

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

FIRST APPEAL NO.503 OF 2002

Shri Kashinath s/o Sonu Patil (Since Deceased)
through L.Rs.

1. Smt. Dwarkabai w/o Kashinath Patil (Deceased)
2. Shri Bhagwat s/o Kashinath Patil (Since Deceased)
through L.Rs.
 - 2a. Kishor s/o Bhagwat Patil
Age- 39 years, Occu.-Service,
R/o. House No.172, Mahda Colony,
Mukunandwadi, Aurangabad.
 - 2b. Kamalabai w/o Bhagwat Patil,
Age- 63 years, Occu.-Housewife,
R/o: Gondkhed, Tq. Jamner, Dist. Jalgaon,
 - 2c. Sanjive s/o Bhagwat Patil,
Age-40 years, Occu.-Education,
R/o: as above.
 - 2d. Suandabai w/o Gopal Patil
Age-43 years, Occu.-Housewife,
R/o. as above.
 - 2e. Surekha s/o Nitin Patil,
Age-36 years, Occu.-Housewife,
R/o: as above.
3. Smt. Kamlabai w/o Sitaram Mahajan,
Age: 50 years, Occu. Household,
R/o. Hivarkheda (BK), Tq. Jamner,
Dist. Jalgaon.
4. Smt. Manglabai w/o Prakash Mahajan,
Age: 60 years, Occu. Household,
R/o. Lohtar, Tq. Pachora,
Dist. Jalgaon.
5. Shri Ramkrishna s/o Kashinath Patil,
Age: 42 years, Occu. Service,

(2)

R/o. Arundaya Colony, House No.669,
CIDCO N-5 A'bad, Tq. & Dist. Aurangabad.

6. Shri Prakash s/o Kashinath Patil,
Age: 36 years, Occ: Business,
R/o, Shradha Colony, House No.182 N-2,
Mukundwadi, Tq. & Dist. Aurangabad. ...Appellants

Versus

1. Shivram Laxman Patil,
Age: 43 years, Occu: Business,
R/o at Post-Bhoje, Tal. Pachora,
Dist. Jalgaon.
2. New India Assurance Company Ltd, Jalgaon
City Branch, Khandesh Mill Complex,
through the Branch Manager. ...Respondents

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Mr. G.S. Patil, Advocate for Appellants.

Mr. S.S. Dargad h/f Mr. S.G. Chapalgaonkar, Advocate for
Respondent No.2.

...

CORAM : P.R. BORA, J.
DATED : 07th March, 2019.

ORAL JUDGMENT:-

1. Heard Shri G.S. Patil, the learned counsel appearing for the appellants and Shri Chapalgaonkar, the learned counsel appearing for the respondent-insurance company.

2. The Motor Accident Claim Petition No.245 of 1997 was filed by one Kashinath Sonu Patil claiming compensation on account of injuries caused to him in a vehicular accident

happened on 19.12.1996. Initially, the compensation was claimed to Rs.1,50,000/-, subsequently the claim amount was enhanced by the claimant to Rs.2,00,000/-. It was the contention of the claimant that he had incurred 45% disability because of the injuries caused to him in the alleged accident. The learned Tribunal after having assessed the evidence on record held the claimant entitled for the compensation of Rs.1,80,000/- jointly and severally from the owner and insurer of the offending Matador. Dissatisfied with the amount of compensation awarded by the Tribunal, said Kashinath had filed the present appeal in this Court. However, within few days after filing of the appeal, he expired and his widow was taken on record and she prosecuted the appeal further. In the meanwhile, the widow also died and the son of deceased Kashinath was taken on record. Unfortunately, the son also died and thereafter his sons are now prosecuting the present appeal.

3. Shri G.S. Patil, the learned counsel appearing for the appellants submitted that the Tribunal has grossly erred in not considering the evidence on record. The learned counsel submitted that though it was testified by the witness examined in the matter on behalf of the claimant that, on the treatment of deceased Kashinath the expenses were

made more than Rs.1,50,000/-, the Tribunal has awarded a sum of only Rs.80,000/-. The learned counsel further submitted that the Tribunal has awarded the compensation of Rs.40,000/- in lump sum when admittedly, the claimant had incurred the disability to the extent of 45%. The learned counsel further submitted that the compensation as has been awarded by the Tribunal towards pain and suffering and loss of amenities of life is also inadequate. The learned counsel in the circumstances, prayed for adequate enhancement in the amount of compensation.

4. Opposing the submissions advanced on behalf of the appellants, Shri Chapalgaonkar, the learned counsel appearing for the respondent-insurance company submitted that the Tribunal has passed a well reasoned order and the compensation as has been awarded by the Tribunal is just and fair. The learned counsel submitted that in fact the medical bills on record are worth Rs.74,000/- only and the Tribunal has awarded the compensation to the tune of Rs.80,000/- under the said head. The learned counsel further submitted that having regard to the subsequent developments and more particularly that the original claimant Kashinath has died, thereafter though his widow prosecuted the appeal further, she also died in the

meanwhile period and thereafter, though the son of deceased Kashinath was taken on record, he also died in the meanwhile period and now the grandsons of deceased Kashinath are prosecuting this appeal. Relying on the judgment of this Court in the case of "**New India Assurance Co. Ltd., Nagpur Vs. Sheikh Rizwan Sheikh Rashid and Ors, 2012(6) Mh.L.J. 652**", the learned counsel submitted that any benefit which could have been awarded to the deceased only could have form the part of loss of income and the same could have been inherited by the legal heirs. The learned counsel submitted that the enhancement sought on account of pain, suffering etc., is thus not liable to be granted in view of the fact that the original claimant is no more now. The similar view is taken by the learned Single Judge of the Madhya Pradesh High Court in the case of "**Shantabai Dube and Anr Vs. Kanhaiyalal and Anr, 1995 ACJ 706**". The learned counsel, therefore, prayed for dismissal of the appeal.

5. I have carefully considered the submissions advanced by the learned counsel appearing for the appellants. I have perused the impugned judgment and award. Apparently, it does not appear to me that there is any scope for any enhancement in the amount of

compensation as has been awarded by the Tribunal. Though, it was vehemently argued by Shri Patil that, the expenses are not appropriately awarded though there were bills and receipts and though it was stated by the witness examined by the claimant in his testimony that the expenses were more than Rs. 1,50,000/-, the evidence on record does not support the contention so raised by the learned counsel. The learned counsel were suggested to go through the record and submit before the Court as to how much bills are existing on record so that the entire said amount can be awarded to the claimant. It is reported that the bills which are filed on record are less than of Rs.75,000/- and including the amount of conveyance therein, the Tribunal has awarded Rs.80,000/-. In the circumstances, it cannot be said that the Tribunal has not considered the evidence on record.

6. In so far as other aspects are concerned, in view of the judgments relied upon by the learned counsel appearing for the respondent-insurance company may not form part of the income of deceased and therefore there is no reason to make anymore discussion on the said issue. Even otherwise, it does not appear to me that the Tribunal has committed any error in determining the amount of

compensation. The total compensation as was claimed by the claimant was of Rs.2,00,000/- and the Tribunal has awarded compensation of Rs.1,80,000/- and no case is made out in the present appeal for any enhancement in the amount of compensation so awarded. The appeal being devoid of any substance deserves to be dismissed and is accordingly dismissed, however, without any order as to costs.

7. The amount invested in Fixed Deposit Receipt out of the amount of compensation awarded by the Tribunal, be remitted in favour of the present claimants along with interest accrued thereon.

(P.R. BORA, J.)