IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 FIRST APPEAL NO.1757 OF 2004

1. Smt. Neelavati w/o Balaji Padmipale
   Age: 27 years, Occu.: Household.

2. Madusudan s/o Balaji Padmipale
   Age: 10 years, Occu.: Education (Minor).

3. Ravi s/o Balaji Padmipale
   Age: 8 years, Occu.: Education (Minor).

4. Arun s/o Balaji Padmipale
   Age: 6 years, Occu.: Minor.

5. Smt.Kalavati w/o. Goroba Padmipale
   Age: 52 years, Occu.: Household,
   (Claimant No.2 to 4 are minors U/G
   of their real mother i.e. claimant No.1)

All r/o. Bhagya Nagar, Ahmedpur,
Dist.Latur. ..Appellants
(Orig. Claimants)

VERSUS

1. Mrs.Uma w/o Sanjiv Limaye
   Age: Major, Occu.: Business,
   R/o.Karad Nagar, Ahmedpur.

2. National Insurance Company Ltd.,
   Branch Nanded,
   Through it's Branch Manager,
   Hanuman Chowk, Main Road, Latur.

3. Haridas s/o Narayan Kendre
   Age: 33 years, Occu.: Driver,
   R/o. M.S.R.T.C., Dept.Ahmedpur.

4. Divisional Controller,
   Maharashtra State Road Transport
   Corporation, Division, Latur. ..Respondents

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Advocate for Appellants : Shri S.S.Manale
Advocate for Respondent No.1 : Shri Milind Patil
Advocate for Respondent No.2 : Shri D.V.Soman
Advocate for Respondent No.3 : Shri S.N.Kendre
Advocate for Respondent No.4 : Smt.Ranjana Reddy

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CORAM : P.R.BORA, J.

DATE: 15th February, 2019

ORAL JUDGMENT:-

1. The claimants in Motor Accident Claim Petition No.315 of 2002 have preferred the present appeal seeking enhancement in the amount of compensation awarded to them by the said Tribunal in the aforesaid petition decided on 07.10.2004. The Tribunal has awarded the compensation of Rs.2,34,000/-.

2. Most of the facts are undisputed. The award passed by the Motor Accident Claims Tribunal is challenged only on the ground of quantum of compensation. It is the case of the appellants that though the appellants did bring on record the Shop Act licence of the deceased evidencing that he was running a electrical shop, the Tribunal has preferred to determine the income by applying criteria of notional income. It is the further contention of the appellants that the income of the deceased could not have been determined by the Tribunal holding the income of the deceased, who was running electrical shop, at par with the

income of an unskilled labour. The appellants have therefore sought enhancement in the amount of compensation as has been awarded by the Tribunal. The appellants have also raised an objection against the impugned Judgment and award to the effect that while awarding the compensation, the Tribunal has not taken into account the future prospectus of the deceased.

3. Shri D.V.Soman, learned Counsel appearing for respondent No.2 Insurance Company has supported the impugned Judgment. The learned Counsel pointed out that the licence, which is placed on record infact was not valid on the date of accident and the evidence on record shows that the said licence was renewed after the year 2000. In the circumstances, according to the learned Counsel, the Tribunal has committed no error in determining the income of the deceased by applying criteria of notional income. The learned counsel further submitted that the Tribunal has wrongly applied multiplier of 17, which must have been of 16 having regard to the age of the deceased. The learned Counsel further submitted that the best evidence which could have been produced on record by the claimants, has not been produced and as such no case is made out by the claimants for enhancement in the amount of compensation. The learned Counsel, therefore, prayed for dismissal of the appeal.

4. I have given due consideration to the submissions made by learned Counsel appearing for the parties. Since the facts of occurrence of accident and the negligence of the driver of Minibus insured with respondent No.2 are not in dispute, I do not find it necessary to discuss the said facts . Challenge to the impugned award is restricted to quantum of compensation only. The Tribunal has awarded the compensation by holding the income of the deceased to the tune of Rs.50/- per day i.e. Rs.1,500/- per month. The objection raised by the appellants is that when a specific case was pleaded by the appellants and the Shop Act licence of the deceased was also placed on record, the Tribunal must have determined the income not on the basis of the income of an unskilled labour, but reasonably at par with the income being earned by the skilled person. The learned Counsel submitted that even in the cross-examination the suggestion by the Insurance Company's Counsel was given to CW-1 that the income of deceased was not more than Rs.2,500/- per month. The learned Counsel submitted that the Tribunal in the circumstances could not have held the income of the deceased less than Rs.2,500/- per month. The contention so raised has been objected by Shri Soman. The learned Counsel invited my attention to next two lines in the cross-examination of CW-1

whereby it was suggested that net income of deceased was not more than Rs.1,000/- after deducting expenses etc. My attention is also invited to the discussions made in paragraph No.13 of the impugned Judgment.

