

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.841 OF 2013

01 Laxmibai w/o Pandurang Navhare,
age: 41 years, Occ: Household,

02 Raviraj s/o Pandurang Navhare,
age: 23 years, Occ: Education,

03 Hemraj s/o Pandurang Navhare,
age: 23 years, Occ: Education;

04 Priya d/o Pandurang Navhare,
age: 23 years, Occ: Education;

05 Jijabai w/o Mahajan Navhare,
age: 65 years, Occ: Household,

All R/o Vithal Rukhmai Mandir,
Pavan Nagar, Taroda (Kd), Nanded,
Tq. & District Nanded.

Appellants

Versus

01 The State of Maharashtra,
through Civil Surgeon,
S.G.G.M. Medical College,
and Hospital, Station Road,
Nanded.

02 Director of Insurance,
Government of Maharashtra,
Mumbai.

Respondents

Mr.G.R.Syed, advocate for appellants
Mr.A.M.Phule, A.G.P. for Respondents.

CORAM : M.S.SONAK, J.

DATE : 11th January, 2018.

ORAL JUDGMENT :

1 By order dated 03.02.2017, this First Appeal was directed to be listed for final hearing in the week commencing from 06.03.2017.

Record and proceedings were also called for.

2 **Admit.**

Learned A.G.P. waives service of notice on behalf of Respondents.

3 At the request and by consent of learned Counsel for respective parties, this appeal is taken up for final disposal at the stage of admission itself.

4 Mr.Sayed, learned Counsel for appellants submits that deceased Pandurang was Government servant and salary certificate was produced on record indicating his salary as Rs.14,949/- per month. He submits that the MACT, has made undue deductions and taken salary of the deceased at only Rs.10,000/-. Mr.Sayed further submits that no addition has been made towards future prospects. He submits that the compensation awarded towards funeral expenses and consortium is also totally inadequate. He submits that no compensation has been awarded towards loss of estate and loss of love and affection. For all these reasons, Mr.Sayed submits that the compensation ought to have been determined at Rs.19,00,000/- and not merely Rs.12,70,000/-, as determined by the MACT.

5 Mr.Phule, learned A.G.P., submits that the appellants have failed to produce true and correct salary statement of

deceased Pandurang. He submits that, this has been observed by the MACT in paragraph 9 of the impugned order. Mr.Phule further submits that the MACT has rightly ignored the personal allowance drawn by deceased Pandurang and has also taken into account statutory deductions. Thus, construed, there is no infirmity in treating income of deceased at Rs.10,000/- per month. Mr.Phule submits that the Tribunal has awarded more than adequate compensation to the appellants and there is no case made out to enhance the compensation amount awarded by the MACT.

6 On the basis of evidence on record, submissions of Mr.Phule as regards monthly income of deceased Pandurang deserves acceptance. From the documents produced by appellants, it does appear that all details were not discernible. There was no clarity as regards the aspect of personal allowance as well as statutory deductions. In these circumstances, the Tribunal cannot be faulted for taking income of deceased Pandurang @ Rs.10,000/- per month. To that extent, therefore, the impugned award warrants no interference.

7 The Tribunal, however, has failed to make any addition whatsoever towards future prospects of deceased Pandurang. Recently, the Constitution Bench of the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi & others**, 2017 (13) SCALE 12, has ruled that an addition of 25%, where deceased was between the age of 40 to 50 years, needs to be given. On this basis, income of the deceased was required to be taken Rs.12,500/- per month. This means that annual income of deceased would be Rs.1,50,000/-. From out of this, a deduction of

25% is due, because this is the amount which deceased would have spent on himself. The contribution of deceased towards his dependency would, therefore, have to be taken as Rs.1,12,500/- per year. Taking into consideration that the age of deceased was 44, the correct multiplier would be 14. The compensation towards dependency would, therefore, come to Rs.1,12,500 x 14 = Rs.15,75,000/-. In this case, the Tribunal has awarded only an amount of Rs.5000/- towards consortium and Rs.5000/- towards funeral expenses. As ruled in the case of **Pranay Sethi** (*supra*), these figures should have been, Rs.15,000/- towards funeral expenses and Rs.40,000/- towards consortium. Further compensation of Rs.15,000/- towards each of the claimants is due (excluding wife) towards loss of love and affection. Since there are three children and one old aged mother, this amount comes to Rs.60,000/-. The compensation of Rs.15,000/- is also due towards loss of estate. Thus, to the dependency compensation of Rs.15,75,000/-, further compensation amount of Rs.1,30,000/- will have to be added. This takes total compensation amount to Rs.17,05,000/- (Rs.Seventeen lakhs Five Thousand).

8 The appeal is, therefore, partly allowed. The compensation amount is enhanced from Rs.12,70,000/- to Rs.17,05,000/-. Out of this amount, an amount of Rs.2,05,000/- (Rs.Two lakhs Five Thousand) is required to be paid to Jijabai w/o Mahajan Navhare, mother of deceased Pandurang. Further an amount of Rs.2,00,000/- (Rs.Two lakhs) each to be paid to Raviraj, Hemraj and Priya. The balance amount of Rs.9,00,000/- (Rs.Nine lakhs) to be paid to Laxmibai, widow of deceased Pandurang. The aforesaid enhanced amount would also carry interest @ 6.5% p.a.,

as already directed by the MACT. In case, amount of Rs.12,70,000/- has already been received by the claimants, though not in the proportion as aforesaid, such award to remain undisturbed. However, from out of the enhanced amount, a sum of Rs.2,05,000/- (Rs.Two lakhs Five Thousand) should be first paid to Jijabai Mahajan Navhare, mother of deceased. The balance amount shall be paid to Laxmibai, in the event Raviraj, Hemraj and Priya have already received their share of Rs.2 lakhs each. Otherwise, three children to be paid proportionate to the aforesaid directions. The impugned award stands modified in the aforesaid terms. In the facts and circumstances of this case, there shall be no order as to costs.

M.S.SONAK
JUDGE

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