IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

68 FIRST APPEAL NO.3100 OF 2018

1. Smt. Parwati @ Renuka w/o Zating Melle
   Age 23 years, Occu: Household,

2. Balaji S/o Zating Melle
   Age 04 years, Minor,

3. Jyoti d/o Zating Melle,
   Age 03 years, Minor,

   No. 2 and 3 are Minors U/g of their
   Mother Smt. Parwati @ Renuka
   W/o Zating Melle,

4. Sow. Muktabai w/o Gangaram Melle,
   Age 47 Years, Occu: Household,

5. Gangaram S/o. Sopan Melle,
   Age 54 Years, Occu: Nil,

6. Maruti S/o Gangaram Melle,
   Age 23 years, Occu: Education.

   All R/o Chinchondi, Tq. Nilanga,
   Dist. Latur. … Appellants
   (Orig. Claimants)

Versus

1. Pashaminya s/o Maheboobsab Maniyar,
   Age Major, Occu: Driver,
   R/o Datta Nagar, Nilanga, Tq. Nilanga
   Dist. Latur.

2. Waman S/o Madhukar Banjgole,
   Age Major, Occu: Business,
   R/o Shindgaon, Tq. Tuljapur,
   District Latur.

3. The Branch Manager,
   United India Insurance Co. Ltd.
   Opp. Gorakshan, Tilak Nagar,
   Main Road, Latur, District Latur. … Respondents.
   (Orig. Respondents)

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Mr. Santosh B. Gastgar, Advocate for Appellants.
Mr. S.G. Chapalgaonkar, Advocate for Respondent No.3.

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CORAM : P.R. BORA, J.

DATED : 04th FABRUARY, 2019

ORAL JUDGMENT:-

1. The original claimants in Motor Accident Claim Petition No.13/2013 have preferred the present Appeal, seeking enhancement in the amount of compensation as awarded in the said petition decided by the the Court of District Judge-1 and Member, Motor Accident Claim Tribunal at Nilanga on 11.12.2015.

2. The appellants are herein after referred to as the 'claimants'. The claimants who are the legal representatives of deceased Zating Melle had filed the aforesaid claim petition claiming compensation on account of the death of deceased Zating in a road accident happened on 08.04.2013 having involvement of a tempo bearing registration No.MH-25-P-2702 owned by present respondent no.2 and insured with present respondent no.3. It was the contention of the claimants that the alleged accident happened because of the sole negligence on part of the present respondent no.1, who was driving the offending tempo at the relevant time. As contended in the petition, the age of deceased Zating was 24 years and he was working as a Clerk with Advocate Shri H.V. Almale. His income was stated to be Rs.10,000/- per month. It was also the

contention of the claimants that deceased Zating was also working as a driver of Advocate Shri Almale. The claimants, had therefore, claimed the compensation of Rs.20,00,000/- from the driver, owner and the insurer of the offending tempo. The claim petition was resisted by the respondents on various grounds.

3. In order to substantiate the claim raised in the petition, claimant no.1 Parwati the widow of deceased Zating deposed before the Court and Advocate Shri Almale was also examined to bring on record the income of deceased Zating. The learned Tribunal after having assessed the oral and documentary evidence brought on record, held the income of deceased Zating to be Res.3,000/- per month by applying the criteria of notional income, and accordingly held the claimants entitled for the total compensation of Rs.4,50,000/- inclusive of the NFL compensation. Aggrieved by, the claimants have preferred the present appeal seeking enhancement in the amount of compensation so awarded by the Tribunal.

4. Shri Gastgar, the learned counsel appearing for the appellants submitted that though sufficient evidence was brought by the claimants in order to prove the income of deceased Zating, the Tribunal has failed in appreciating the said evidence. The learned counsel submitted that the statement given on oath by Advocate Almale with whom deceased Zating was working as a Clerk, could not have been discarded by the Tribunal only on

the ground that no documentary evidence was placed on record by the claimants to prove the income of deceased Zating. The learned counsel submitted that the driving licence of deceased Zating was also placed on record showing that he was working as a driver. Learned counsel submitted that the Tribunal, in the circumstances, must have held the income of deceased Zating to the tune of Rs.10,000/- per month, and accordingly must have assessed the amount of compensation. Learned counsel further submitted that no compensation has been awarded by the Tribunal towards the future prospects of the deceased. The learned counsel further submitted that the non pecuniary damages as has been awarded by the Tribunal are also inadequate. The learned counsel further submitted that the Tribunal has illegally and incorrectly dismissed the claim petition so far as the original claimant no.5 is concerned. The learned counsel, in the circumstances, prayed for adequate enhancement in the amount of compensation.

