IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 778 OF 2003

1. Farzana Parveen w/o Anwar
Ul-Haq
age 30 years, occ. household
r/o Karanja, Tq. Karanja

2. Juber Ahmed s/o Anwar-Ul-Haq
age 12 years, occ. (minor) education

3. Umar Ahmed s/o Anwar-Ul-Haq
age 9 years, occ. (Minor) education

4. Zeba Parveen d/o Anwar-Ul-Haq
age 6 years, Minor

5. Samrin Parveen d/o Anwar-Ul-Haq
age 4 years, minor

6. Ashrafee w/o Abdul Sattar
age 60 years, occ. household
r/o Karanja, Tq. Karanja
Dist. Akola

(Appellant nos. 2 to 5 are minor
and under the Guardianship of
real mother appellant No. 1.) Appellants

Versus

1. Dr. Padamsi Bai K. Khona
age major, occ. business
r/o Navipeth, Karanja
Dist. Akola

2. National Insurance Company Ltd.
Through its Branch manager
Hajari Chember
Adalat Road, Aurangabad. Respondents

Mr. B.S. Kudale, advocate for appellants.

Mr. P.S. Agrawal, advocate for respondent no. 1.
Mr. P.P. Bafna, advocate for respondent no. 2.

CORAM : M.S. SONAK, J.
DATE : 10th JANUARY, 2018

JUDGMENT :

1. Heard Mr. Kudale, learned counsel for appellant, Mr. Agrawal, learned counsel for respondent no. 1 and Mr. Bafna, learned counsel for respondent no. 2.

2. Appellants appeal judgment and award dated 13.02.2002 to the extent it denies them compensation to the tune of Rs.3,50,000/- as claimed by them on account of demise of Anwar-Ul-Haq upon whom they were dependent. The Motor Accident Claims Tribunal, Hingoli (MACT) has awarded appellants total compensation of Rs. 2,07,000/- inclusive of compensation paid towards "No Fault Liability". The MACT has also awarded interest at the rate of 9% per annum from the date of claim petition till the date of realisation of compensation amount.

3. Mr. Kudale, learned counsel for appellants submits that deceased was employed as compounder-cum-driver with respondent no. 1. He points out that PW 1, the widow of deceased, has deposed that he was drawing salary of Rs. 3,000/- per month and an additional amount of Rs.50/- per month as Bhatta. He points out that respondent no. 1 in his evidence has denied this position but, at the stage of cross-examination, he was absent and therefore, the statement of PW 1 has gone unchallenged. He

submits that, MACT, in these circumstances, was not justified in treating income of deceased as Rs. 1,500/- per month. Learned counsel Mr. Kudale places reliance on notification under Minimum Wages Act, 1948 to submit that as compounder-cum-driver, the minimum wages possible would have been Rs. 2,100/- per month. He submits that the tribunal was required to treat income of deceased as atleast Rs.2,100/- per month.

4. Mr. Kudale further submits that the tribunal has failed to make any addition towards future prospects or make any award towards loss of love and affection to the children and mother of the deceased. He submits that no compensation has been awarded towards funeral expenses as well. For all these reasons, Mr. Kudale submits that the claim of appellants was required to be allowed in its entirety. He submits that the impugned award, to the extent it restricts claim to only Rs. 2,07,000/-, warrants interference and upward modification.

5. Mr. Bafna and Mr. Agrawal, learned counsel for respondents submit that there is absolutely no evidence that deceased was employed with respondent no. 1. In any case, there is no evidence that deceased was regularly employed with respondent no. 1. In this situation, they submit that the tribunal has infact indulged the appellants by taking income of deceased at Rs. 1,500/- per month. They further submit that since the deceased was not in regular employment, there is no question of making any addition towards future prospects. They submit that already an amount of Rs.5,000/- has been awarded for transportation of the body to the village of deceased and, this is inclusive of funeral expenses. They

