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

FIRST APPEAL NO.1430 OF 2004

1. Smt. Latabai Ambadas Pawar
Age : 34 years, Occu : Household

2. Master Govind Ambadas Pawar
Age : 15 years, Occu : Education

3. Master Santosh Ambadas Pawar
Age : 13 years, Occu : Education,

4. Kum. Sunita Ambadas Pawar
Age : 10 years, Occu : Education ..**APPELLANTS**
(Original Applicants)

Appellants No.2 to 4 are minors
Through mother and guardian
Appellant No.1

5. Shri Sukhadeo Piraji Pawar
Age : 65 years, Occu : Nil

6. Sou Geetabai Sukhadeo Pawar
Age : 60 years, Occu: Nil

All R/o Yeola road, Kopargaon
Tal – Kopargaon, Dist. Ahmednagar

Versus

1. Shri Ramdas Baburao Kale
Age : Major, Occu : Business
R/o. Panvi, Tal. Vaijapur,
Dist. Aurangabad

2. United India Insurance Com. Limited
Branch – Aurangabad. .. RESPONDENTS
(Original Opponents)

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Shri A.T. Kanwade & Shri Shardul Dev, Advocate for appellants;
Shri S.V. Kulkarni, Advocate for Respondent No.2

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CORAM : P.R. BORA, J.
DATED : 26.09.2018

<u>ORAL JUDGMENT</u> :

1. The claimants in the Motor Accident Claim Petition No.51 of 2002 decided on 19.04.2004 by the Motor Accident Claims Tribunal at Kopargaon (hereinafter referred to as the 'Tribunal') have preferred the present appeal seeking enhancement in the amount of compensation awarded in the said petition by the Tribunal.

2. The appellants (hereinafter referred to as the 'claimants') had filed the aforesaid claim petition claiming compensation on account of the death of Ambadas Pawar alleging the same to have been caused in a road accident having involvement of a tractor bearing registration no.MXC 8798. It was the contention of the claimants that, the accident happened because of the negligence of the tractor driver. It was contended by the claimants that, deceased Ambadas was dashed by the offending tractor when he was proceeding on foot by the side of the road. Age of deceased Ambadas was stated to be 30 years, whereas his monthly income was stated to be Rs.3,000/-. The claimants had claimed the compensation of Rs.4,17,500/-, but has restricted the claim to Rs.2,00,000/- for the purposes of the court fee.

3. The claim petition was contested by the owner as well as insurer of the offending tractor on various grounds.

4. In order to substantiate the contentions raised in the petition, the claimant no.1 deposed before the Court and one more witness by name Khandu Rama Shinde (PW-2) was examined by the claimants in order to prove the income of the deceased. No oral or documentary evidence was adduced by the respondents. The learned Tribunal, after having assessed the oral as well as documentary evidence on record, though determined the amount of compensation to the tune of Rs.4,17,500/- payable to the claimants, awarded the compensation of Rs.2,00,000/- inclusive of the NFL compensation stating that the claimants themselves have restricted the claim to Rs.2,00,000/-. Aggrieved by, the claimants have preferred the present appeal.

5. The learned Counsel appearing for the claimants submitted that, the Tribunal was under an obligation to determine and award the just and fair compensation to the claimants on the basis of evidence on record and should not have restricted the award to the sum of Rs.2,00,000/- on the ground that, the claimants have restricted their claim to that amount. The learned Counsel further

submitted that, the Tribunal has also erred in assessing the amount of dependency compensation. It was contended that, the Tribunal must have held the income of deceased Ambadas at least Rs.3,000/- per month and must have added therein the future prospects and on the said enhanced amount should have determined the amount of dependency compensation. The learned Counsel submitted that, towards the non-pecuniary damage also the Court has awarded unjust and inadequate compensation. The learned Counsel, therefore, prayed for adequate enhancement in the amount of compensation.

6. Shri S.V. Kulkarni the learned Counsel appearing for the respondent – Insurance Company supported the impugned and Award.

7. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have also perused the impugned Judgment and the evidence on record. When the Tribunal had reached to the conclusion that, from the evidence brought on record before it, the claimants had proved their entitlement for the total compensation of Rs.4,17,500/-, it should not have restricted the award to Rs.2,00,000/- on the ground that, the claimants themselves had restricted the claim to that amount. The

Tribunal was under an obligation to determine and grant the just and fair amount of compensation on the basis of evidence on record. It is evident that, the claimants had restricted the claim to Rs.2,00,000/- only for the purposes of payment of court fees. In the circumstances, subject to payment of the deficit court fee by the claimants, learned Tribunal must have awarded the total compensation as was determined by it on the basis of the evidence on record. The Tribunal has grossly erred in awarding the compensation of Rs.2,00,000/- on the ground that, the claim was restricted to that extent by the claimants.

8. It was the contention of the claimants that, deceased Ambadas was 32 years old on the date of accident and used to earn Rs.800/- to Rs.1000/- per week. PW-1 Latabai widow of deceased Ambadas had deposed before the Tribunal that, deceased Ambadas used to earn Rs.800/- to Rs.1000/- per week and that he was doing the labour work of excavation of soil. Admittedly, no documentary evidence was produced and could not have been produced by the claimants. The Tribunal has, however, held the income of deceased Ambadas to the tune of Rs.2,400/- i.e. Rs.28,800/- per annum and deducting 1/3rd amount from the same has assessed the dependency of the claimants on the said amount i.e. Rs.19,000/- per annum. By

applying the multiplier of 17, the Tribunal has determined the dependency compensation to the tune of Rs.3,23,000/-.

9. The Tribunal, though has rightly held the income of deceased to the tune of Rs.2,000/- per month, has erred in not considering the future prospectus of the deceased. Deceased was admittedly of the age of 32 years and was in the private employment. In the circumstances, 40% of his existing income must have been added in his monthly income and the amount of dependency compensation ought to have been worked out on that amount. Considering the income of deceased Ambadas to the tune of Rs.2000/- per month on the date of accident, 40% of his said income has to be added in his monthly income on the date of accident and the dependency compensation will have to be assessed on that amount, which comes to Rs.2,800/- per month i.e. Rs.33,600/- per annum. Having regard to the number of dependents on the income of the deceased, only 1/4th of his total income would be liable to be deducted from his total income towards his personal expenses and the remaining amount can very well be held to be available with the deceased to be spent on his dependents, which comes to Rs.25,200/-. Having regard to the age of the deceased, the appropriate multiplier in the present case would be of 17 and by applying the said

multiplier, the dependency compensation comes to Rs.4,28,400/-. In addition to the aforesaid amount, the claimants were also entitled to be granted a further sum of Rs.25,000/- towards non-pecuniary damages. The appellants are, thus, found entitled for the total compensation of Rs.4,53,400/-. In the facts and circumstances of the case, it appears to me that, this should be the fair and just compensation payable to the appellants - claimants jointly and severally from respondent nos.1 & 2. The amount of Rs.2,00,000/- awarded by the Tribunal as compensation to the claimants, thus, need to be enhanced to Rs.4,53,400/-.

10. For the reasons stated above, the following order is passed.

ORDER

(i) The appeal is partly allowed.

(ii) The appellants are held entitled for the enhanced compensation of Rs.2,53,400/- jointly and severally from respondent nos.1 and 2 along with the interest thereon at the rate of 9% per annum from the date of filing of the appeal till its realization.

(iii) Since by this time, the minor claimants must have been attained majority, I do not find it necessary to pass any order as about the deposit of any amount in the Fixed Deposit Receipt.

(iv) Award be modified to the aforesaid extent.

(v) Deficit court fee be recovered from the claimants.

(vi) Pending Civil Application, if any, stands disposed of.

(P.R. BORA)
JUDGE

ggp