IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.652 OF 2014

1 Smt. Anita Walter Peter,
Age 43 yrs., Occ. Household,

2 Miss Leah Walter Peter,
Age 17 yrs., Occ. Education,

3 Master Moses Walter Peter,
Age 12 yrs., Occ. Education,

4 Smt. Shashikala Walter Peter,
Age 71 yrs., Occ. Nil,
(**deleted vide order dated 10.03.2016**)

Applicant No.1 is for herself and the
Natural Guardian of No.2 and 3.

All are r/o Mohan Nagar, Near
Vrindavan Garden, Jalgaon,
Dist. Jalgaon.

… **Appellants**.

… **Versus** …

1 Dinesh Kumar Garg,
Age – major, Occ. Business,
R/o Room No.4, Building No.11,
CBD Belapur, Konkan Bhavan,
Navi Mumbai.

2 The Branch Manager,
The Oriental Insurance Company Ltd.,
Empire House, 1st Floor, 214,
Dr. D.N. Road, Mumbai,
Through The Manager,
The Oriental Insurance Company Ltd.,

Center Phule Market, Jalgaon.

... **Respondents**.

...

Mr. M.M. Bhokarikar, Advocate for the appellants

Mr. A.G. Kanade, Advocate for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21st AUGUST, 2019

JUDGMENT :

1 Present appeal has been filed by original claimants for enhancement in the compensation.

2 Present appellants had filed M.A.C.P. No.55/2008 before Motor Accident Claims Tribunal, Jalgaon under Section 166 of the Motor Vehicles Act, 1988 for getting compensation, on account of death of Walter Peter. Claimant No.1 is the widow, claimant Nos.2 and 3 are the children and claimant No.4 is the mother of deceased Walter. Walter was working as Liquor Marketing Payment Collector and was getting Rs.6,500/- per month. He was also getting petrol and other charges for travelling. He was proceeding on his motorcycle bearing No.MH 19/AA-1277 on 26.12.2007. When he reached near Hotel UP Bombay, he was dashed by a tanker bearing

No.MH 04/F-9405, which had come rashly and negligently, in uncontrolled speed from back side. As a result of the dash, Walter fell down and the wheels of the tanker ran over his head and body. He died on the spot. The accident was reported to police and the driver of the tanker has been prosecuted. Respondent No.1 being the owner of the said tanker and respondent No.2 being the insurance, it is stated that both the respondents are liable to pay compensation to the claimants, jointly and severally.

3 The matter proceeded ex parte against respondent No.1. Respondent No.2-the insurance company filed written statement and denied all the averments in the petition. The fact of accident, the manner in which the accident took place etc. has been denied specifically. Age, income and occupation of the deceased has also been denied. Statutory defence has been taken, stating that there is breach of terms of policy and therefore, the insurance company is not liable to pay compensation to the claimants.

4 After the issues were framed, only claimants led oral as well as documentary evidence. Taking into consideration the evidence on record, the learned Tribunal has held that the claimants proved that accident took place due to the sole negligence on the part of the tanker driver. Insurance company has failed to prove breach of terms of policy and therefore, respondent No.1 being the owner and respondent No.2 being the insurer of

the tanker, are responsible to pay compensation to the claimants, jointly and severally. Amount of Rs.3,00,000/- has been awarded as compensation together with interest @ 7% per annum from the date of the petition till actual realization of the entire amount. Hence, the present appeal by the original claimants for enhancement.

5 It will not be out of place to mention here, that the insurance company or the owner of the offending vehicle have not preferred any appeal challenging the findings, which have gone against them. Therefore, the scope of the present appeal is limited to the enhancement only. Therefore, following point arise for determination; findings and reasons for the same are as follows.

1 Whether the Tribunal was justified in awarding amount of Rs.3,00,000/- only to the claimants ?

R E A S O N S

6 Heard learned Advocate Mr. M.M. Bhokarikar for appellants and learned Advocate Mr. A.G. Kanade for respondent No.2-insurance company. It has been vehemently submitted on behalf of appellants that the learned Tribunal failed to consider that evidence in the form of testimony of the claimant as well as his employer would show that deceased was earning

Rs.6,500/-, however, the learned Tribunal discarded the evidence of CW No.2 and invoked notional income @ Rs.3,000/- per month. Further, future prospects were not granted. It was always not necessary to take 1/3rd of the amount from the income of the deceased towards personal expenditure and therefore, taking into consideration the fact that there were four family members dependent on the deceased, 1/4th ought to have been deducted towards personal expenditure. The amount, which has been awarded by the Tribunal, is on the lesser side and therefore, it needs enhancement.

