

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

**947 FIRST APPEAL NO. 2176 OF 2012
WITH CA/13964/2012 IN FA/2176/2012**

The Chief Officer,
Latur Municipal Council,
Latur, District Latur
(Now The Municipal Corporation
Latur, District Latur,
Through its Commissioner).

..Appellant
(Ori. Opp.No.1)

Versus

1. Daivashala w/o Ramling Dhappadhule
Age: 40 years, Occu.: Household.
2. Ramling s/o Baburao Dhappadhule
Age: 43 years, Occu.: Service.
3. Omprakash s/o Ramling Dhappadhule
Age: 12 years, Occu.: Education
(Minor u/g of real father claimant No.2)

All R/o.Murud,
Tq. and District Latur.

.. (Ori. Claimants)

4. United India Insurance Co. Ltd.,
Through its Branch Manager,
Branch at Latur, District Latur.

..(Ori. Opp.No.2)
..Respondents

...
Advocate for Appellant : Shri Mahesh S. Patil
Advocate for Respondent No.1 : Shri B.R.Kedar
Advocate for Respondent No.4 : Shri S.V.Kulkarni
Respondent Nos.2 & 3 are served.

...
CORAM : P.R.BORA, J.
DATE: 27th September, 2018

ORAL JUDGMENT:-

1. The appellant has filed the present appeal challenging the

Judgment and award passed in Motor Accident Claim Petition No.77 of 2011 decided on 07.08.2012 by the Motor Accident Claims Tribunal at Latur.

2. The present respondent Nos.1 to 3 had filed the aforesaid claim petition under Section 166 of the Motor Vehicles Act, claiming the compensation on account of death of Shivprasad Dhappadhule alleging that the same has been caused in a vehicular accident happened on 18.12.2010 having involvement of a Tractor bearing registration No.MH-24-8233 owned by the present appellant and insured with the present respondent No.4. It was the contention of the respondent Nos.1 to 3 (hereinafter referred to as 'the claimants') that the accident had happened because of sole negligence of driver of the offending Tractor. Deceased was proceeding on his Motorcycle and was dashed from his behind by the offending Tractor. The claim petition was opposed by the original respondent No.1 i.e. owner of the Tractor and insurer of the Tractor. The respondent Insurance Company had taken a defence of not holding a valid licence by the driver of the offending Tractor and thus prayed for exonerating the Insurance Company from indemnifying the insured. The Municipal Council also had raised several objections. The learned Tribunal, after having considered the oral as well as

documentary evidence brought on record, held the claimants entitled for the total compensation of Rs.3,25,000/- and directed the Insurance Company to first pay the said amount of compensation and then to recover the same from Municipal Council, Latur. Aggrieved by, the Municipal Council has preferred the present appeal.

3. During the pendency of the present appeal, Latur Municipal Council has become Latur Municipal Corporation. The learned Counsel, Shri Mahesh S.Patil appearing for the appellant Corporation assailed the impugned Judgment mainly on the ground that the Tribunal must not have passed the order of pay and recover. The learned Counsel submitted that the licence of the driver, who was driving the offending Tractor at the relevant time, was immediately renewed two days after the alleged accident. The learned Counsel submitted that prior to that, he was holding valid driving licence and merely because the same was not renewed within the given period, no such conclusion can be arrived at that the said driver was incompetent to drive the vehicle. The learned Counsel submitted that in the circumstances, the Tribunal must have held the appellant Corporation entitled to be indemnified by the Insurance Company fully and no order of pay and recover could have been

passed in such case. The learned Counsel also assailed the impugned Judgment on the quantum of compensation. The learned Counsel submitted that without there being any evidence on record, explicitly relying on the statement of claimants that deceased was earning salary of Rs.5,000/-, the same income has been held to have been proved to be the income of the deceased and on the same amount, compensation has been determined by the Tribunal. Learned Counsel submitted that on both these counts, the impugned Judgment and award deserves to be quashed and set aside.

