IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.440 OF 2007

1. Vandana wd/o Rameshwar Deshmukh
   a/a 26 years, Occ. Household work,

2. Nikhil s/o Rameshwar Deshmukh,
   a/a 6 years, minor,
   Through next friend mother
   Vandana wd/o Rameshwar Deshmukh

   Both r/o Kothali
   Post Wadi, Tq. Motala,
   Dist. Buldhana … Appellants.

-vs-

1. Vijay s/o Rameshwar Patil
   adult, (owner of vehicle)

2. Vitthal s/o Narayan Deshmukh,
   adult, occ. Nil

3. Anusayabai w/o Vitthal Deshmukh,
   adult, occ. Household work,

   Nos.1 to 3 residents of Kothali,
   Tq. Motala, Dist. Buldhana

4. The New India Assurance Co. Ltd.
   Through its Branch Manager,
   at Malkapur, Ta. Malkapur,
   Dist. Buldhana … Respondents

Shri C. A. Joshi, Advocate for appellants.
Ms Anita Mategoankar, Advocate, Advocate for respondent No.4/Insurance Company.

CORAM : A.S.CHANDURKAR, J.
DATE : January 04, 2019

Oral Judgment :

This appeal filed under Section 173 of the Motor Vehicles Act, 1988 (for short, the said Act) is filed by the original claimants who seek an enhancement in the amount of compensation as awarded by the Claims Tribunal under Section 166 of the said Act.

2. In an accident that occurred on 13/05/2000 the husband of appellant No.1 and father of appellant No.2 expired. He was travelling in a jeep which was insured with the respondent No.4/Insurance Company and owned by the respondent No.1 herein. According to the claimants the deceased was working as a teacher in Zilla Parishad school and was earning about Rs.8,000/- per month as salary. On account of rash and negligent driving of the jeep, the accident in question occurred. The claimants therefore sought compensation of an amount of Rs.10,00,000/- from the owner and insurer of the vehicle. In the written statement filed by the Insurance Company it was pleaded that the vehicle registered was a private vehicle without any taxi permit. Though the said vehicle was duly insured the risk of fare paying passengers was not covered. As more than ten fare paying occupants were travelling in the said jeep, there was a breach of the policy and as the risk was not covered the Insurance Company was not

liable.

3. The claimant No.1 examined herself at Exhibit-43 and another witness at Exhibit-58. After considering that evidence the Claims Tribunal held that the accident occurred on account of rash and negligent driving by the driver of the jeep. By considering the salary certificate at Exhibit-52 and after making certain deductions the monthly income of the deceased was taken as Rs.5571/-. After deducting 1/3rd amount and taking the multiplier of 16 compensation of Rs.6,83,083/- was awarded as compensation. Being aggrieved the claimants have filed this appeal.

4. Shri C. A. Joshi, the learned counsel for the appellant by relying on the evidence of the claimant No.1 at Exhibit-43 submitted that as per the salary certificate at Exhibit-52 it could be seen that the monthly salary was Rs.6923/-. It was only the amount of profession tax that was liable to be deducted from that amount. However, the learned Judge of the Claims Tribunal deducted various other amounts thus arriving at a lower net salary. Placing reliance on the decision in ***Manasvi Jain vs. Delhi Transport Corporation 2014 ALL SCR 2093*** it was submitted that it is only the amount of contribution towards Income tax and Profession tax which is liable to be deducted while taking into consideration the monthly salary. He then submitted that as the deceased was aged about 27 years, the multiplier of 17

ought to be applied and not 16 as applied by the Claims Tribunal. As there were four persons in the family 1/4th amount for personal expenses was liable to be deducted. On the basis of amounts payable under conventional heads it was submitted that the appellants are entitled for higher compensation. He also placed reliance on the decision in ***National Insurance Company Ltd. vs. Pranay Sethi and ors. 2018 (3) Mh.L.J. 70*** in that regard.

