IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

8 FIRST APPEAL NO. 816 OF 2002

1. Sk.Supadu Sk.Bhiyya
Age: 53 yrs., Occu.: Leber

2. Alishanbee Sk.Supdu
Age: 47 yrs., Occu.: Household,
Both r/o.Jamnerpura, Tq.Jamner,
Dist.Jalgaon. ..Appellants
(Orig. Applicants)

Versus

1. Pralahad Ramdas Sapkal
Age: 38 yrs., Occu.: Driver,
R/o. Jamner, Dist.Jalgaon.

2. Ranulal Ramlal Bohara
Age: 53 yrs., Occu.: Business,
R/o. Jamner, Dist.Jalgaon.

3. The Manager,
United India Insurance Co.Ltd.,
Mansing Market, Jalgaon. ..Respondents
(Res.No.1 to 3 Orig.Res.No.1 to 3)

...
Advocate for Appellants : Shri A.M.Gholap
Respondent Nos.1 and 2 are Served.
Advocate for Respondent No.3 : Shri A.B.Gatne
...

CORAM : P.R.BORA, J.

DATE: 19th September, 2018

ORAL JUDGMENT:-

1. Heard Shri A.M.Gholap, learned Counsel appearing for the appellants and Shri A.B.Gatne, learned Counsel appearing for the

respondent No.3 Insurance Company. What should be the percentage of deduction for personal expenditure while determining the amount of compensation is the question raised in the present appeal.

2. The present appellants had filed Motor Accident Claim Petition No.186 of 1998, before the Motor Accident Claims Tribunal at Jalgaon, claiming compensation on account of death of their son in a vehicular accident happened on 14.12.1997, having involvement of Matador bearing registration No.MH-19/ 5031 owned by present respondent No.2 and insured with respondent No.3 Insurance Company. Appellants had claimed the compensation of Rs.2,50,000/-. The age of deceased was stated to be 22 years and his income was claimed to be Rs.2,500/- per month i.e. Rs.1,000/- per month by way of salary and Rs.50/- per day by way of Bhatta amounting to Rs.1,500/- per month. The Tribunal after having assessed the evidence on record awarded the compensation of Rs.1,20,000/- to the appellants/claimants. The Tribunal held income of the deceased to the tune of Rs.1,000/- per month and by deducting half of it towards personal expenses, determined the amount of compensation to Rs.78,000/-. The Tribunal has also awarded Rs.25,000/- towards non-pecuniary damages and Rs.17,000/-

towards medical expenses. Thus, total compensation of Rs.1,20,000/- has been awarded by the Tribunal to the appellants. Aggrieved by, the appellants have preferred the present appeal.

3. Learned Counsel Shri Gholap submitted that the Tribunal has grossly erred in not considering that the deceased was getting an amount of Rs.50/- per day by way of Bhatta, which was being used by him to meet his own expenses and salary amount was available to be spent on his parents. The learned Counsel submitted that the Court has also not awarded adequate amount towards non-pecuniary damages. The learned Counsel prayed for adequate enhancement in the amount of compensation.

4. Shri Gatne, learned Counsel appearing for the respondent No.3 Insurance Company submitted that no fault can be found in the Judgment and award passed by the Tribunal. Learned Counsel submitted that each of the contention made by the claimants has been properly considered by the Tribunal while assessing the amount of compensation for dependency as well as towards non-pecuniary damages. Compensation awarded by the Tribunal cannot be said to be unjust or improper. In the

circumstances, according to the learned Counsel, no interference is called for in the Judgment and award passed by the Tribunal.

5. The question which falls for consideration in the present appeal is “whether the Tribunal was justified in deducting half of the amount of salary towards the personal expenses of the deceased while assessing the compensation payable to the parents of the deceased, when the Tribunal has already kept out of consideration the amount of daily allowance (Bhatta) being received to the deceased ?”

6. In the instant matter, deceased was admittedly working as a Cleaner on the Truck. According to the averments made in the claim petition, deceased used to get the monthly salary to the tune of Rs.1,000/- per month and also used to be paid Rs.50/- per day by way of daily allowance (Bhatta). The averments as aforesaid are not seriously disputed by the respondents. The learned Tribunal has also accepted the said fact. While assessing the amount of dependency compensation, the Tribunal has, however, taken into account only the amount of monthly salary to the tune of Rs.1,000/- and has deducted half of the said amount towards personal expenses of the deceased. According to Shri Gatne, learned Counsel for the Insurance Company, the

Tribunal has not committed any mistake in doing so, whereas it is the contention of Shri Gholap, learned Counsel for the appellants that the Tribunal should not have deducted any amount from the meager salary amount of the deceased towards his personal expenses in view of the fact that deceased was also receiving daily Bhatta.

7. It is true that if the deceased was a bachelor and the claimants are the parents, ordinarily 50% of the income of the deceased is deducted as personal and living expenses. However, as has been observed by the Hon'ble Apex Court in the case of ***Fakeerappa And Anr. vs Karnataka Cement Pipe Factory And Ors. [2004 (2) SCC, 473]*** "*What would be percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon the circumstances of each case*".

8. In the instant matter, as I noted herein above, the deceased was admittedly working as a Cleaner on the Matador and used to receive daily Bhatta of Rs.50/- in addition to salary of Rs.1,000/- per month. It can be reasonably believed that the amount of Rs.50/- per day being received to the deceased was sufficient to meet his personal and living expenses. Even otherwise, when the income of the deceased was meager, according to me, it was unjust to deduct any portion of the said

amount and in no case half of the said amount while determining the amount of dependency compensation.

9. While considering the income of the deceased, Bhatta amount is admittedly not considered by the Tribunal and has therefore not been included in the income of the deceased. The Tribunal has held the annual income of the deceased only to the tune of Rs.12,000/- per annum and while determining the amount of dependency compensation deducted half of the said amount towards the personal and living expenses of the deceased. It appears to me that when the Bhatta amount was not considered by the Tribunal as the income of the deceased, it should not have again deducted half of the amount from his salary towards his personal and living expenses. It further, appears to me that in the cases where the salary amount is too meager, the Tribunals shall not apply the same criteria as a rule of thumb and deduct half of the said income as because the deceased was bachelor and the claimants are the parents. In such cases, the Tribunals shall not make any further deductions and certainly not half of it and shall workout the dependency compensation on the basis of whole of the said meager salary.

10. While determining the amount of compensation in the instant matter, two factors were liable to be considered by the Tribunal; first that the deceased was receiving a meager amount of salary and the other that the Bhatta amount being received to the deceased was sufficient to meet his personal and living expenses. Taking into account the aforesaid aspects, the dependency compensation has to be assessed on the whole of the salary income of the deceased. If so done, it would come double to the amount as has been assessed by the Tribunal i.e. Rs.1,56,000/-. To that extent, the impugned award needs to be modified. The compensation awarded by the Tribunal under the other heads appears to be quite just and proper and does not require any interference. For the reasons stated above, the following order is passed:-

ORDER

I) The First Appeal is partly allowed.

II) The appellants are held entitled for the enhanced compensation of Rs.78,000/- in addition to the compensation awarded by the Tribunal, alongwith interest on the said enhanced amount of compensation @ 9% p.a. from the date of filing of the appeal till its realization.

III) The respondent No.3 Insurance Company shall deposit the enhanced amount of compensation alonwith interest accrued thereon in the Motor Accident Claims Tribunal, Jalgaon, within four months from the date of this order.

IV) Award be prepared accordingly.

(P.R.BORA)
JUDGE

SPT