IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1423 OF 2003

1. Smt. Kausalyabai w/o Jugalkishor Zanwar
age 50 years, occ. household
r/o 3476, Tel Girani Chowk
At Post Tq. Barshi, Dist. Solapur.

2. DAttaprasad s/o Jugalkishor Zanwar
age 26 years, occ.student
r/o as above.

3. Manojkukmar s/o Jugalkishor Zanwar
age 20 years, occ.student
r/o as above.

4. Chandmal s/o Bhuramal Zanwar
age 70 years, occ. nil
r/o as above.

5. Sow. Champabai w/o Chandmal Zanwar
age 68 years, occ. nil
r/o as above. Appellants

Versus

1. Maharashtra State Road Transport
Corporation,
Head Office : Vahtuk Bhavan
Dr.Nayar Marg,
Bombay 400 008.

2. The Divisional Collector
Maharashtra State Road Transport
Corporation,
Divisional Office, Solapur

3. Sow Anjali w/o Navnit Lahoti
age 28 years, occ. household

r/o Bhakti Apartment, Geeta Dham
Bhavani Peth, Solapur

4. Sow. Bharati w/o Dilip Bhattad
age 26 years, occ. household
r/o Rashtra Bhushan chowk
Pune ... Respondents

Mr. S.V.Natu, advocate for appellants.

CORAM : M.S.SONAK, J.
DATE : 11th January, 2018.

ORAL JUDGMENT :

1 Heard Mr.S.V.Natu, learned Counsel for appellants. Respondents, though served, neither present personally nor through any representative of their advocate.

2 The appellants have instituted this appeal complaining about inadequacy of compensation in award dated 18.08.2003 made by the MACT, Osmanabad. The claim was raised by the appellants on account of demise of Jugalkishor in motor accident on 31.01.1994.

3 Mr.Natu, learned Counsel for the appellants, submits that income tax returns were produced on record to establish income of the deceased. As per income tax returns for the years 1991, 1992 and 1993, income of the deceased was Rs.45,065/-, Rs.49,282/- and Rs.51,872/-. On this basis, average income of the deceased could have been taken as Rs.48,000/- per year and not Rs.43,000/-, per year. Mr.Natu submits that in this case, since,

the deceased was survived by five dependents, the deduction towards personal expenses of the deceased should have been taken to the extent of 1/4th and not 1/3rd, as has been held in the impugned award. Besides, Mr.Natu submits that no addition has been made towards future prospects and in terms of the Constitution Bench decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi & others**, 2017 (13) SCALE 12, it should have been 25%. He points out that no award has been made towards funeral expenses. For all these reasons, Mr.Natu submits that the compensation awarded by the MACT warrants substantial enhancement.

4 With the assistance of Mr.Natu, I have perused the impugned award as also Record & Proceedings. The impugned award itself takes cognizance of income tax returns of the deceased. However, when it comes to calculations, yearly income of the deceased has been taken as Rs.43,000/- when the average income of the deceased would come to Rs.48,000/- per year. To that extent, the impugned award requires to be modified.

5 There is no addition made to the annual income towards future prospects. Applying the law laid down by the Supreme Court in **Pranay Sethi** *(supra),* addition towards future prospects was due and this takes yearly income of the deceased to Rs.60,000/-. Mr.Natu is right in his submission that the deduction towards personal expenses would not have been 1/3rd, but would have been required to be restricted to 1/4th . This means that out of annual income of Rs.60,000/-, deduction of Rs.15,000/- is due and that would take contribution of the

deceased. The contribution towards dependency thus comes to Rs.40,000/- per year. In this case, there is no dispute that the multiplier would come to Rs.13. On this basis compensation towards dependency will have to be computed at Rs.45,000/- x 13 = Rs.5,85,000/-. In addition, compensation of Rs.5000/- towards funeral expenses is due taking into consideration the fact that the deceased died in the year 1994. This takes the compensation amount to Rs.5,90,000/-. The MACT has already awarded compensation of Rs.25,000/- towards loss of consortium.

6 Upon addition of all these amounts, total compensation amount comes to Rs.6,15,000/-. The impugned award is, therefore, liable to be modified and is hereby modified. The compensation is determined at Rs.6,15,000/- in substitution of Rs.3,97,671/-. This shall be inclusive of the amount already paid towards no fault liability. The appellants shall be entitled to the interest @ 9% p.a. on the substantial amount, as awarded by the MACT. The Award is modified accordingly.

7 The appeal is partly allowed in aforesaid terms. There shall be no order as to costs.

M.S.SONAK
JUDGE

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