professional course can be taken into account for awarding loss of dependency.

9 In the case of *Ramesh Chand Joshi & Anr. Vs. New India Assurance Co. Ltd.* (supra) pursuant to the order passed by the High Court the Joint Registrar of Delhi College of Engineering has filed an affidavit along with the chart of average salary drawn by a fresh engineering graduate of Delhi College of Engineering. The said chart contains the names of different Companies and salaries offered by them in the year 2009 to fresh graduates in Bio-Technology from Delhi College of Engineering. After considering the said chart, the Delhi High Court held that the earning capacity of the deceased after completing graduation course would have been Rs.4.6 lacs per annum i.e. Rs.38,333/- per month. Furthermore, in

the facts of the said case, the deceased was about to complete his graduation when he met with accidental death.

10 In the case *ICICI Lombard General Ins. Co. Ltd. Vs. Archana Sethi & Ors.* (supra), the Claimants therein have examined PW-2, who happened to be Training and Placement Officer, Delhi Technological University, who deposed that for the last two years there were 100% placements given to the students and some of the students got multiple offers. Considering the said evidence, the Tribunal took the potential salary of an Engineer to be Rs.50,000/- per month.

11 In the instant case, in absence of any positive evidence about the potential salary of deceased Suyog on completion of his graduation in computer application and further the fact that deceased Suyog was taking eduction in the first year course of computer application, I deem it appropriate to consider his potential salary from the said professional course at Rs.20,000/- per month inclusive of future prospects.

12 Deceased Suyog was an unmarried son. Thus, 50% of his income is required to be deducted towards his personal and

living expenses. The Tribunal has applied multiplier 18 after considering the age of deceased Suyog at the time of his death. However, in view of the observations made by this Court in the case of ***United India Insurance Company Ltd. Vs. Sobha Amarsingh Rajput***, reported in, ***2016 SCC OnLine Bom 8996***, after referring all the judgments on this point, the relevant multiplier would be in consonance with the age of the mother in the event of the claim of compensation made on account of death of an unmarried son. Thus, considering the age of Appellant / Claimant No.1 at the time of death of her son, the relevant multiple would be 14. Thus, Appellant / Claimant No.1 is entitled for the compensation of Rs.16,80,000/- (10000 x 12 x 14) towards the loss of future income / dependency as against Rs.3,78,000/- as awarded by the Tribunal. The Appellant / Claimant is also entitled for an amount of Rs.25,000/- towards funeral expenses as against Rs.10,000/- awarded by the Tribunal. The Appellant / Claimant is also entitled for an amount of Rs.20,000/- for loss of estate. The Tribunal has awarded just and reasonable compensation of Rs.50,000/- for loss of love and affection.

13 Thus, the break up of compensation under the different

heads, which can be broadly categorized is as under:

Sr No	Particulars of the head	Amount in Rupees
1)	Towards Loss of future income / dependency (10000 x 12 x 14) (as against Rs.3,78,000/- awarded by Tribunal)	Rs.16,80,000/-
2)	Towards funeral expenses (as against Rs.10,000/- awarded by Tribunal)	Rs.25,000/-
3)	Loss of estate	Rs.20,000/-
4)	Loss of love and affection (as awarded by the Tribunal)	Rs.50,000/-
	Total =	**Rs.17,75,000/-**

14 The Appellant / Claimant is entitled for the total amount of compensation as worked out hereinbefore. The judgment and award passed by the Tribunal thus, requires modification. Hence, the following order:

O R D E R

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

II. The judgment and award passed by the learned Chairman of the Motor Accident Claims Tribunal, Parbhani dated 26th August, 2015 in MACP No.31 of 2011, is hereby modified in the following manner:

> "The Respondent do pay an amount of Rs.17,75,000/- (Rupees Seventeen Lacs and Seventy-Five Thousand only) inclusive of the compensation under no fault liability alongwith interest @7.5% per annum from the date of application till realization of the entire amount."

III. Rest of the judgment and award stands confirmed.

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

V. Needless to say that if any amount is paid as per the award passed by the Tribunal, the same shall be the part of the compensation as per the above modification.

VI. Out of the aforesaid amount, an amount of Rs.10,00,000/- (Rupees Ten Lacs Only) shall be kept in FDR in any nationalized bank for a period of five years and the Appellant / Claimant is permitted to withdraw quarterly interest thereon.

The remaining amount alongwith the interest shall be paid to the Appellant / Claimant.

VII. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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