IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 673 OF 2004

1. Yenutai w/o Ramesh Kotgire
   Age 40 yrs, Occ. Household

2. Sainath s/o Ramesh Kotgire
   Age 25 yrs, Occ. Education

3. Gajanan s/o Ramesh Kotgire
   Age 19 yrs, Occ. Education

4. Miratai d/o Ramesh Kotgire
   Age 17 yrs, Occ. Education
   (Under guardianship of appellants no.1)

5. Washali d/o Ramesh Kotgire
   Age 16 yrs, Occ. Education
   (Under guardianship of appellant no.1)

   All r/o Malkautha, Tq. Mudhkhed,
   Dist. Nanded. ..Appellants

Versus

1. Sow. Radhabai w/o Chandrakant Murad
   Age 42 yrs, Occu. Business,
   r/o Weekly market Yeotmal,
   Tq. & Dist. Yeotmal.

2. The Branch Manager
   United India Insurance Co. Ltd.
   Nanded Tq. And Dist. Nanded. ..Respondents

...

Mr. B.G. Deshmukh, Advocate for Appellants.
Mr. R.F. Totla, Advocate for Respondent No.2.

...

CORAM : P.R. BORA, J.
DATE : 08th OCTOBER, 2018.

ORAL JUDGMENT:-

. The original claimants in Motor Accident

Claim Petition No. 8 of 1998 have preferred the present appeal seeking enhancement in the amount of compensation awarded to them in the aforesaid matter by the Motor Accident Claims Tribunal. The Motor Accident Claims Tribunal at Nanded had decided the said petition vide judgment and order passed on 21.04.2003.

2. The learned counsel appearing for the appellants/claimants submitted that the Tribunal has grossly erred in not considering the future prospects of the deceased while determining the amount of compensation. The learned counsel further submitted that having regard to the number of dependents on the income of deceased, the Tribunal instead of deducting 1/3rd of total income of deceased must have deducted 1/4th of his total income towards the personal expenses. The learned counsel raised the third objection as about inappropriate amount awarded by the Tribunal towards non-pecuniary damages. On the aforesaid three grounds, the learned counsel sought enhancement in the amount of compensation awarded by the Tribunal.

3. Shri R.F. Totla, the learned counsel appearing for the respondent-insurance company supported the impugned judgment and award and submitted that a well reasoned judgment has been delivered by the Tribunal and no interference is required in the judgment and award so passed.

4. I have given due consideration to the submissions made by the learned counsel appearing for the parties. I have perused the impugned judgment and the evidence on record. In so far as income of deceased as held by the Tribunal at the rate of Rs. 2,500/- is concerned, though it was sought to be contended by the learned counsel appearing for the appellants that the same has been considered at the lower level, I do not find any substance in the submission so made. However, there appears substance in his further contention that the Tribunal did not consider the future prospects of the deceased while assessing the amount of dependency compensation. In view of the law laid down by the Apex Court in the case of **"Smt Sarla Verma and Ors Vs. Delhi Transport Corporation and Anr"** and thereafter and in the case of **"National Insurance Company Limited Vs. Pranay**

Sethi", in so far as the employment in private sector or self employment is concerned, the future prospects are to be assessed at the rate of 25% of the existing income of the deceased in case, if he falls in the age group of 40 to 50.

5. Having regard to the income of the deceased in the present case to the tune of Rs. 2,500/- which annually comes to Rs. 30,000/-, 25% of it will have to be added whereupon annual income would be Rs. 37,500/-. On this income the amount of dependency compensation will have to be assessed. The Tribunal has also erred in deducting 1/3rd of the income of the deceased towards his personal expenses. Having regard to the number of dependents, the Tribunal could not have deducted more than 1/4th of the total income of the deceased under the said head. Deducting 1/4th of his total income, the dependency compensation can be calculated on the basis of the remaining income which comes to Rs. 28,125/- (Rs.37,500 - 9,375 = 28125).

6. Having regard to the age of deceased, the multiplier of 14 would be applicable. Tribunal has

been correctly applied the same. Applying the said multiplier, the amount of compensation comes to Rs. 3,93,750/-. The claimants are also entitled for compensation of Rs. 70,000/- under the head of non-pecuniary damages. Adding the said amount in the amount of dependency compensation, the total compensation payable to the claimants comes to Rs. 4,63,750/- inclusive of NFL compensation. According to me, in the facts and circumstances of the case, this will be the just and fair compensation payable to the claimants. The amount of compensation awarded by the Tribunal, therefore needs to be enhanced to the aforesaid extent. In the result, the following order is passed:

ORDER

i) The appellants/claimants are held entitled for the enhanced compensation of Rs. 1,93,750/- jointly and severally from respondent nos. 1 and 2 with interest thereon at the rate of 9% p.a. from the date of filing of the appeal till its realization.

ii) Except the enhancement in the amount of compensation, the remaining award passed by the Tribunal is maintained as it is.

iii) The modified award be prepared accordingly.

iv) The appeal stands allowed in the aforesaid terms.

v) Deficit Court fee, if any, shall be recovered from the claimants.

(P.R. BORA, J.)

Mujaheed//