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

FIRST APPEAL NO.2918 OF 2008

The Oriental Insurance Co. Ltd
Divisional Office 1st Floor,
Shivaji Shopping Centrem
Opp. Civil Hospital, Himmat Nagar,
Jalgaon, Dist. Jalgaon
Through it's Sr. Divisional Manager
at Aurangabad .. **APPELLANT**
(Original Respondent No.2)

VERSUS

1. Smt. Chhayabai w/o. Tukaram Banait
Age : 40 yrs, Occu : Household work,

2. Kum. Komal Tukaram Banait
Age : 17 yrs, Occu : Education

3. Kum Kajal Tukaram Banait
Age : 12 yrs, Occu : Education

4. Master Vaibhav Tukaram Banait
Age : 10 yrs, Occu : Education

Petitioner Nos.2 to 4 Minors, through
Their Guardian Mother Petitioner No.1

5. Rambhau Nago Banait
Age : 73 yrs, Occu : Nil,
(All R/o. D-22/1, M.S.E.B. Colony,
Deepnagar, Bhusawal, Dist. Jalgaon) .. Original Petitioners

6. The Manager,
M/s. Chartered Carriers Ltd.
Tokarwadam Silvasa, Dadra & Nagarhaveli .. **RESPONDENTS**
(Orig. Respondent No.1)

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Advocate for Appellant : Shri A.S. Deshpande
Advocate for Respondents No.1 to 5 : Shri M.M. Bhokarikar
Respondent No.6 – Served.

WITH

FIRST APPEAL NO.2798 OF 2010

1. Smt Chhayabai w/o Tukaram Banait
Age : 40 yrs, Occu : Household

2. Ku. Komal Tukaram Banait
Age : 17 yrs, Occu : Education

3. Kum. Kajal Tukaram Banait
Age : 12 yrs, Occu : Education

4. Chi. Vaibhav Tukaram Banait
Age : 10 yrs, Occu : Education

(Applicant Nos.2 to 4 are minor
Applicant no.1 is the mother of applicant
nos.2 to 4 and is their natural and legal
guardian)

5. Shri Rambhau Nago Banait
Age : 73 yrs, Occu : Nil
All Applicants are residing at D 22/1,
MSEB Colony, Deep Nagar, Bhusawal,
Tal. Bhusawal, Dsit. Jalgaon … **Appellants**
(Orig. Claimants)

VERSUS

1. The Oriental Insurance Co. Ltd
Divisional Office 1st Floor,
Shivaji Shopping Centrem, Opp. Civil Hospital,
Himmat Nagar, Jalgaon, Dist. Jalgaon
Through its Senior Divisional Manager,
Aurangabad .. **Opponent**
(Orig. Opponent)

2. The Manager
M/s Chartered Carriers Ltd
Tokarwadam Silvasa, Dadra and
Nagarhaveli .. **Opponents**

Shri M.M. Bhokarikar, Advocate for the appellants
Shri A.S. Deshpande, Advocate for Respondent No.1
Respondent No.2 – served.
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CORAM : P.R. BORA, J.
Dated: October 11, 2018

ORAL JUDGMENT :

1. Both these appeals are arising out of the Judgment and Award passed by the Motor Accident Claims Tribunal at Jalgaon in Motor Accident Claim Petition No.22 of 2002 decided on 31.05.2007. I have, therefore, heard the common arguments in both the appeals and I deem it appropriate to decide these appeals by a common reasoning.

2. First Appeal No.2918 of 2008 is filed by the Insurance Company, whereas First Appeal No.2798 of 2010 is filed by the Orig. claimants. The appellants in First Appeal No.2798 of 2010 are hereinafter referred to as the claimants, whereas the appellant in First Appeal No.2918 of 2008 is hereinafter referred to as the Insurance Company.

3. The claimants had filed the aforesaid claim petition claiming compensation on account of the death of Tukaram

Rambhau Banait alleging the same to have been caused in a vehicular accident happened on 25.11.2002 having involvement of a truck bearing Registration No.DN-09-9471 owned by respondent no.1 in both these appeals and insured with the Insurance Company.

4. It was the contention of the claimants that, deceased Tukaram while was proceeding on his motorcycle bearing Registration No. MH-19-D-9695 from Icchadevi Chowk towards Dandenagar, Pimprala was dashed by the offending truck and in the accident so happened died on the spot. At the relevant time, the mother of deceased Tukaram namely Gayabai was the pillion rider on the motorcycle and she also suffered the death in the said accident. The claimants had alleged that, the accident in question happened because of the sole negligence on part of the driver of the offending truck. The claimants had, therefore, claimed the compensation of Rs.40 Lakhs from the driver, owner and the insurer of the offending truck.

