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

FIRST APPEAL NO.189 OF 2017

1. Smt. Vimalbai Jagan Mahajan,
Age 60 years, Occupation Household,
R/o Pimpalgaon Hareshwar,
Taluka Pachora, District Jalgaon

2. Late Jagan Baburao Mahajan ... APPELLANTS
(Original Claimants)

VERSUS

1. Shri Satish Anantrao Patil,
Age 45 years, Occupation Business,
R/o Pimpri Bk. Taluka Pachora,
District Jalgaon.

2. The Manager,
The New India Assurance Company Ltd.,
Adalat Road, Aurangabad
... RESPONDENTS
(Original Opponents)

.....

Shri Uday S. Malte, Advocate for appellant
Shri Sudhir V. Kulkarni, Advocate for respondent No.1

.....

CORAM: A.M. DHAVALE, J.

DATED : 25th July, 2018.

ORAL JUDGMENT :

1. This is appeal by the original claimants for enhancement of compensation awarded under Section 166 of the

Motor Vehicles Act. The claimants are parents of the deceased Dattatraya. Their accident claim M.A.C.P. No.167/2010 was allowed by the Member, Motor Accident Claims Tribunal, Jalgaon, by judgment dated 9.9.2016 and compensation of Rs.5,04,000/- was awarded.

2. Learned Advocate Shri Bhokarikar for the claimants/ appellants submits that, the learned Tribunal wrongly assumed the income of the deceased at Rs.3000/- per month . It should have been assumed at Rs.4500/- per month. There should have been further increase of 40% by way of future prospects. He has no grievance that 50% for personal expenses of the amount has been deducted as the deceased was a bachelor. He claims that, the judgments needs modification and enhancement of the compensation in the light of the above facts.

3. Per contra, Shri S.R. Bodade, learned counsel for respondent No.2 Insurance Company submitted that, in the case of **Laxmi Devi & ors. Vs. Mohammad Tabbar & anr.,** reported in **AIR 2008 SC 1858**, learned trial Judge has rightly assumed the income of the deceased at Rs.3000/- as he was daily wager, with no documents in evidence about his income. He also submitted that, future prospects at 50% were not permissible and the funeral expenses at Rs.25,000/- and loss of love and

affection at Rs.20,000/- were not proper in view of the judgment in case of **National Insurance Company Limited Vs. Pranay Sethi & ors.**, reported in **[(2017) 16 Supreme Court Cases 680].**

4. He tried to argue that the evidence disclosed that the vehicle insured with the respondent No.2 was not involved in the accident. However, the Insurance Company has not preferred appeal and it has no right to agitate this point and claim that the award and decree should be set aside and the claim should be dismissed.

5. The only point for my consideration is:-

> "Whether the quantum awarded by the Tribunal is just and reasonable or not ?."

6. The evidence on record shows that, the deceased Dattatraya was 28 years old and was unmarried. On 23.2.2010 he met with an accident and succumbed to the injuries sustained. The liability of the owner of the tractor and the Insurance Company was accepted by the Member, Motor Accident Claims Tribunal and has not been challenged by them, and has become final. The only dispute is about the quantum. The claimants had

claimed that the deceased was earning Rs.5000/- per month. There is no documentary evidence about his income. Learned Advocate Shri Bodade submits that, the income assumed at Rs.3000/- per month is proper whereas Shri Bhokarikar submits that, the Apex Court has assumed the income at Rs.4500/- per month.

7. In the present case, the accident has taken place on 23.2.2010 and as per the Apex Court judgment, at the relevant time, the income of the person having no documentary evidence and working as a labourer is assumed at Rs.4500/- per month. In this regard, I rely on the case of **Kamala Mangalal Vayani & ors. Vs. M/s United India insurance Co. Ltd. & ors**. (Civil Appeal Nos.8221-8225 of 2002, decided on 14th January 2010)

8. Learned Advocate Shri Bodade submits that, there is admission of the mother of the deceased that he was not getting monthly income of Rs.5000/-. This admission does not indicate that he was not getting even Rs.4500/- per month.

9. Learned Advocate Shri Bhokarikar submitted that, as per the judgment in Pranay Shetty's case, the assumed income of deceased Dattatraya could be increased by 40% towards future prospects. The said judgment is applicable only for self

employed and employees getting fixed salary. It will not be applicable to the cases where there is absolutely no evidence about the income, and income is assumed at Rs.4500/- by way of daily wages.

10. There is no dispute that 50% deduction will have to be made towards personal expenditure that reduces the loss of income to Rs.2250/- i.e. Rs.27,000/- p.a. The appropriate multiplier will be 17 and the loss of income would be Rs.4,97,000/-. The learned Member of the Tribunal has awarded funeral expenses of Rs.25,000/- and loss of love and affection at Rs.20,000/- to grant total of Rs.5,04,000/-. As per the recent judgment in the case of Pranay Shetty, these amounts are reduced and funeral expenses are reduced to Rs.15,000/- and loss of estate to Rs.15,000/-. No compensation is payable under the head “loss of love and affection”. However, since the Insurance Company has not preferred any appeal, the amount awarded by the Tribunal cannot be reduced in the appeal filed by the claimants for enhancement. I find that, the interest awarded @ 8% p.a. is on lower side considering the Bank rates prevailing at the relevant time. Hence, I enhance it to 9% p.a. from the date of the application.

11. I, therefore, hold that, the claimants are not entitled

for any enhancement in amount of compensation but they are entitled for increase in rate of interest from 8% to 9%. The appeal is thus partly allowed to that extent only.

12. The parties shall bear their own costs.

13. Award amounting to decree shall be drawn accordingly.

(A.M. DHAVALE)
JUDGE

fmp/