

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

1 FIRST APPEAL NO. 891 OF 2012

1 Smt.Usha W/do. Preetam Barkate
Age: 23 years, Occu.: Household,
R/o.: Gondegaon, Tq. and Dist.Latur,
At present R/o. Takalgaon, Tq. and
Dist.Latur.

2 Rohini D/o Preetam Barkate
Age: 02 years, Occu.: Nil,
U/g of real mother i.e.
appellant No.1

..Appellants
(Orig. Claimants)

Versus

1 Shivram @ Shivraj S/o Trimbak Bidwe
Age: 30 years, Occu.: Driver,
R/o. Ramegaon, Tq. And Dist.Latur.

2 Rajkanya W/o. Sandeep Shinde
Age: 32 years, Occu.: Business,
R/o. Gangapur, Tq. And Dist.Latur.

3 The Manager,
Oriental Insurance Company Ltd.
Branch Office at Latur.

4 Narsing S/o Lima Barkate
Age: 55 years, Occu.: Agril.,
R/o. Gondegaon, Tq. & Dist.Latur.

5 Sow. Satwarbai W/o Narsing Barkate
Age: 50 years, Occu.: Household,
R/o. Gondegaon, Tq. and Dist.Latur.

..Respondents
(Orig. Respondents)

...

Advocate for Appellants :Shri R.K.Ashtekar
Advocate for Respondent No.1 & 2 : Shri Ajay T. Kanawade
Advocate for Respondent No.3 : Shri Arun G. Kanade

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CORAM : P.R.BORA, J.

DATE: 26th October, 2018

ORAL JUDGMENT:-

1. The claimants in Motor Accident Claims Petition No.163 of 2011, decided by the Motor Accident Claims Tribunal at Latur on 06.02.2012, have preferred the present appeal seeking enhancement in the amount of compensation as has been awarded by the said Tribunal.

2. The appellants, who are hereafter referred to as the claimants, had filed the aforesaid claim petition claiming compensation on account of death of Pritam Barkate in a vehicular accident happened on 19.02.2011. It was the contention of the claimants that deceased Pritam when was proceeding on foot was dashed by Tractor bearing registration No.MH-24 D-5991 coming from his back, and in the accident so happened, he died on the spot itself. As stated in the petition, the age of deceased Pritam on the date of accident was 24 years. According to the claimants, deceased Pritam was earning Rs.150/- per day. It was alleged by the claimants that the accident happened because of negligence of the Tractor driver. The claimants had claimed compensation of Rs.5,00,000/- from the owner and

insurer of the said Tractor. The claim petition was resisted by the respondent Insurance Company on various ground. The Tribunal after having assessed oral and documentary evidence brought before it, held the claimants entitled for the compensation of Rs.3,41,400/- inclusive of no fault liability compensation jointly and severally from the owner and insurer of the Tractor. Dissatisfied by the Judgment and award so passed, seeking enhancement in the amount of compensation, the appellants have preferred the present appeal.

3. Shri R.K.Ashtekar, learned Counsel appearing for the claimants submitted that though, it was a specific plea raised by the claimants that deceased Pritam was working as labour and used to earn Rs.150/- per day, the Tribunal without assigning any reason, has discarded the said evidence and has held the income of the deceased only to the extent of Rs.80/- per day. The learned Counsel further submitted that the Tribunal has also applied the wrong multiplier. The learned Counsel further submitted that the Tribunal has also not awarded adequate compensation towards non-pecuniary damages.

4. Learned Counsel for the owner of the vehicle supported the impugned Judgment and award.

5. Shri A.G.Kanade, learned Counsel appearing for the respondent Insurance Company also supported the impugned Judgment and award. The learned Counsel submitted that a well reasoned order is passed and no interference is required in the order so passed.

6. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. As has been noted herein above, the enhancement in the amount of compensation is sought on two grounds; first that the income of the deceased must have been held to the tune of Rs.4,500/- per month, second that the non-pecuniary damages are not adequately determined. First, I would deal with the aspect of income of the deceased. Though, it was the contention of the appellants – claimants that deceased used to earn Rs.150/- per day, as has been observed by the Tribunal, no concrete evidence was placed on record by the claimants to prove the same. The learned Tribunal, in the absence of any evidence brought on record by the claimants, has held the income of the deceased to the tune of Rs.80/- per day.

7 It is evident that the Tribunal has assumed the income of deceased Pritam, applying the criteria of notional income of the person carrying out the labour work. The Tribunal has apparently held the income of the deceased on lower side. Even by applying criteria of notional income, the Tribunal could not have determined the income of deceased Pritam less than Rs.3,000/-. While determining the amount of dependency compensation, law is now well settled that the future prospects of the deceased are to be considered. Having regard to the fact that the deceased was not in any permanent employment, I deem it appropriate to add 30% of his existing income in his proved monthly income so as to assess the amount of compensation payable to his dependents. The said amount comes to Rs.46,800/- ($\text{Rs.3,000} \times 12 = \text{Rs.36,000} + 30\% \text{ of it i.e. Rs.10,800} = \text{Rs.46,800}$). Having regard to the number of dependents on the income of the deceased, 1/3rd of his income has to be deducted towards his personal expenses from his total income. Deducting the said amount, the balance remains of Rs.31,200/- ($\text{Rs.46,800} - \text{Rs.15,600} = \text{Rs.31,200}$), on the basis of which the amount of dependency compensation can be worked out. Having regard to the age of the deceased, the multiplier of 18 would apply. Applying the said multiplier, the amount of compensation comes to

Rs.5,61,600/-. In addition to the aforesaid amount, the claimants are also entitled for a sum of Rs.70,000/- towards non-pecuniary damages. Adding the said amount, the total compensation comes to Rs.6,31,600/-. In the facts and circumstances of the case, this would be the just and fair compensation payable to the claimants. The claimants are thus found entitled for the enhanced compensation of Rs.2,90,200/-. In the result, the following order is passed:-

ORDER

I) The claimants are held entitled for the enhanced compensation of Rs.2,90,200/-.

II) The respondent Nos.1, 2 and 3 shall jointly and severally pay the enhanced amount of compensation to the tune of Rs.2,90,200/- to the claimants with interest thereon @ 9% p.a. from the date of filing of appeal till its realization.

III) 40% of the total amount of compensation be invested in the name of applicant No.2 – original claimant No.2 namely Rohini Pritam Barkate for the period till she

attains age of majority. Balance amount be paid to claimants No.1 - Smt.Usha Barkate.

IV) The deficit of Court fee, if any, be recovered from the appellants.

V) The appeal stands allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

SPT