5. The owner of the offending truck though was duly

served, did not cause his appearance in the matter and the petition was proceeded *ex-parte* against him. The Insurance Company filed its written statement and resisted the petition on various grounds.

6. As stated in the petition, deceased Tukaram was 42 years old on the date of accident and was serving as an Engineer in the Thermal Power Station at Deepnagar. The salary of the deceased was stated to be Rs.40,000/- per month. It was also contended by the claimants that, deceased was having the income of Rs.25,000/- per annum from the agriculture land owned by him.

7. In order to substantiate the contentions raised in the petition, one of the claimants deposed before the Tribunal and the documentary evidence was also placed on record. The claimants placed on record the certified copies of the relevant police papers in the criminal case filed in connection with the accident in question. The salary slip of the deceased for the month of October – 2001 was also placed on record. The claimants had also examined the clerk from Thermal Power

station, Deepnagar to prove the salary of the deceased.

8. The Insurance Company had denied and disputed the age as well as the income of the deceased and accordingly the witnesses examined on behalf of the claimants were cross-examined by the Insurance Company. The Insurance Company, however, did not adduce any oral or documentary evidence on its behalf.

9. The learned Tribunal, after having assessed the oral and documentary evidence brought on record before it, held the claimants entitled for the total compensation of Rs.18,25,000/- inclusive of the NFL compensation and held the owner and insurer of the offending truck responsible to pay the said amount jointly and severally to the claimants along with the interest at the rate of 7.5% per annum from the date of filing of the petition till its realization.

10. Dissatisfied with the amount of compensation so awarded by the Tribunal, the claimants have preferred the

appeal seeking enhancement in the amount of compensation, whereas disputing the amount of compensation awarded by the Tribunal and alleging the same to have been arbitrarily awarded, the Insurance Company has also filed an appeal.

11. Shri A.S. Deshpande, learned Counsel appearing for the Insurance Company submitted that, the Tribunal has grossly erred in determining the amount of compensation holding the income of the deceased to the tune of Rs.30,000/- per month. The learned Counsel further submitted that, the deduction from the salary amount have not been appropriately considered by the Tribunal while assessing the amount of compensation. The learned Counsel further submitted that, the Tribunal has also erred in applying the multiplier of 15, whereas having regard to the age of the deceased the appropriate multiplier would have been of 14.

12. The learned Counsel further submitted that, in the present matter, while assessing the amount of dependency compensation, several factors were liable to be considered and

the theory of split multiplier must have been adopted by the Tribunal considering that, the claimants were also entitled for the amount of pension. On this count, the modification is sought by the Insurance Company in the impugned Judgment.

13. Learned Counsel further submitted that, the Tribunal has erred in holding the annual income of Rs.12,000/- to the deceased from the agriculture land. The learned Counsel submitted that, even after the death of deceased Tukaram, the income from agriculture land must have been continued. As such the said income was not liable to be considered while assessing the dependency of the claimants on the income of the deceased. In the circumstances, it is prayed that, the Award needs to be suitably modified and the amount of compensation needs to be decreased accordingly.

14. As against it, Shri Bhokarikar learned Counsel appearing for the claimants submitted that, the Tribunal has grossly erred in making wrongful deductions from the salary amount of the deceased, which has resulted in decreasing the

amount of dependency compensation. The learned Counsel inviting my attention to the salary slip submitted that, the contribution paid towards GPF or any other contribution could not have been deducted from the salary amount. The learned Counsel submitted that, the amount paid towards the profession tax and income tax were only liable to be deducted from the salary income of the deceased and the amount of compensation was liable to be calculated on the basis of the remaining amount. The learned Counsel further submitted that, the Tribunal has also erred in not considering the future prospectus of the deceased. Relying on the Judgments in **Sarla Verma Vs. DTC, (2009) 6 SCC 121,** and **National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 Supreme Court Cases 680** delivered by the Hon'ble Apex Court, the learned Counsel submitted that, 30% of the total income of the deceased was liable to be added in his existing income and on that basis the dependency compensation must have been assessed by the Tribunal. The learned Counsel further submitted that, having regard to the number of dependents on the income of the deceased, ¼ amount only was liable to be deducted towards his personal expenses, whereas the Tribunal has deducted 1/3rd of the said amount. The learned Counsel further submitted that, the Tribunal has also not appropriately awarded the non-pecuniary damages. The learned Counsel further contended that, though there was evidence brought on record as about the agriculture land in the name of deceased, the same has not been appropriately considered by the Tribunal, while computing the amount of dependency compensation. On these grounds, the learned Counsel has sought enhancement in the amount of compensation as has been awarded by the Tribunal.