5. Shri Chapalgaonkar, the learned counsel for the respondent-insurance company supported the impugned judgment and award. The learned counsel submitted that in absence of any cogent and sufficient evidence brought on record by the claimants, the Tribunal could not have held the income of deceased Zating more than Rs.3,000/- per month. The learned counsel submitted that the evidence, which could have been

placed on record by the claimants since has not been placed on record, no fault can be found in the finding recorded by the Tribunal, thereby holding the income of deceased Zating by applying the criteria of notional income. The learned counsel, in the circumstances, prayed for dismissal of the appeal.

6. I have given due consideration to the submissions made by the learned counsel appearing for the claimants and the learned counsel appearing for respondent-insurance company. I have perused the impugned judgment. It is not in dispute that the deceased Zating was aged about 24 years and was working with Advocate Shri Almale as a Clerk. The only issue, which deserves to be considered is as about the income of deceased Zating. It is argued that when Advocate Shri Almale has testified before the Tribunal that he used to pay monthly salary to the tune of Rs.10,000/- to deceased Zating since he was not only working as Clerk, but also working as a driver with him, the Tribunal must have believed the same. The Tribunal has discarded the said evidence on the ground that no documentary evidence was placed on record by the claimants. It was, in fact not impossible for the claimants to bring on record some more cogent evidence. Advocate Almale could have filed on record his account books evidencing payments made to deceased Zating towards his salary. In the circumstances, though it apparently appears that the Tribunal was right in applying the criteria of notional income,

if further appears to me that the Tribunal must have taken into account the prevailing rate of wages on the date of accident of the similarly situated persons. Considering the evidence on record, which has gone unchallenged as about the duties, which deceased Zating was performed, it appears to me that reasonably the income of deceased Zating could have been reasonably determined by the Tribunal at the rate of Rs.5,000/- per month.

7. The Tribunal has further erred in not considering the future prospects of deceased Zating. In view of the law laid down by the Hon'ble Apex Court in the case of ***National Insurance Company Limited versus Pranay Sethi and others (2017) 16 SCC 680***, considering the age of deceased Zating and considering that he was in private employment, 40% of his existing income was liable to be added in the said income so as to arrive at his prospective income for the purpose of assessing the dependency compensation. Considering the income of deceased Zating to the tune of Rs.5,000/-, which annually comes to Rs.60,000/-, if 40% of the same i.e. Rs. 24,000/- is added in the said income, the prospective income of deceased Zating comes to Rs.84,000/- p.a. Having regard to the number of dependents on the income of deceased Zating, which is five, only 1/4th of the amount was liable to be deducted from the amount of compensation towards the personal and living expenses of deceased Zating. Deducting the said amount, the balance

amount can be multiplied by the appropriate multiplier so as to determine the amount of dependency compensation. Deducting the $1/4^{th}$ amount from the total income, the balance amount remains to Rs.63,000/-. Having regard to the age of deceased Zating, the appropriate multiplier would be of 18. By applying the said multiplier, the amount of dependency compensation comes to Rs.11,34,000/- (Rs.63000 x 18). In addition to the aforesaid amount, the appellants-claimants have also entitled to receive the compensation of Rs.70,000/- towards non pecuniary damages. The appellants-claimants, thus, are found entitled for the total compensation to Rs.12,04,000/-. In the circumstances, and having regard to the evidence on record, it appears to me that this would be the just and fair compensation payable to the appellants-claimants.

8. The Tribunal has not awarded any compensation to original claimant no.5 namely; Maruti Gangaram Melle (Appellant No.6 in the present appeal). Claimant Maruti is the brother of deceased Zating. Admittedly, he is major. No evidence has been brought on record in order to prove that claimant Maruti was dependent upon the income of deceased Zating. In absence of any such evidence, it does not appear to me that the Tribunal has committed any error in not holding said Maruti to be the dependent on the income of deceased Zating. No interference is therefore required in the finding recorded by the Tribunal in that regard.

9. For the reasons stated above, the following order is passed:-

ORDER

[i] Appellant Nos. 1 to 5 are held entitled for the enhanced compensation of Rs.7,54,000/-.

[ii] The respondent nos. 2 and 3 shall jointly or severally pay the enhanced amount of compensation to the appellants-claimants together with interest thereon at the rate of 9% p.a. from the date of filing of the claim petition till its realisation.

[iii] Out of the amount of compensation, 20% amount shall go to the share of two children in equal proportion, 20% amount to the parents and the balance 40% amount to the widow of the deceased. The amount allotted to the share of the minors be invested in Fixed Deposit Receipt for the period till they attain the age of majority.

[iv] The Award be modified accordingly.

[v] Deficit in the Court fee, if any be recovered from the claimants.

[vi] The appeal is allowed in the aforesaid terms.

(P.R. BORA)
JUDGE

Sudhir Rane