

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

FIRST APPEAL NO. 949 OF 2010

1. Smt. Mangalabai Bharat Mali (Mahajan)
Age-37 Years, Household
2. Ku. Aarati Bharat Mali
Age-12 Years, Occ-Student
3. Chi. Anand Bharat Mali
Age-10 Years, Occ.-Student
4. Chi. Lalit Bharat Mali
Age-7 Years, Occu.-Student
5. Shri. Sau. Bhikabai Pandu Mali (Deleted)
6. Shri. Arjun Pandu Mali
Age-72 Years, Occu.-Nil

(The applicant no.1 is the natural guardian
of the applicants no.2 to 4 being mother)

All the applicants are residing
at Gudhe, Tal. Bhadgaon,
Dist. Jalgaon.

..Appellants

Versus

1. Shri Hardeepsingh Darasingh
Age Major, Occu. Truck Owner,
R/o Plot no.45/46, Dashisar Marg,
Mumbai Dist. Thane.
2. United India Insurance Company Ltd
Divisional Office, Mehata House,
91 Mumbai Samachar Marg, Fort, Mumbai
(Notice be served on the Manager,
United India Insurance Co. Ltd, 2nd Floor,
Mansingh Market, Near Railway Station,
Jalgaon, Dist. Jalgaon.)
3. Shri. Sanjaykumar Ramkhilawan Pal
Age-37 Years, Occu.-Truck Driver
R/o Transport Nagar,
1 Shantiniketan, Jalgaon.

..Respondents

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Mr. M.M. Bhokarikar, Advocate for Appellants.
Mr. Mahesh Deshmukh, Advocate for Respondent No.2.

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CORAM : P.R. BORA, J.
DATE : 24th OCTOBER, 2018.

ORAL JUDGMENT:-

. The claimants in Motor Accident Claim Petition No. 362 of 2003 have preferred the present appeal seeking enhancement in the amount of compensation awarded by the Motor Accident Claims Tribunal at Jalgaon in the aforesaid claim petition decided on 30.12.2009. The appellants are hereinafter referred to as 'the claimants'.

2. The claimants had filed the aforesaid petition seeking compensation on account of death of one Bharat Arjun Mali alleging the same to have been caused in vehicular accident happened on 05.09.2003. It was the contention of the claimants that deceased Bharat, on the fateful day when was standing near the truck in which he was employed as a truck driver, was run over by another truck bearing Registration No. MH-04-AL-3880 owned by present respondent no.1 and insured with present respondent no.2 and in the accident so happened he died on the spot itself. The age of deceased Bharat was stated to be 33 years. It was the

contention of the claimants that he was working as a truck driver and used to earn Rs. 5,000/- per month by way of salary. It was also the contention of the claimants that deceased Bharat was having income from the agricultural labour to the tune of Rs. 1,000/- per month. The appellants had therefore claimed the compensation of Rs. 5,00,000/- from the owner and insurer of the offending truck. No evidence was adduced on behalf of the respondents.

3. The claimants had placed on record the certificate from the employer of deceased Bharat evidencing that he was earning salary to the tune of Rs. 5,000/- per month. The certificate from Talathi was also placed on record demonstrating that from the agricultural labour, deceased Bharat was earning the income of Rs. 1,000/- per month. The owner and the truck driver though were served with the notices in the claim petition, did not appear in the matter and petition was proceeded ex-parte against them. Respondent no.2-insurance company has resisted the petition by filing its written statement. The insurance company has denied the contentions raised in the petition as

about the age, income etc of the deceased. In order to substantiate the contentions raised in the petition, one of the claimant deposed before the Court and certain documents were placed on record by the claimants.

4. The learned Tribunal after having assessed the oral and documentary evidence brought on record before it by the claimants held the claimants entitled for the total compensation of Rs. 3,97,000/- inclusive of NFL compensation jointly and severally from the owner and insurer of the offending truck. Dissatisfied by, the claimants have preferred the present appeal.

