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

FIRST APPEAL NO.120 OF 2006

The New India Assurance Company Ltd.,
Through It's Divisional Manager,
Adalat Road, Aurangabad .. **Appellant**
(Orig. Resp. No.2)

Versus

1. Satyabhama W/o. Bhimrao Dongre
Age : 37 years, Occu : Household,
R/o. Wadwani, Tq. Wadwani,
Dist. Beed

2. Jyoti D/o. Bhimrao Dongre
Age : 13 years, Occu : Education,
R/o. As above.

3. Swati D/o. Bhimrao Dongre
Age : 13 years, Occu : Education,
R/o. As above.

4. Mohini D/o. Bhimrao Dongre
Age : 11 years, Occu : Education,
R/o. As above.

5. Rohini D/o. Bhimrao Dongre
Age : 9 years, Occu : Education,
R/o. As above.

6. Anju D/o. Bhimrao Dongre
Age : 6 years, Occu : Education,
R/o. As above.

7. Manju D/o. Bhimrao Dongre
Age : 6 years, Occu : Education,
R/o. As above.

8. Bhagyashree D/o. Bhimrao Dongre
Age : 4 years, Occu : Education,
R/o. As above.

9. Govind S/o. Bhimrao Dongre
Age : 2 ½ years, Occu : Nil,
R/o. As above.

10. Sakharam S/o. Nanasaheb Fartade
Age : Major, Occu : Business,
R/o. Arvi, Tq. Shirur (Kasar)
Dist. Beed .. **Respondents**
(No.1 to 9 Org. Claimants,
No.10 Org. Respdt No.1)

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Shri S.G. Chapalgaonkar, Advocate for Appellant ;
Shri S.S. Thombre, Advocate for Respondents No.1 to 9;
Shri A.N. Nagargoje, Advocate for Respondent No.10.

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CORAM : P.R. BORA, J.
Dated: February 21, 2019

ORAL JUDGMENT :

1. The Insurance Company has preferred the present appeal against the Judgment and Award passed in Motor Accident Claim Petition No.264 of 2003 decided by the Motor Accident Claims Tribunal at Beed on 28.09.2005.

2. The present respondent nos.1 to 9 had filed the aforesaid claim petition claiming compensation on account of the death of one Bhimrao Sitaram Dongre in a road accident

happened on 03.11.2002 having involvement of a tempo bearing registration no.MH-23/1597 owned by present respondent no.10 and insured with the appellant – Insurance Company. In the petition, the age of deceased Bhimrao was stated to be 40 years and his income was stated to be Rs.3,000/- per month. The petition was resisted by the appellant – Insurance Company on various grounds. The Tribunal, however, after having assessed the oral and documentary evidence brought on record before it, held respondent nos.1 to 9, who are hereinafter referred to as the claimants, entitled for the total compensation of Rs.6,38,000/- inclusive of the NFL compensation. Aggrieved by, the Insurance Company has filed the present appeal.

3. Shri Chapalgaonkar, learned Counsel appearing for the appellant – Insurance Company assailed the impugned Judgment mainly on the ground that, without there being any sufficient evidence on record and the pleadings in that regard, the Tribunal has wrongly held the income of the deceased to the tune of Rs.5,000/- per month. The learned Counsel submitted that, in the claim petition, the income of the deceased was

stated to be Rs.3,000/- per month only. In the evidence of one of the witness examined on behalf of the claimants, it has come on record that, the deceased was also working as sugarcane harvester and the said income has been held the income of the deceased in addition to his monthly income as stated in the petition. Learned Counsel further submitted that, the multiplier of 15 has also been wrongly applied and having regard to the age of the deceased the multiplier of 14 was liable to be applied. The learned Counsel, in the circumstances, prayed for modifying the award by holding the income of the deceased to the tune of Rs.3,000/- per month.

4. Shri S.S. Thombre, learned Counsel appearing for the respondents no.1 to 9 – Orig. claimants supported the impugned Judgment and Award. The learned Counsel submitted that, the Tribunal has rightly held the income of the deceased to the tune of Rs.5,000/- per month and has accordingly assessed the amount of compensation correctly. The learned Counsel, therefore, prayed for dismissal of the appeal.

5. Shri Nagargoje, learned Counsel appearing for respondent no.10 i.e. owner of the offending vehicle submitted for passing appropriate orders.

6. After having considered the submissions advanced by the learned Counsel appearing for the parties and on perusal of the impugned Judgment, apparently, it does not appear to me that, there is any scope for causing interference in the amount of compensation as awarded by the Tribunal. It appears that the income of the deceased was stated to be Rs.3,000/- per month in the claim petition and only on the basis of some facts, which have come on record through the evidence the witness examined by the claimants, the Tribunal has held the income of the deceased to the tune of Rs.5,000/- per month observing that, he was also working as a sugarcane harvester. In fact, there is no supporting evidence in that regard to hold the income of the deceased to the tune of Rs.5,000/- per month. However, the perusal of the impugned judgment also reveals that, the Tribunal has not considered the future prospects of the deceased and no compensation is awarded under the said head. Similarly, non-

pecuniary damages are also not adequately awarded by the Tribunal. In the circumstances, even if the compensation is to be reduced on the ground that, the income of the deceased is held on higher side, if the future prospects of the deceased are taken into account and the compensation amount is enhanced under the said head and the amount of compensation is also enhanced towards the non-pecuniary damages, the amount of compensation, may more or less, would remain the same as has been determined by the Tribunal. In the circumstances, I do not see any reason for causing interference in the amount of compensation as has been awarded by the Tribunal. The appeal, therefore, fails.

7. The amount deposited by the appellant – Insurance Company in this Court along with the interest accrued thereon is permitted to be withdrawn by the claimants in terms of the impugned Award.

8. Pending Civil Application, if any, stands disposed of.

(**P.R. BORA, J.**)

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