5. After having considered the observations made and conclusion recorded by the Tribunal, it is noticed that the Tribunal has held the income of deceased at par with the notional income of an unskilled person. The view so taken by the Tribunal apparently is unsustainable. The income of a person running shop of electrical goods, could not have been determined by the Tribunal treating him at par with an unskilled labour. It is true that the claimants also did not bring on record any concrete evidence as about the income of deceased, which could have been certainly brought on record by them. However, it does not mean that the Tribunal was powerless to determine the income of the deceased by applying criteria of income earned by skilled workman or considering average income of a person running such a shop in place like Ahmedpur. After having considered evidence on record, it appears to me that the income of the deceased as has been held by the Tribunal to the tune of Rs.50/- per day is unjust and improper. Having regard to the fact that the deceased was running a electrical shop and further having

considered the fact that he was maintaining family of 5 to 6 persons, his income can be reasonably held for the purpose of determining the compensation @ Rs.2,500/- per month.

6. The Tribunal has admittedly not considered the aspect of future prospects of deceased while determining the amount of compensation. In view of the law settled by the Hon'ble Apex Court in the case of ***Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and Another [(2009) 6 SCC 121]*** and thereafter in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Others [(2017) 16 SCC 680]*** having regard to the age of deceased and the nature of his job, which can be categorized as private employment, 40% of his existing income is liable to be added in his annual income so as to assess dependency compensation. The Tribunal has further erred in deducting 1/3rd of the amount towards personal and living expenses of the deceased. Considering the number of dependents on the deceased, the Tribunal could not have deducted more than 1/4th of the amount towards that. To that extent, some modification is required in the impugned award. So far as non-pecuniary damages are concerned, the Tribunal has rightly awarded the same. No enhancement is required under the said head.

7. After having considered the facts as aforesaid, the appellants – claimants can be held entitled to receive the compensation as follows:-

I have held the income of the deceased to the tune of Rs.2,500/- per month, which annually comes to Rs.30,000/-. Having regard to the age and occupation of the deceased, 40% of his existing income will have to be added in the said income whereupon his prospective income for the purpose of assessing dependency compensation would be Rs.42,000/- (Rs.30,000 + Rs.12,000 = Rs.42,000/-). Considering the number of dependents upon the income of the deceased, only 1/4th of his total income will be liable to be deducted from his annual income. Deducting the said amount of Rs.10,500/-, the net amount remains to the tune of Rs.31,500/-. As per the age of the deceased, appropriate multiplier would be of 16. By applying the said multiplier, the amount of compensation comes to Rs.5,04,000/-. The claimants are further entitled to receive the compensation of Rs.70,000/- towards the non-pecuniary damages. Adding the said amount, the total amount of compensation payable to the claimants comes to Rs.5,74,000/-. In the facts and circumstances of the present case, it appears to me that this would be the just and fair compensation payable to the appellants - claimants. For the reasons stated above, the following order is passed:-

ORDER

I) The appellants - claimants are held entitled for the enhanced compensation of Rs.3,40,000/- jointly and severally from respondent Nos.1 and 2 together with the interest thereon @ 9% p.a. from the date of application till its realization.

II) Out of the total amount of compensation as aforesaid, 15% each be paid to claimant Nos.2, 3, 4 and 5 i.e. Madusudan s/o. Balaji Padmipale, Ravi s/o. Balaji Padmipale, Arun s/o Balaji Padmipale and Smt.Kalavati w/o Goroba Padmipale respectively and 40% amount be paid to claimant No.1 – Smt.Neelavati w/o Balaji Padmipale.

III) The award be modified accordingly.

IV) The appeal thus stands allowed in the aforesaid terms.

V) Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

SPT