

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

BENCH AT AURANGABAD.

FIRST APPEAL NO.1637 OF 2017

Smt.Yashodabai Baburao
Suralkar and others. ... Appellants.

Versus

Altafbhai Abdulbhai
Qureshi and another. ... Respondents.

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Mr.M.M.Bhokarikar, advocate for the Appellants.
Mr.S.G.Chapalgaonkar, advocate for Respondents.

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CORAM : S.V.GANGAPURWALA, J.

Date : 18.09.2017.

PER COURT :

1. The present appellants had filed petition U/s 166 of the Motor Vehicles Act, seeking compensation on account of the death of Vithal. Deceased Vithal is son of claimant No.1, husband of claimant No.3 and father of claimant Nos.4 and 5. The Motor Accident Claims Tribunal partly allowed the claim petition granting

compensation of Rs.3,91,000/- (Rupees three lac ninety one thousand). The present appeal is filed seeking enhancement of compensation amount.

2. Mr.Bhokarikar, learned counsel submits that deceased was a vegetable vendor and used to earn Rs.6,000/- (Rupees six thousand) per month. However, the Tribunal has committed an error in considering notional income at Rs.3,000/- (Rupees three thousand) per month. The learned counsel further submits that there are four claimants, as such deduction on account of own expenses ought to be 1/5th. The Tribunal has deducted only 1/4th.

3. According to the learned counsel, even loss of future prospect has not been considered. The same ought to be considered 40% of the present income.

4. Mr.Chapalgaonkar, learned counsel for the Respondents supports the judgment and submits that there is no proof of income, as such the same is rightly considered. The deduction is

rightly considered as 1/4th. The deceased did not have a permanent source of income nor any permanent service, as such future loss is not required to be considered.

5. I have considered the judgment delivered by the Tribunal, so also have gone through the record. The notional income has been considered at Rs.3,000/- (Rupees three thousand) by the Tribunal. It appears that the deceased was vegetable vendor. Considering the price index and the inflation, it would be appropriate to consider notional income at Rs.4,500/- (Rupees four thousand five hundred) per month. Considering the fact that there are only four claimants, the deduction towards personal and living expenses has to be 1/4th as is held by the Apex Court in the case of **"Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another"** reported in **AIR 2009 Supreme Court 3104**.

6. It is a fact that the deceased did not have any permanent source of income and the same was always fluctuating being a vegetable vendor.

The consideration of future loss in such cases is pending consideration with the larger Bench of the Apex Court, as such it would not be appropriate to consider the said factor at present.

7. Considering above, the pecuniary loss would come to Rs.5,26,500/-.

8. Now coming to the non-pecuniary loss, it would appear that Tribunal has awarded very meager amount towards loss of consortium to the wife only Rs.10,000/- (Rupees ten thousand) is awarded. Rs.1,00,000/- (Rupees one lac) would be reasonable. Reference can be had to the judgment of the Apex Court in the case of **"Smt.Nita Kallappa Kadolkar and others etc. Vs. Div. Manager, MSRTC, Kolhapur"** reported in **2015 AIR SCW 832**. Towards love and affection for children Rs.50,000/- (Rupees fifty thousand) to each child would be reasonable and to the parents Rs.25,000/- (Rupees twenty five thousand). So also on account of loss to estate Rs.1,00,000/- (Rupees one lac) would be reasonable and proper.

9. Considering above, towards non-pecuniary loss the claimants would be entitled to Rs.3,25,000/- (Rupees three lacs twenty five thousand). The claimants would be entitled to the total amount of (i) pecuniary Rs.5,26,500/- (Rupees five lac twenty six thousand five hundred); (ii) non-pecuniary Rs.3,25,000/- (Rupees three lac twenty five thousand) - total Rs.8,51,500/- (Rupees eight lac fifty one thousand five hundred).

10. In light of the above, the judgment of the Tribunal is modified. It is held that the claimants are entitled for an amount of Rs.8,51,500/- (Rupees eight lac fifty one thousand five hundred). The Respondents shall jointly and severally pay to the claimants amount of Rs.8,51,500 (Rupees eight lac fifty one thousand five hundred) inclusive of amount of Rs.50,000/- (Rupees fifty thousand) granted towards no fault liability along with interest at the rate of Rs.7.5% p.a. from the date of realisation. The amount already paid shall be deducted.

11. In case there is deficit Court fees the appellants shall make good the said Court fees.

12. The appeal is accordingly allowed. No costs.

(S.V.GANGAPURWALA, J.)

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