IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

56 FIRST APPEAL NO. 461 OF 2012

1. Sanjubai Suresh Patil
Age: 43 years, Occu.: Household,
R/o. Loni, Tal.Chopda,
District: Jalgaon.

2. Vidyabai Pravin Chaudhari
Age: 25 years, Occu.: Household,
R/o.Zurkheda, Tal.Dharangaon,
District: Jalgaon.

3. Kavita @ Rohini Kiran Patil
Age: 22 years, Occu.: Household,
R/o. Tardi, Tq.Shirpur, Dist.Dhule.

4. Rupali @ Chaya Suresh Patil
Age: 20 years, Occu.: Education,
R/o. Loni, Tq.Chopda, District: Jalgaon.

5. Jagannath Chindhu Patil (Dead)
Age: 84 years, Occu.: Nil.

6. Manjurabai Jagannath Patil (Dead)
Age: 82 years, Occu.: Nil,
Both R/o. Loni, Tq.Chopda,
District: Jalgaon. ..Appellants
(Orig. Petitioners)

Versus

1. Govindbhai Pasabhai Maru
Age: 48 years, Occu.: Driver,
R/o. Hadala, Tal. Sayala,
Dist.Surendra Nagar (Gujarat)

2. Rajubai Bachchuba Jadeja
Age: Adult, Occu.: Vehicle Owner,
R/o. Bhunva, Tal.Gondal,
Dist.Rajkot (Gujarat)

3. The Branch Manager,
Bajaj Alliance General Insurance

Company Ltd., Shriganesh Plaza,
2nd Floor, Kute Marg, Near National
Highway bus stand, near hotel,
'Sandeep', Nashik.

..Respondents
(1 to 3 are Orig. Resp.)

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Advocate for Appellants :Shri Shailesh P. Brahme
Advocate for Respondent No.3 : Shri S.G. Chapalgaonkar
Respondent No.2 is served.

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Appeal is dismissed against Respondent No.1 as per Court's order dated 05.04.2013.

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CORAM : P.R.BORA, J.

DATE: 1st October, 2018

ORAL JUDGMENT:-

1. The claimants in Motor Accident Claim Petition No.72 of 2009 decided by the Motor Accident Claims Tribunal at Amalner on 17.12.2011, have filed the present appeal seeking enhancement in the amount of compensation awarded by the Tribunal.

2. The appellants had filed the aforesaid petition claiming compensation on account of death of one Suresh Jagannath Patil alleging the same to have been caused in a road accident having involvement of Truck owned by respondent No.2 and insured with respondent No.3. The appellants had claimed the total compensation of Rs.7,00,000/-. The learned Tribunal, after

having assessed the evidence on record, awarded the compensation of Rs.3,51,321/- inclusive of no fault liability compensation. Dissatisfied with the amount of compensation so awarded, the appellants have preferred the present appeal.

3. Shri S.P.Brahme, learned Counsel appearing for the appellants submitted that though sufficient evidence was produced on record evidencing that there were three agricultural lands, which were being cultivated by the deceased and there was also a Flour Mill run by the deceased, the Tribunal has held the income of the deceased by applying criteria of notional income i.e. Rs.3,000/- per month. The learned Counsel submitted that in no case the income of the deceased could have been held by the Tribunal less than Rs.6,000/- per month. The learned Counsel further submitted that future prospects of deceased are not at all considered while determining the amount of compensation. The learned Counsel further submitted that the age of deceased was 43 years, however, merely because no authenticated document could be placed on record as about the birth date of the deceased, the Tribunal has held the age of the deceased to be 50 years as was shown in the Post-mortem Report, which has resulted in applying the multiplier of 13, which otherwise could have been 14. The learned Counsel further

submitted that the Tribunal has awarded a very meager amount towards non-pecuniary damages. On the aforesaid counts, the enhancement in the amount of compensation is sought.

4. Shri S.G.Chapalgaonkar, learned Counsel appearing for the Insurance Company supported the impugned Judgment and award. The learned Counsel submitted that in absence of any evidence produced on record, no fault can be found with the Tribunal, if it has determined the amount of compensation on the basis of notional income of the deceased. The learned Counsel further submitted that even as about the age, there was no cogent evidence produced on record by the claimants and the Tribunal, therefore, has rightly held the age as was shown in the Post-mortem Report. The learned Counsel, however, was fair enough to admit that future prospects are not considered by the Tribunal properly and the compensation awarded by the Tribunal under the head of non-pecuniary damages may also be liable to be enhanced in view of the recent pronouncement by the Hon'ble Supreme Court.

5. I have carefully considered the submissions advanced by learned Counsel appearing for the parties. I have perused the impugned Judgment and the findings on record.

6. Though, it was sought to be contended that the age of deceased Suresh was 43 years and the same shall be held to be his age for calculation of compensation, I am unable to accept the said submission for want of cogent and sufficient evidence, which could have been certainly produced by the appellants. The age as has been held by the Tribunal on the basis of Post-mortem report, has to be accepted as the age of the deceased.

7. In so far as the income of the deceased is concerned, it does not appear that the Tribunal has committed any error in holding the income, in absence of any documentary evidence, to the tune of Rs.3,000/- per month. However, there is substance in the argument made by learned Counsel for the appellants that the future prospects must have been considered properly by the Tribunal, while assessing the amount of compensation. In view of the Judgment of the Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Ors. [(2017) 16 SCC 680],*** the future prospects of the deceased falling in the age group below 50 years and having the service in private sector or self-employment, has to be considered at 25% of existing income of the deceased. To that extent, the amount of compensation is certainly liable to be enhanced. The income of the deceased was held by the Tribunal to the tune of Rs.3,000/-. Adding 25% of the said income, his prospective monthly income comes to Rs.3,750/-

and it annually comes to Rs.45,000/-. Having regard to the number of dependents on the income of the deceased, only 1/4th of his total income would be liable for deduction towards his personal and living expenses. Deducting the same, the amount of Rs.33,750/- remains, which can be multiplied by the appropriate multiplier for determining the amount of dependency compensation. Having regard to the age of the deceased, the appropriate multiplier in the present case would be 13 and applying the same, the amount of dependency compensation comes to Rs.4,38,750/-. The appellants are also entitled for non-pecuniary damages in lumpsum to the tune of Rs.70,000/- in view of the law laid down by the Hon'ble Apex Court in the case of ***Pranay Sethi and Ors.*** (supra) . Rs.60,821/- were the medical expenses incurred by the claimants on the treatment of the deceased. The Tribunal has awarded the entire said amount to the claimants towards medical expenses. Adding aforesaid amount, the total compensation payable to the appellants – claimants comes to Rs.5,69,571/-. I hold the appellants – claimants entitled for the said amount. In the facts and the circumstances of the case, it appears to me that it would be the just and fair compensation payable to the appellants. In the result, the following order is passed:-

ORDER

I) The appellants are held entitled for the enhanced compensation of Rs.2,18,250/-.

II) Respondent Nos.1 to 3 shall jointly and severally pay the enhanced amount of compensation to appellant No.1 with interest thereon @ 9% p.a. from the date of filing of the appeal till its realization.

III) Award be modified accordingly.

IV) Appeal is allowed in the above terms.

(P.R.BORA)
JUDGE

SPT