submit that in the year 2000, there was no requirement of awarding any amount towards loss of love and affection to the children or the mother of the deceased. They submit that an amount of Rs. 10,000/- has already been awarded towards loss of consortium to the wife of deceased and, this is more than what was required in law at the relevant time. They submit that notification under Minimum Wages Act is not at all applicable to the present case because there is no evidence that the deceased was in regular employment. They submit that the place where deceased was alleged to be employed comes within Zone III of the notification and therefore, the wages would be Rs. 1,800/- per month and not Rs.2,100/- per month. For all these reasons, learned counsel for respondents submit that no case is made out to interfere with the impugned award made by MACT.

6. In this case, appellant no. 1 who is the widow of deceased has categorically deposed that her husband was drawing salary of Rs.3,000/- per month. Respondent no. 1, who is in the best position to contradict this statement, has chosen to remain absent at the stage of evidence/cross-examination. Thus, learned counsel for respondents are right in submitting that apart from this statement, the claimants have not produced any evidence in support of their case with regard to regular employment of deceased for salary of Rs. 3,000/- per month. In these circumstances, it will not be possible to accept the contention of learned counsel Mr. Kudale on the aspect of monthly income of deceased.

7. The MACT has however failed to make any addition towards

future prospects. Deceased was only 35 years of age at the time when he met with an accident. Therefore, applying the law laid down by Constitution Bench of Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. vs. Pranay Sethi and others* reported in **2017(13) SCALE 12**, an addition of 40% is due towards future prospects. This means that monthly income of deceased will have to be taken as Rs.2,100/-. Out of this, 1/3rd deduction towards personal expenses of deceased is due and therefore, towards computation of dependency, income will have to be taken as Rs.1,400/- per month. There is no dispute that multiplier in this case would be 16. Thefore, compensation towards dependency would come to Rs.1,400 x 12 x 16 = Rs. 2,68,800/-.

8. In this case, the tribunal has awarded sum of Rs.10,000/- towards loss of consortium and Rs. 5,000/- for bringing body of the deceased from the place of accident to the village of deceased/claimants. The tribunal has however, made no award towards loss of love and affection for four minor children and mother of the deceased. At the time when claim petition was instituted, the children of deceased were aged 12, 9, 6 and 4 years and the mother was aged 60 years. Thus, compensation of Rs.5,000/- each towards loss of love and affection was due to said claimants. Further, compensation of atleast Rs.5,000/- is due towards funeral expenses. An amount of Rs.5,000/- is also due towards loss of estate. This means that towards conventional heads, claimants are entitled to further compensation of Rs.50,000/-. Total compensation therefore works out at Rs.2,68,800 + Rs.50,000 = Rs. 3,18,800/-.

9. Respondents contention that deceased was not regularly employed and therefore, there should be no addition towards future prospects, cannot be accepted. The tribunal has also not accepted that deceased was not in regular employment. However, without assigning any reason, the tribunal has omitted to make any addition towards future prospects. Besides, this is a matter where respondent no. 1, with whom the deceased was said to be employed, after filing written statement, has not stepped into the witness box to controvert the assertions made on oath by widow of the deceased i.e. PW 1. In these circumstances, addition towards future prospects was necessary. There is also no merit in the submission that an amount of Rs.5000/- awarded by the tribunal for bringing body of the deceased from the site of accident to his village is inclusive of funeral expenses. This is not something which is borne out from evidence on record. Accordingly, award is required to be made towards funeral expenses.

10. Appeal is therefore liable to be partly allowed and the amount of compensation is liable to be enhanced from Rs.2,07,000/- to Rs. 3,18,800/-. On the enhanced amount, the appellants will be entitled to interest at the rate of 9% per annum, which is the same rate as determined by the tribunal. The interest component be calculated from the date of lodging of appeal till realisation. Appeal is partly allowed in aforesaid terms. In the facts and circumstances of the case, there shall be no order as to costs.

(M.S. SONAK, J.)

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