

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

FIRST APPEAL NO. 1431 OF 2007

- 1 Pandurang s/o. Ramrao Badgire, Age 35 years, Occu. Agril.,
- 2 Nivrti s/o. Pandurang Badgire, Age 20 years, Occu. Education,
- 3 Namdeo s/op. Pandurang Badgire, Age 17 years, Occu. Education, Appellant NO.3 is minor U/G of his real father i.e. appellant No.1.

All R/o. Nandur (B), Tq. Ahmedpur, Dist. Latur. .. Appellants
(Ori.Claimants)

Versus

- 1 Mrs. Uma w/o. Sanjiv Limaye, Age Major, Occu. Business, R/o. Karad Nagar, Ahmedpur, Tq. Ahmedpur, Dist. Latur.
- 2 National Insurance Co. Ltd., Br. Nanded, through its Br. Manager, Hanuman Chowk, Main Road, Latur.
- 3 Haridas s/o. Narayan Kendre, Age 33 years, Occu. Driver, R/o. MSRTC Dept., Ahmedpur.
- 4 Divisional Controller Maharashtra State Road Transport Cor. Div. Latur. .. Respondents

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Mr. S. S. Manale, Advocate for Appellants.
Mr. M.M.Patil, Advocate for Respondent No.1
Mr. D.V.Soman, Advocate for Respondent No.2
Mr. A. R. Salve, Advocate for Respondent No.4

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CORAM : A.M. DHAVALÉ, J.

DATE: 16th August, 2018

ORAL JUDGMENT :

1. Heard. Admit. With the consent learned Advocates appearing for the parties, the appeal is taken up for final hearing.

2. This is an appeal for enhancement of compensation by husband, parents and minor children on account of death of Lilawati, aged 32 years. As per the claim, on 10.05.2001 at 9.45 a.m. on Ahmedpur to Udgir road, the deceased house wife while travelling in mini bus, she died in accident involving mini bus and S.T. bus. The crime was registered against driver of mini bus. The learned trial Judge held that the owner and insurer of mini bus is liable to pay the entire compensation. It was claimed that deceased was looking after the agricultural lands and her income be assumed at Rs.5,000/- per month. The learned trial Judge assumed her income at Rs.1,500/- per month and with multiplier of '17', awarded Rs. 2,04,000/- for loss of income and Rs.80,000/- under conventional head total Rs. 2,84,000/-.

3. Mr. Manale, learned Advocate for respondent No.2 submits that the deceased was house wife and was also looking after agricultural lands, and therefore, her income should have been assumed at Rs.5,000/- per month. At least her income should have been assumed at Rs.3,000/- per month.

4. Mr. Soman for respondent No. 2 submitted that there was no source of income for the deceased and assumption of the salary at Rs. 1,500/- is on higher side. Besides, as per the ratio laid down in a case of the ***National Insurance Company Limited Versus Pranay Sethi, [(2017) 16 SCC 680]***, the compensation under conventional heads are on higher side and under non admissible heads.

5. After hearing the parties, I find that only issue that arises is whether the learned trial Judge has awarded just and reasonable compensation or not ? I answer it in negative and enhance compensation to Rs. 4,54,000/-.

REASONS

6. The deceased was house wife and was also working in

her own agricultural field. She was aged 32 years. Her income should be assumed at Rs.3,000/- per month. As per the Sarla Varma's case, the proper multiplier would be 16.

7. Since there are 3 dependents, the personal deduction would be $1/3^{\text{rd}}$ and loss of income would be Rs.2,000/- per month i.e. Rs. 24,000/- per annum. The total loss of income would be Rs. 3,84,000/-. Since the deceased was not self-employed or having fixed salary, there is no question of granting enhancement on the ground of future prospects.

8. Besides, as per the Pranay Sethi's case (*supra*), the claimants are entitled for compensation under conventional heads as follows :-

Nos	Compensation towards	Amount (Rs.)
1	Loss of consortium	40000
2	Loss of estate	15000
3	Loss of funeral expenses	15000
	Total (1+2+3)	70000
	The Loss of Income would be at	384000
	Total :-	454000

9. The learned trial Judge has committed an error in assumption of income at lower rate, selection of multiplier and granting compensation on the grounds viz. loss of love

and affection, compensation for pains and agony, loss of shelter, comfort and awarded lesser compensation for consortium and funeral expenses. Hence, the appeal deserves to be partly allowed. Hence, the order :-

ORDER

1. The appeal is partly allowed.
2. The Judgment and Award of the trial court is set aside and modified as under :-
 - i) Respondents No. 1 and 2 in the appeal (Original opponent Nos. 1 and 2 in the claim petition) do jointly and severally pay to the claimants Rs. 4,54,000/- (inclusive of NFL amount) with the interest @ 9 % per annum and proportionate costs through out.
 - ii) It is reported that amount has already been received by the claimants. Since the claimants No. 2 and 3 have become major, there is no order in regard to investment.
 - iii) The amounts already paid shall be deducted from dues for calculation as well as adjustment of interest.

3. The Award amounting to decree shall be drawn up accordingly.

(**A.M.DHAVALA, J**)

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