15. 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.

16. It is not in dispute that, deceased Tukaram was in the age of group of 40 to 45. His date of birth has come on record, from which, it can be gathered that, he was aged about 42 years. It is further not in dispute that, he was serving as an

engineer in Thermal Power Station at Deepnagar. The salary slip for the month of October-2001, which can be said to be the last month's salary of the deceased, is placed on record. On perusal of the said salary slip (Exh.44), it is revealed that, the basic pay of deceased Tukaram was Rs.12,155/- and DA for the said month was of Rs.4,612/-. In the salary slip at Exh.44 deceased Tukaram is also shown to have received conveyance allowance, electricity allowance, fringe benefit allowance and special compensation allowance. Since the amounts received under the aforesaid heads were the personal benefits to the deceased for the particular month, the same cannot be held to be part of his monthly salary, which was being paid by him for maintaining himself and his family. From the evidence on record, the salary amount which deserves to be taken into account his basic pay of Rs.12,155/- and dearness allowance to the tune of Rs.4610/-. Total of which comes to Rs.16,765/-. In the salary slip though deductions are shown under various heads, for the purpose of assessing compensation, the only amounts which are liable to be deducted from the salary amount of the deceased are the amount of profession tax and amount of income tax. Under both the heads, Rs.200/- each are shown to have been deducted. Thus, the only said amount of Rs.400/- would be liable to be deducted and by deducting the same the monthly salary of deceased Tukaram has to be held Rs.16,365/- for the purpose of determining the amount of compensation payable to the legal heirs of the deceased.

17. In view of the law laid down by the Hon'ble Apex Court in the case of **Sarla Verma** and reiterated in the **Pranay Sethi's** case, while assessing the amount of dependency compensation, the future prospectus of the deceased are liable to be considered. In view of the law laid down in the aforesaid Judgments, deceased Tukaram being in the government employment and in the age group of 40 to 45, 30% of his existing income was liable to be added in his monthly income so as to arrive at the prospective income of the deceased for the purposes of assessing the amount of dependency compensation, which comes to Rs.21,275/-.

18. Having regard to the number of dependents on the income of deceased Tukaram, only ¼ of his total income was

liable to be deducted. Deducting the said amount towards his personal expenses, the dependency compensation can be calculated on the remaining amount of Rs.15956/-. Considering the age of deceased Tukaram, the appropriate multiplier will be of 14. By applying the said multiplier, the amount of dependency compensation comes to Rs.26,80,608/-. It has to be stated that, though the Tribunal has held the agriculture income to the extent Rs.12,000/- per annum while determining the amount of dependency compensation, I am not agreeing with the conclusion so arrived at by the Tribunal. I find substance in the argument advanced on behalf of the Insurance Company that, when the agriculture land continues to exist and the income from the agriculture land also continues and since there is no concrete evidence as about any decrease in the said amount, such income was not liable to be considered as the pecuniary loss to the dependents of deceased Tukaram. I have, therefore, kept the said amount out of consideration while determining the amount of dependency compensation. In the aforesaid amount, the amount of Rs.70,000/- is liable to be added towards the non-pecuniary damages. Adding the said amount, total amount of compensation comes to Rs.27,50,608/-. In the facts and circumstances of the case, it appears to me that, this would be just and fair compensation payable to the claimants in the present case.

19. It was vehemently submitted by Shri Deshpande the learned Counsel appearing for the Insurance Company that, the amount being received to the legal heirs of deceased Tukaram by way of pension was liable to be considered while assessing the amount of compensation. The arguments so made is liable to be rejected. Death of a person in any accident or otherwise is immaterial as the widow and minor children are in any case, entitled to receive the family pension as of right on the death of such person. There is no other significant ground raised by the Insurance Company in exception to the impugned Judgment and Award.

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

ORDER

(i) First Appeal No.2918 of 2008 is dismissed with costs.

(ii) First Appeal No.2798 of 2010 is partly allowed in the following terms:

(a) The appellants-claimants are held entitled for the enhanced compensation of Rs.9,25,608/- jointly and severally from respondent nos.1 and 2 (Orig. respondent nos.1 & 2) with interest thereon at the rate of 9% per annum from the date of filing of the claim petition till its realization.

(b) The enhanced amount of compensation be apportioned amongst appellants – claimants in the same proportion as was apportioned by the Tribunal in the impugned Judgment and Award.

(c) The amount of compensation, if any, deposited by the Insurance Company in this Court, is permitted to be withdrawn by the claimants, if already not withdrawn.

(d) Deficit Court fee, if any, be recovered from the appellants-claimants.

(e) Award be drawn accordingly.

(P.R. BORA, J.)

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