5. On the other hand Ms Anita Mategaonkar, learned counsel for the respondent No.4-Insurance Company supported the impugned judgment and submitted that just compensation was awarded by the Claims Tribunal. Referring to the Written Statement filed on behalf of the Insurance Company it was submitted that the vehicle in question was a private vehicle and fare paying passengers were not permitted to travel. She submitted that in the cross-examination of claimant No.1 it was admitted that 10-12 persons were travelling in the said vehicle which admission indicated breach of the policy. It was further submitted that the parents of the deceased were having agriculture land and hence it cannot be said that claimants were dependents on the deceased. The learned counsel placed reliance on the decision of Honorable Supreme Court in ***Civil Appeal No.3335/2009 (Bhagyalakshmi and ors. vs. United Insurance Co. Ltd. and anr.)*** to urge that the Insurance Company could not have been held liable for satisfying the claim of the

person travelling for consideration in a private car.

6. The following point arises for determination :

" Whether the amount of compensation as granted deserves to be enhanced ?"

7. I have heard the learned counsel for the parties at length and I have also perused the records of the case. The present appeal has been filed by the claimants seeking enhancement in the amount of compensation. The findings recorded as to the accident being caused on account of rash and negligent driving and absence of evidence with regard to defence of the Insurance Company is not under challenge. On the basis of those findings recorded by the Claims Tribunal the claim for enhancement would have to be considered.

8. According to the claimants the deceased was serving as a teacher. His salary certificate at Exhibit-52 indicates monthly salary of Rs.6923/-. As held in ***Manasvi Jain*** (supra) it is only the amount of Income tax and Profession tax that is liable to be deducted from the monthly income while considering the figure of net salary received by the deceased. The amount in that regard was Rs.150/- per month. In view of the fact that the accident took place on 13/05/2000 that amount comes to Rs.6773/- . In ***Pranay Sethi***

(supra) on the basis of age of the victim it is seen that future prospects to the extent of 50% of the actual salary would be admissible as the victim was employed with the Zilla Parishad and was aged about 27 years. That amount per month comes to Rs.3386/-. There being four persons in the family of the deceased 1/4th amount is liable to be deducted for personal expenses and on such deduction the figure of Rs.7620/- can be obtained. The annual loss of income would thus comes to Rs.91440/-. Multiplier of 17 in the light of the decision in ***Sarla Verma vs. Delhi Transport Corporation 2009 (5) MhLJ 775*** would be applicable. On that basis the total loss of income would be Rs.15,54,480/-. After granting an amount of Rs.70,000/- towards conventional heads, the total compensation payable would be Rs.16,24,480/-. The additional compensation payable after deducting the amounts already paid would be Rs.9,41,397/-. In the facts of the present case and in the light of the evidence on record the point as framed is answered by holding that the appellants are entitled for enhancement of compensation.

9. As regards the submission made on behalf of the respondent No.4, it is to be noted that such plea has not been pleaded in the written statement and hence the same has been not duly proved by leading evidence. The admission of claimant No.1 that about 10-12 persons were travelling with the deceased by itself is not sufficient to conclude that there

was a breach of policy conditions. No evidence was led to indicate that the deceased was a fare paying passenger. In absence of challenge to those findings the ratio of the decision in ***Bhagyalakshmi and ors.*** (supra) cannot apply to the case in hand.

10. In view of aforesaid discussion, the following order is passed :

The judgment of the Claims Tribunal in M.A.C.P. No.124/2001 is partly modified. It is held that the claimants are entitled to a total compensation of Rs.16,24,480/-. From this amount the compensation already awarded by the Claims Tribunal would stand deducted. The balance amount of compensation of Rs.9,41,397/- would be payable to the claimants with interest of 7.5% per annum from the date of the application. From this amount of additional compensation, 85% amount be paid to the present appellants and 15% thereof be paid to be respondent Nos.2 and 3. The amount of enhanced compensation be paid to the parties within period of three months by depositing the same in this Court. The amounts be accordingly disbursed.

The First Appeal is allowed in aforesaid terms with no order as to costs.

JUDGE

Asmita