5. Shri Bhokarikar, the learned counsel appearing for the claimants submitted that in the claim petition itself it was specifically disclosed by the claimants that deceased Bharat was working as a truck driver and his salary was also disclosed to be Rs. 5,000/- per month. The learned counsel submitted that the certificate from the employer of deceased Bharat was also placed on record evidencing that deceased Bharat was earning monthly salary to the tune of Rs. 5,000/-. The learned

counsel further submitted that in order to prove the agricultural income, the certificate of Talathi was placed on record. The learned counsel submitted that both these documents were respectively marked at Exhibit-55 and 56 and however, the Tribunal while determining the amount of compensation has completely ignored the aforesaid documents. The learned counsel submitted that in view of the averments in the claim petition, the fact testified by the witness AW-1 Smt. Mangalabai Bharat Mali in her evidence coupled with certificate at Exhibit-55 on record, the Tribunal must have held the income of deceased to the tune of Rs. 5,000/- per month from the salary and in view of the certificate at Exhibit-56 must have also added in the said income Rs. 1,000/- per month from the agricultural labour. The learned counsel submitted that the Tribunal have manifestly erred in holding the income of deceased by applying the criteria of notional income. The learned counsel further submitted that the Tribunal has also erred in not considering the future prospects of deceased. The learned counsel further contended that the Tribunal has awarded inadequate

compensation towards the non-pecuniary damages. The learned counsel in the circumstances prayed for adequate enhancement in the amount of compensation as awarded by the Tribunal.

6. Shri Deshmukh, the learned counsel appearing for the respondent-insurance company resisted the submissions made on behalf of the appellants-claimants. The learned counsel inviting my attention to Para 15 to 18 of the impugned judgment submitted that the Tribunal has made a very sound discussion as about the evidence brought on record by the claimants as about the income of deceased Bharat. The learned counsel submitted that in absence of any evidence brought on record by the claimants, which, as has been observed by the Tribunal, could have been easily brought by the claimants, no fault can be found in the finding of fact recorded by the Tribunal and the conclusions recorded as about the income of deceased on the basis of the said evidence. It is to be noted that the appellants have filed Civil Application No. 13068 of 2010 seeking leave to file the copy of the driving licence of deceased Bharat on record. The production of the documents was allowed by this

Court. The learned counsel submitted that since, the best evidence which was possible to be adduced by the claimants was not placed on record by the claimants, the Tribunal has rightly held the income of deceased Bharat to the tune of Rs. 2,500/- per month by applying the criteria of notional income. The learned counsel in the circumstances submitted for non-interference in the finding recorded by the Tribunal as about the income of deceased Bharat.

7. In so far as another objection as about the future prospects, it was the contention of the learned counsel that there was no pleading in that regard and as such the said request also cannot be considered. The learned counsel was fair enough in submitting that non-pecuniary damages will have to be suitably modified in view of the judgment delivered by the Hon'ble Apex Court in the case of **"National Insurance Company Limited Vs. Pranay Sethi and Ors, (2017) 16 SCC 680"**. The learned counsel therefore prayed for passing appropriate orders accordingly.

8. I have given due consideration to the submissions made by Shri Bhokarika, the learned

counsel appearing for the claimants and Shri Deshmukh, the learned counsel appearing for the respondent-insurance company. I have perused the impugned award and the evidence on record. In the claim petition, the claimants have stated the occupation of deceased Bharat as truck driver. In her testimony before the Court, AW-1 Smt. Mangalabai Bharat Mali has also specifically deposed that her husband deceased Bharat was working as a driver and used to earn Rs. 5,000/- per month by way of salary. The claimants had placed on record the salary certificate of deceased Bharat which has been marked at Exhibit-56. Admittedly, the claimants did not examine the employer of deceased Bharat namely Rajanikant Shaha who was stated to have issued the certificate at Exhibit-56.