4. Shri S.V.Kulkarni, learned Counsel appearing for the respondent Insurance Company resisted the submissions made on behalf of the appellant Corporation. The learned Counsel submitted that breach as was committed by the insured was apparent at the face of the record. The learned Counsel submitted that admittedly, the driver of the offending Tractor was not holding any licence on the date of accident. In the circumstances, the breach committed by the owner of the vehicle as alleged by the Insurance Company was held to have been proved by the Tribunal. The learned Counsel submitted that in fact no liability could have been saddled on the Insurance Company to pay the amount of compensation first. The learned

Counsel submitted that no interference is required in the order so passed.

5. Shri B.R.Kedar, learned Counsel appearing for the claimants submitted that the Tribunal has rightly passed the order directing the Insurance Company first to pay the amount of compensation and then to recover the same from the owner of the offending Tractor and no interference is called for in finding recorded by the Tribunal. The learned Counsel relying upon the Judgment in the case of ***Jitendra Khimshankar Trivedi and others Vs. Kasam Daud Kumbhar and Others, [(2015) 4 Supreme Court Cases, 237]*** submitted that though the claimants have not preferred any appeal against the impugned Judgment and award, when from the impugned Judgment it is apparently appearing that the Tribunal has not awarded just and fair compensation payable to the claimants, the mistake so committed by the Tribunal can be corrected by this Court in the present appeal. The learned Counsel pointed out that the learned Tribunal while assessing the dependency compensation has deducted 2/3rd amount towards personal expenses of the deceased, which is impermissible in law. It is well settled that when the dependency of parents is required to be determined, half of the amount is liable to be deducted towards personal expenses and dependency compensation is liable to be assessed on the basis

of balance 50% of the income of the deceased. The learned Counsel pointed out that the monthly income of the deceased has been properly considered to the tune of Rs.5,000/- per month and accordingly annual income comes to Rs.60,000/- and deducting half of the said income, dependency compensation must have been assessed by the Tribunal by applying appropriate multiplier. The learned Counsel submitted that by deducting half of the income of the deceased towards his personal expenses, dependency compensation for which the claimants are entitled comes to Rs.5,40,000/- (Rs.30,000 x 18 = Rs.5,40,000/-). The learned Counsel submitted that in view of the Judgment of the Hon'ble Apex Court, this Court in the present appeal can enhance the amount of compensation to the aforesaid extent. The learned Counsel further submitted that towards non-pecuniary damages, the Tribunal has awarded meager sum of Rs.15,000/- and even that deserves to be adequately enhanced.

6. I have carefully gone through the Judgment relied upon by Shri B.R.Kedar, learned Counsel in the matter of ***Jitendra Khimshankar Trivedi and others*** (supra). The learned Counsel appearing for the Insurance Company and learned Counsel appearing for the appellant Corporation also does not dispute the ratio laid down in the aforesaid Judgment. In view of the law laid

down by the Hon'ble Apex Court, though, the original claimants have not filed any appeal against the impugned Judgment and award, when from the record it is apparently revealed that the Tribunal has committed an error in deducing 2/3rd of the income of the deceased towards personal expenses, the same mistake needs to be rectified by this Court. I, therefore, hold the claimants entitled for compensation of Rs.5,40,000/-. Similarly, non-pecuniary damages also need to be adequately enhanced from Rs.15,000/- to Rs.70,000/-. Thus, claimants are entitled for total compensation of Rs.6,10,000/-. It appears to me that in the facts and circumstances of the case, this will be the just and fair amount of compensation payable to the claimants inclusive of no fault liability compensation already paid. In the circumstances, except enhancement in the amount of compensation, the other part of the order as has been passed by the Tribunal, does not require any interference. The appeal filed by the appellant Corporation, therefore, fails and is dismissed, however, without any order as to the costs, and amount of the compensation is adequately enhanced. Modified award be prepared accordingly. Pending civil applications, if any, stand disposed of.

(P.R.BORA)
JUDGE

SPT