

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

965 FIRST APPEAL NO.35 OF 2019

ICICI General Insurance Company
Limited, ICICI Bank Tower,
Bandra-Kurla Complex,
Bandra (E), Mumbai 400 054
Through its Legal Manager

... Appellant
(Ori. Resp. No.5)

VERSUS

1. Smt. Savita Wd/o Radhakrushna Ugale
Age : 26 years, Occ : HH
2. Ruija Radhakrushna Ugale
Age : 05 years, Occ : Nil.
3. Snehal Radhakrushna Ugale
Age : 3 years, Occu : Nil.
4. Rambhau Shankar Ugale
(Died)
5. Smt. Sushila Rambhau Ugale
Age : 60 years, Occu : Nil.

All the above residing
at Samsherpur, Tq. Akola
Dist. Osmanabad.

6. Ms. National Auto Road lines
Carriers Sunny motors,
Sherpur Chook, G J Road
Ludhiyana Dist. Ludhiyana
Punjab 141 006
(appeal is dismissed as per
Courts order dt. 22.11.2018)
7. National Insurance Company
Divisional Manager, Ahmednagar.
8. Abidali Ahmed Shaikh
Age : 33 Occu: Driver
R/o. Samsherpur Tq. Akole
Dist. Ahmednagar

9. Ahmed Haidarbhai Shaikh
 Age : 67 years, Occ: Business
 R/o. Samsheerpur, Tq. Akole
 Dist. Ahmednagar. ... Respondents.
 (abated as per Court's order
 dated 22.11.2018)

....

Mr. S.S. Patil, Advocate for Appellants;
 Mr. R.K. Temkar, Advocate for Respondent Nos. 1 to 3 and 5;
 Mr. S.R. Bodade, Advocate for Respondent No.7;
 Mr. S.K. Shiknde, Advocate for Respondent No.8;

....

CORAM : V.L. ACHLIYA, J.

DATED : 05th APRIL, 2019

PER COURT:-

By consent, heard finally at the stage of admission.

2. Being aggrieved by the judgment and award dated 20.04.2011 passed in MACP No.266/2007 by the Member, MACT, Sangamner, District Ahmednagar the appellant (original respondent no.4) has preferred this appeal. For the sake of convenience, the parties to the appeal are referred as they are referred in the judgment and order passed by the Claims Tribunal.

3. Heard the learned counsel for the appellant and the counsel representing the respondents. Perused the Record and Proceedings.

4. In brief it is the contention of the learned counsel for the appellant that the Tribunal has erred in awarding the compensation to the tune of Rs.6,66,800/- making the

appellant/original respondent no.4 and respondent no.3 liable to pay the compensation. By referring the over all facts of the case, the pleadings and the evidence adduced, the learned counsel submits that except the oral evidence given by witness for claimant – respondent no.1 that the deceased was employed as a co-driver and earning Rs.4,000/- per month from in the employment of respondent no.3, no other evidence brought on record to prove the income and occupation of the deceased. It is pointed out that in the cross examination, the respondent no.1 – claimant/petitioner no.1 has admitted that she has no documentary evidence to show that her deceased husband was working with Abidali and receiving salary of Rs.4,000/- per month.

5. On the other hand, the learned counsel representing the respondent nos. 1 to 5 i.e. the claimants have supported the judgment and order passed by the Tribunal and submits that there is absolutely no perversity in the reasons and findings recorded by the Tribunal, so as call for interference in exercise of appellate jurisdiction. It is pointed out that respondent no.3 – owner and insured of the vehicle involved in accident has specifically admitted in his written statement filed as Exhibit 36 that the deceased was employed as a driver and receiving Rs.4,000/- per month as a salary. Respondent no.1 (claimant

no.1) has deposed on oath that the deceased was working in the employment of Abidali Ahmed Shaikh i.e. respondent no.3 and receiving monthly salary of Rs.4,000/- per month and his yearly income was Rs.60,000/- as a salary as well income derived by cultivating the agriculture land. In the cross examination of respondent no.1 nothing has been brought on record to discard or disbelieve the facts deposed as to the age, occupation and income of the deceased. It is submitted that the deceased was working in the employment of respondent no.3, private individual and therefore, no documentary proof of such employment and payment of salary expected to be produced by the claimant. Respondent No.3 the employer of deceased has admitted in the written statement filed that deceased was working in his employment and receiving monthly salary of Rs.4,000/- per month as a driver. In this background the learned counsel submits that the appeal filed is devoid of merit and liable to be dismissed.

6. Learned counsel representing respondent nos. 7 and 8 supported the judgment and order passed by the claims tribunal.

7. I have carefully considered the submissions advanced in the light of pleadings, the oral and documentary evidence adduced in the case as well as the reasons and findings recorded by the claims Tribunal.

8. On due consideration of the submissions advanced, I am of the view, no case is made out to entertain the appeal. In the petition filed, the claimant has specifically pleaded as to age, occupation and the income of the deceased. The Respondent No.3 the employer of deceased has admitted the facts pleaded to that effect by claimant. In support of the claim, the respondent no.1 has stepped into the witness box. She has categorically deposed that her husband was working in the employment of respondent no.3 i.e. Abidali Ahmed Shaikh and receiving monthly salary of Rs.4,000/- per month. She stood by her testimony in the cross examination. Nothing has been elicited in the cross examination to disbelieve or to discard the facts deposed by her in respect of age, income and occupation of deceased. The Respondent No.3 has filed written statement at Exhibit 36. In the written statement, respondent no.3 has specifically pleaded that the deceased had driving licence to drive the vehicle in question and deceased was employed by him since four months prior to the accident. He has further pleaded that he was paying Rs.4,000/- per month to the deceased as a salary.

9. Thus, in absence of any documentary proof of income of the deceased, the oral testimony of respondent no.1 – claimant, duly supported by the employer of deceased i.e. respondent no.3, cannot be discarded or disbelieved. The deceased was

privately employed as a driver on the pickup van owned by respondent no.3. Normally such private employer not issue letter of appointment and salary slip to driver employed. Apart from this, if we consider the age and occupation of deceased, then the income of the deceased considered by Tribunal @ Rs.4,000/- per month cannot said to be exorbitant or without basis. Therefore, in absence of any documentary proof, the income of the deceased claimed as Rs.4,000/- per month can be accepted as a notional income of the deceased for the purpose of assessment of compensation. In that view, the reasons and findings recorded by the claims Tribunal calls for no interference in exercise of appellate jurisdiction. The judgment and order passed by the Tribunal is quite consistent with the pleadings and the evidence adduced in the case. In that view, the appeal preferred is devoid of merit and liable to be dismissed. Accordingly, the appeal is dismissed with no order as to costs.

(V.L. ACHLIYA)
JUDGE

SPR