9. In so far as the agricultural income, the claimants had relied upon the certificate issued by Talathi at Exhibit-55 to the effect that deceased Bharat was earning from agricultural work. The Tribunal in Para 15 to 18 of the judgment, the averments which were brought to my notice by the learned counsel for the respondents, has

elaborately discussed the evidence as about the income of deceased Bharat. It appears to me that it was quite possible for the claimants to examine the employer of deceased Bharat, so as to legally prove the salary income of deceased Bharat. In absence of any such evidence on record, in fact it cannot be said that the Tribunal has recorded any incorrect finding as about the income of deceased as claimed from the employment of said Rajanikant Shaha. However, it also cannot be ignored that it was the specific contention since beginning of the claimants that deceased was working as a truck driver.

10. In the present appeal, the application was filed as noted herein above seeking leave to place on record the copy of driving licence of deceased Bharat. It is the matter of record that this Court has allowed the production of the said documents. Along with said application, the xerox copy of the driving licence is placed on record. No original is produced on record till this date. Why the said original has not been produced, there is no explanation given. Considering all these aspects, it appears to me that the contention of

the claimants that income of deceased Bharat shall be held to the tune of Rs. 5,000/- per month holding that he was working as a driver seems difficult to be accepted.

11. Relying on the judgment of the Hon'ble Apex Court in the case of **"Nagarajappa Vs. Divisional Manager, Oriental Insurance Company Limited, AIR 2011 SC 1785"**, the learned counsel submitted that in the said matter the compensation was assessed by notionally holding the income of Coolie at the rate of Rs. 3,000/- per month. The learned counsel submitted that in absence of any evidence on record at least the income of deceased Bharat may not be considered less than Rs. 3,000/- per month.

12. Shri Deshmukh, the learned counsel appearing for the respondent submitted that the observations made in the aforesaid judgment cannot be said to be the ratio laid down by the Hon'ble Apex Court and on perusal of the impugned judgment it reveals that the Supreme Court did not cause any interference in the finding already recorded by the Tribunal.

13. Considering the submissions as above, it appears to me that though it is a fact that the claimants have failed in bringing on record any cogent and sufficient evidence as about the income of deceased Bharat, the income of deceased Bharat can be reasonably held to the tune of Rs. 3,000/- per month for the purposes of computing the amount of compensation. If the income of deceased Bharat is held to the tune of Rs. 3,000/- per month i.e. annually Rs. 36,000/-, 40% of the said amount will be liable to be added in the same. By adding the same the income comes to Rs. 50,400/- on the basis of which the amount of dependency compensation can be assessed. From the said income, $\frac{1}{4}^{\text{th}}$ of the said income would be liable to be deducted towards personal expenses of deceased Bharat. Deducting the said amount, the balance remains of Rs. 37,800/- and if the same is multiplied by multiplier of 16, the amount of dependency compensation comes to Rs. 8,06,400/-. The Tribunal has applied the multiplier of 17 in view of the judgment delivered by the Hon'ble Apex Court in the case of **"Smt Sarla Verma and Ors Vs. Delhi Transport Corporation and Anr"**, the appropriate

multiplier having regard to the age of deceased Bharat would be of 16. The said has been applied by this Court while determining the amount of dependency compensation. In the aforesaid amount, the non-pecuniary damages to the tune of Rs. 70,000/- will have to be added. By adding the same, the amount of compensation comes to Rs. 8,76,400/-.

14. In the facts and circumstances of the case, it appears to me that this would be the just and fair compensation payable to the claimants. The appellants are thus held entitled for the enhanced compensation of Rs. 4,09,400/-. For the reasons stated above, the following order is passed:

ORDER

- i) The appellants are held entitled for the enhanced compensation of Rs. 4,09,400/-.
- ii) Respondent Nos. 1 and 2 shall jointly or severally pay the enhanced amount of compensation with interest thereon at the rate of 9% p.a from the date of filing of the appeal till its realization.

- iii) Deficit Court fee, if any, be recovered from the claimants.
- iv) The appeal stands allowed in the aforesaid terms.

(P.R. BORA, J.)

Mujaheed//