IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3087 OF 2016

1. Smt. Sarikabai Rajesh Valavi
age 23 years, occ. household

2. Kum. Yuvraj Rajesh Valavi
age 2 months, occ. nil

3. Smt. Tolabai Era Valavi
age 65 years, occ. nil

Applicant no. 1 for herself and
on behalf of applicant no. 2.

All r/o Rajmohi. Tq. Akkalkuwa
Dist. Nandurbar. Appellants

Versus

1. Harjitkaur Kuljitsing Bhatiya
age major, occ. Truck Owner
r/o 102,Dindayal Puram
Khandwa, Tq. & Dist. Khandwa
(M.P.)

2. Shriram General Insurance Co. Ltd.
Through Manager
10003, E-8, EPIP, RIICO Industrial Area
Sitapura
Jaipur 302 022 (Rajasthan State) Respondents

Mr. Mohit Deshmukh, advocate for appellants.
Mr. Vinayak Upadhye, advocate for respondent no. 2.

CORAM : M.S. SONAK, J.
DATE : 1st FEBRUARY, 2018

ORAL JUDGMENT :

1. This Court, on 18th December, 2017, had made the following order :

> "When the matter is called out, none appears for respondent No. 1 even after service of notice. Matter is listed for final hearing on merit. Being last opportunity for respondent No. 1, stand over to 17th January, 2018."

2. Since service is complete on both the respondents and since, the matter was already listed for final hearing by the aforesaid order, the same is taken up for final hearing today.

3. Mr. Deshmukh, learned counsel for appellants submits that in this case there is evidence that the deceased was a skilled masion. Therefore, relying upon the ruling in **Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited**, (2014) 2 Supreme Court Cases 735 and **Ramchandrappa Vs. Manager, Royal Sundaram Alliance Insurance Company Limited**, (2011) 13 Supreme Court Cases 236, Mr. Deshmukh submits that the notional income ought to have been taken at atleast Rs. 6,500/- per month since, the accident in this case has taken place in the year 2013. He further submits submits that in terms of the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of National **Insurance Company Ltd. Vs. Pranay Sethi and others**, 2017(13) SCALE 12, taking into consideration the age of the deceased, atleast 40% addition was due towards future prospects. He submits that in this case, inadequate compensation has been paid towards non-pecuniary benefits. For all these reasons,

Mr. Deshmukh submits that the amount awarded is liable to be modified and the compensation amount needs to be enhanced.

4. Mr. Upadhye, learned counsel for respondent no. 2-insurance company submits that in the present case, there is absolutely no evidence with reference to the income of the deceased and therefore, the tribunal was quite right in taking the notional income of the deceased at Rs. 3,000/- per month. Relying upon the decision of the Division Bench in the matter of **New India Assurance co. Ltd. Vs. Smt. Alpa Rajesh Shah Master Urvil Rajesh Shah Kasturben Mulchand Shah Ramkrishna S. Ghawte**, 2014(4) All M R 172, Mr. Upadhye submits that in the absence of any proof whatsoever regards future prospects, there is no question of making any addition to the income notionally assumed. Mr. Upadhye submits that for these reasons, the appeal is liable to be dismissed.

5. In this case, there is no dispute that the accident from which, this claim arises, took place in the year 2013. The deceased was 28 years of age at the time of accident. Claim of compensation has been made by his widow, aged 23 years, and, a minor son who was 2 months old at the time of accident/claim petition. The 3rd claimant is the mother of deceased aged 65 years. There is some evidence on record that deceased was a masion and therefore, can be regarded as a skilled labour.

6. In the case of *Syed Sadiq* (supra), the Hon'ble Supreme Court, in case of a vegetable vendor, had taken notional income at Rs. 6,500/- per month. The Supreme Court observed that it is

difficult for us to convince ourselves as to how a labour involved in a unorganised sector doing his own business is expected to produce document to prove his monthly income. After recording this observation at paragraph no. 8 and thereafter, quoting from its earlier decision in *Ramchandrappa* (supra), the Hon'ble Supreme Court at paragraph no. 9 of the judgment observed thus :

> 9. There is no reason in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs. 6500 per month.

In Ramchandrappa (supra), in the absence of any evidence, the Hon'ble Supreme Court, assumed notional income at Rs. 4,500/- per month in respect of a coolie.

7. In the facts and circumstances of the case, since, the deceased was a masion, the tribunal, was required to assume his income notionally at atleast Rs. 4,500/- per month. Such an assumption would be quite consistent with the decision of the Hon'ble Supreme Court in the case of *Ramchandrappa* (supra) and *Sayed Sadiq* (supra).

8. In the instant matter, the future prospects have to be assumed and addition will have to be made in terms of the formula laid down by the Hon'ble Supreme Court in the case of *Pranay Sethi* (supra). This decision of the Constitution Bench will have to

be followed in preference to the observations in *Alpa Rajesh* (supra). Accordingly, taking into consideration the age of deceased at 28 years, an addition of 40% is due to the monthly income towards future prospects. This takes the monthly income of the deceased to Rs. 6,300/-. Deduction of 1/3rd is due towards the expenditure which the deceased would have incurred on himself. Upon such deduction, monthly dependency comes to Rs. 4,200/- and the yearly dependency to Rs. 50,400/-. There is no dispute that the multiplier in the present would be 17. Therefore, compensation towards dependency will have to be determined at Rs. 50,400 x 17 = Rs. 8,56,800/-. To this amount, towards non-pecuniary damages, a sum of Rs. 70,000/- will have to be added as provided in paragraph no. 54 of the decision of the Constitution Bench in the case of *Pranay Sethi* (supra). This takes the total compensation amount to Rs. 9,26,800/-.

9. Appeal is therefore allowed. Compensation amount is enhanced and determined at Rs. 9,26,800/- in place of Rs.4,38,000/-. Interest awarded by the tribunal is appropriate to the facts and circumstances of the present case. Out of this compensation amount, it is directed that an amount of Rs.2,50,000/- be kept in fixed deposit in the name of the minor i.e. appellant no. 2, in any Nationalised Bank, till he attains the age of majority. Appellant no. 1 Sarikabai is at liberty to avail quarterly interest, if she so desires, on the amount kept in fixed deposit.

10. Respondent no. 2 - insurance company is directed to pay or deposit the differential amount in this Court within a period of eight weeks from today. Upon deposit, the appellants, subject to

aforesaid directions regarding fixed deposit, are at liberty to withdraw such amount unconditionally.

(M.S. SONAK, J.)

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