

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

FIRST APPEAL NO.731 OF 2005

United India Insurance Co. Ltd.
Latur, through its Divisional Manager
and Authorised Representative and
Signatory, Nanded Divisional Office,
Guru Complex, G.G. Road, Nanded,
District Nanded

... APPELLANT

VERSUS

1. Sunanda w/o Ram Ghare
Age 28 years, Occu. Household,
R/o Hasarni, Tq. Ahmedpur,
at present at Dhalegaon,
Tq. Ahmedpur, District Latur.
2. Swapnil s/o Ram Ghare,
Age 8 years, minor u/g of
real mother respondent No.1
3. Amit Mukesh Saste,
Age 22 years, Occu. driver,
R/o Vidhya Nagar, Alibag,
Tq. Alibag, District Raigad
4. Vijay s/o Krishan Kadam,
Age 40 years, Occu. Business,
R/o Koliwada, Behind Bhaji Market,
Alibag, Tq. Alibag,
District Raigad.

... RESPONDENTS

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Shri A.B. Gatne, Advocate for appellant
Shri A.B. Tele, Advocate for respondent No.1.
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CORAM: A.M. DHAVALÉ, J.

DATED : 10th August, 2018.

ORAL JUDGMENT :

1. This is an appeal by the Insurance Company against the grant of excessive compensation of Rs.6,97,000/- with interest @ 6% p.a. As per the record, on 14.10.1997, at 10.00 p.m., Ram Daulat Ghare, while proceeding from Wadkhel Naka to Alibag by Maruti Van bearing No.MH-06-4610, driven by respondent No.3 and owned by respondent No.4, met with an accident due to rashness and negligence by the Driver. Ram Ghare was injured and taken to the hospital at Panvel. He suffered first amputation and thereafter he succumbed to the injuries on 10.11.1997 at Sion Hospital, Mumbai. It was claimed that, he was Supervisor, drawing salary of Rs.10,000/- per month. Learned Member, Motor Accident Claims Tribunal, Udgir Camp at Ahmedpur held that the deceased was aged 32 years. As he had no documents of ownership, his income was taken at Rs.3000/- p.a. Personal deductions were not made and, therefore, excessive compensation has been awarded. The multiplier of 17 was applied. While passing the final award, no reference was made towards deduction of N.F.L. Amount of Rs.50,000/-.

2. Mr. Gatne, learned Advocate for the appellant submits that, as per the case of **Sarla Verma (Smt.) & ors. Vs. Delhi Transport Corporation & anr. reported in [(2009) 6 SCC 121]**, the multiplier was 16, and there should have been one third deduction towards personal expenditure; the N.F.L. Amount should have been deducted while granting the final compensation.

3. Learned Advocate for the respondent does not dispute that the multiplier applicable was 16 and there should have been personal deductions of one third. He submits that, the amount of compensation awarded under conventional head is on lower side.

4. Considering the arguments, the point for my determination is :

“Whether the claimants have been awarded excessive compensation ?” I answer it in the affirmative.

5. The deceased was aged 32 years. His income was rightly held at Rs.3000/- per month. The accident had taken place on 14.10.1997 and there is no documentary evidence of his

occupation or income. Therefore, the said assumption is just and proper. There were two dependents. Therefore, the income will have to be reduced by one third towards personal expenses of the deceased. Therefore, the loss of income will be Rs.2000/- per month i.e. Rs.24,000/- p.a. With multiplier of 16, the loss of income would be Rs.3,84,000/-. In addition, the learned trial Judge has awarded Rs.25,000/- towards medical expenses and Rs.5000/- towards transportation. The evidence shows that, the deceased was first taken from Vadkhel Naka to Panvel and thereafter to Sion Hospital, Mumbai. He died after about 25 days. The trial Court has awarded medical expenses of Rs.25,000/- and transportation expenses of Rs.5000/-. There is no need to interfere in the same. However, he has awarded Rs.25,000/- towards loss of Consortium, Rs.25,000/- towards loss of love and affection and Rs.5000/- for funeral expenses. As per the case of **National Insurance Company Limited Vs. Pranay Sethi & ors.**, reported in [**(2017) 16 Supreme Court Cases 680**], the claimants are not entitled for the loss under the head "loss of love and affection" but the claimants are entitled for compensation of Rs.40,000/- for loss of Consortium and Rs.15,000/- for loss of company and Rs.15,000/- for funeral expenses. The total of Rs.70,000/-. Thus, on including this figure, the total amount payable would be Rs.4,84,000/-. I agree that the N.F.L. amount is to be deducted.

6. Hence, the appeal is partly allowed. The judgment and decree passed by learned trial Court in Motor Accident Claim Petition No.179/1999(Old) (24/2002- New) is modified and respondents No.1 to 3 are directed to jointly and severally pay to the claimants Rs.4,84,000/- inclusive of N.F.L. amount, along with interest @ 6% p.a. In the facts and circumstances, the parties shall bear their own costs. Out of the amount deposited, the amount payable to the claimants be paid by cheque and the balance amount, if any, shall be refunded to the Insurance Company.

(A.M. DHAVALA)
JUDGE

fmp/