IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 57 OF 2007

1) Ashwini Raju @ Janku Rohkale
Aged 30 years, Occu. Nil,
R/o Jakhangaon, Tq. Nagar,
District Ahmednagar

2) Aarti Raju @ Janku Rohkale
Aged 10 years, Occu. Education,
Minor, under guardianship of
appellant no.1, mother,
R/o Jakhangaon, Tq. Nagar,
District Ahmednagar

3) Sukhdeo Sakharam Rohkale
Aged: 68 years, Occu. Nil,
R/o Bhalwani, Tq. Parner,
District Ahmednagar

4) Jijabai Sukhdeo Rohkale,
Aged: 61 years, Occu. Household,
R/o Bhalwani, Tq. Parner,
District Ahmednagar ... **Appellants**
(Ori. Claimants)

VERSUS

1) Anusaya Sampat Narsale
Aged: Major, Occu. Agri.,
R/o Goregaon, Tq. Parner,
Dist. Ahmednagar

2) The Manager,
Oriental Insurance Co. Ltd.,
Ambar Plaza, Station Road,
Ahmednagar ... **Respondents**
(Ori. Opponents)

Mr. V. C. Patil, Advocate h/f Shri P. B. Vikhe Patil, Advocate for appellants
Mr. N. D. Kendre, Advocate for appellants (Appointed)
Mr. V. N. Upadhye, Advocate for respondent No.2

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CORAM : R. G. AVACHAT, J.
DATED : 07th DECEMBER, 2021

J U D G M E N T :-

. This is an appeal for enhancement of compensation granted by the Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claim Patition no. 692 of 1999. It was a death claim. The claim was preferred by widow, minor daughter and parents of the deceased - Raju @ Janku, who died in vehicular accident. The Tribunal held the deceased to have been negligent/rash to the accident of 50%, therefore, awarded a sum of Rs. 1,72,400/- with interest @ 9% p.a. Since the respondent – Insurance Company did not file any appeal or cross objection against the impugned judgment and award, the findings recorded by the Tribunal attained finality so far as against respondent No.2 – Insurance Company is concerned.

2. During the hearing of this appeal, learned Advocate for the appellants and the learned Advocate who was appointed to assist this Court came around to admit the findings recorded by the Tribunal, however, urged for enhancement of compensation in terms of the Apex Court judgments in the case of ***National Insurance Company Limited Vs Pranay Sethi and others – (2017) 16 SCC 680*** and ***Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others – (2018) 18 SCC 130*** .

3. The learned Advocate for the respondent – Insurance Company would, on the other hand, submit that just and reasonable compensation has been awarded by the Tribunal. According to him, the claim, in fact, ought to have been dismissed. The learned Advocate, ultimately, urged for dismissal of the appeal.

4. The Jeep bearing registration No. MH-16-7364, met with the accident on 29.12.1995. The deceased Raju @ Janku was driver on the said jeep. No other vehicle was involved in the accident. It was averred in the petition that the front tyre of the jeep burst all of sudden and the jeep thereby got overturned. Deceased Raju suffered multiple injuries and died thereof.

5. The jeep belonged to respondent No.1 (Anusaya Sampat Narsale) herein. The Tribunal held the deceased to have been serving at a monthly pay of Rs.1,800/-. It was a petition filed under Section 166 of the Motor Vehicles Act. For grant of compensation in a petition under Section 166, rash or negligence on the part of driver of the alleged vehicle needs to be averred and proved. Here, no other vehicle was involved. It was not claim under Section 163-A of the Motor Vehicles Act. The Motor Vehicle Inspector's report indicate that there was no mechanical defect with the jeep involved in the accident. It has been averred in the First Information Report (Exh.34) that the deceased Raju was under influence of some intoxicant when he met with the accident. The postmortem report reinforces the same. There is statement of the father of the deceased, stating therein the deceased was addicted to alcohol. In this factual backdrop, the claim ought to have been dismissed. Be that as it may.

6. The widow, minor daughter and parents of the deceased are before this Court, asking for enhancement in the amount of compensation. The finding that the deceased was equally responsible to the accident (50%) has attained finality, in view of there being no

appeal by the respondents herein. This Court has therefore no option, but to work out the compensation in terms of the aforesaid judgmets and grant the appellants herein 50% thereof. The amount of compensation is therefore re-worked out as under.

7. Monthly income of the deceased was Rs.1,800/-. After adding 40% thereto for future prospects it comes to Rs. 2,520/- (1800 + 720). The annual income of the deceased would come to Rs.30,240/-. After deducting 1/4th thereof towards personal and living expenses, it comes to Rs. 22,680/- (30240 – 7560). The deceased was little over 22 years of age. Multiplier of 17 is therefore applied. This way, the amount of compensation on account of loss of dependency would come to Rs. 3,85,560/-. Each of the claimants is granted Rs.40,000/- towards loss of love and affection, besides a sum of Rs.30,000/- granted towards loss of estate and funeral expenses. As such, the amount of compensation comes to Rs.5,75,560/-. Since the findings recorded by the Tribunal admittedly not to be disturbed, the appellants only be entitled to 50% of the amount of compensation worked out as above. Therefore, it comes to Rs.2,87,780/-. In view of this, the appeal is allowed in terms of following order:-

<u>O R D E R</u>

(i) The appeal is allowed.

(ii) The amount of compensation granted by the Tribunal is enhanced from Rs. 1,72,400/- to Rs.2,87,780/-.

(iii) The enhanced amount of compensation shall carry interest at the rate 6% p.a. from the date of claim petition to the date of payment.

(iv) The amount which has already been paid or deposited by the respondent – Insurance Company, be given set off.

(v) The amount to be paid to the appellants, shall be deposited with this Court within a period of two months here-from.

(vi) Once the amount is deposited, the same shall be disbursed to the claimants as stated above.

[R. G. AVACHAT, J.]

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