7 Per contra, the learned Advocate appearing for the insurance company supported the calculation given by the Tribunal while arriving at the compensation. He submitted, that when proper evidence was not led to prove the income of the deceased, the Tribunal was justified in invoking the notional income theory.

8 At the costs of repetition, it will have to be stated that the scope of the present appeal is limited to the enhancement of the compensation only and therefore, those parameters are then required to be considered. It has been proved that deceased was 48 years old, at the time of accident. In order to prove his income apart from the statement of claimant No.1, claimants have examined CW No.2 Surekha Bhangale, who is stated to be the owner of wine shop, where the deceased was employed. The salary certificate of the

deceased is produced at Exh.35, however, during the course of cross-examination the owner of the shop admitted, that she has no documentary evidence to show that she is the owner of the said shop. It was also noted that said witness was not maintaining any record in respect of payment of salary to the employees. Absolutely no documentary evidence was adduced, which could have shown, that deceased was employed with her and she was paying salary to the deceased. Certificate Exh.35 was a secondary evidence. Such certificate can be issued only on the basis of documentary evidence available with the concerned person. However, no documentary evidence has been produced and therefore, the learned Tribunal was justified in invoking the notional income theory.

9 Taking into consideration the fact that the accident had taken place in the year 2007, the learned Tribunal was also justified in holding that deceased might have been earning Rs.3,000/- per month. However, thereafter the learned Member erred in not taking into consideration the future prospects. Now, in view of the decision in **National Insurance Co. Ltd. vs. Pranay Sethi, (2017) 16 SCC 680** and the fact that deceased was self employed and was between age group of 45-50, 25% of the income is required to be added to future prospect. That amount comes to Rs.750/- (25% of Rs.3,000/-). Thus, by adding this amount to the income, the income

of the deceased would be Rs.3,750/-. Yearly that amount would be Rs.45,000/- (Rs.3,750/- x 12 months).

10 I do not agree with the submissions on behalf of the learned Advocate for the appellants that 1/4th of the amount of income is required to be deducted towards personal expenditure and it is not always to deduct 1/3rd. It is to be noted that said deduction of personal expenditure has to be calculated on the strength of decision in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**. Taking into consideration number of dependents on the income of deceased, 1/3rd is required to be deducted, which comes to Rs.15,000/-. After deducting the personal expenditure, the amount for our calculation purpose would be Rs.30,000/- (Rs.45,000/- - Rs.15,000/-). Further, taking into consideration the age of the deceased as 48 years and as per the decision in **Sarla Verma**, the just multiplier would be “13”. After applying the multiplier, the total future loss of income for the claimants would be Rs.3,90,000/- (Rs.30,000/- x 13). Further, in view of the decision in **Pranay Sethi**, amount of Rs.70,000/- is required to be awarded towards non pecuniary damages i.e. Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenditure. Thus, the claimants are entitled to get compensation of Rs.4,60,000/-. The amount awarded by the

learned Tribunal is on the lesser side and therefore, it needs enhancement. Hence, following order.

ORDER

1 Appeal is hereby partly allowed.

2 The Judgment and Award passed in M.A.C.P. No.55/2008 by learned Member, Motor Accident Claims Tribunal and District Judge-1, Jalgaon on 09.03.2010 is hereby set aside and modified to the extent of quantum only, as follows :

> "The respondent Nos.1 and 2 are, jointly and severally, pay compensation of Rs.4,60,000/- (Rupees Four Lacs Sixty Thousands only) to the claimants, together with interest @ 7% per annum, from the date of the petition till the actual realization of entire amount."

3 The amount deposited or paid, if any, towards impugned Judgment and Award be adjusted towards the modified Award.

4 It is clarified, that rest of the Award is maintained as it is.

(Smt. Vibha Kankanwadi, J.)

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