

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

986 FIRST APPEAL NO.2237 OF 2018

- 1] Babulal s/o. Seva Dholke,
Age: 70 years, Occu : Nil.
- 2] Kausabai w/o. Babulal Dholke,
Age: Major, Occu : Household
[Deleted as Dead]

Both R/o. Barwar Mohalla,
Jalna, Tq. & Dist. Jalna.

.. APPELLANTS
[Orig. Claimants]

VERSUS

- 1] Shri C.S.Agrawal,
Age: Major, Occu : Business,
R/o. Adalat Road, Aurangabad,
Tq. & Dist. Aurangabad.
- 2] The Oriental Insurance Company Ltd.
Through its Branch Manager,
Branch Office, Jalna,
Tq. & Dist. Jalna.

.. RESPONDENTS
[Orig. Respondents]

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Mr.Pramod C. Mayure, Advocate for the appellants.
Mr.Suhas R. Shirsat, Advocate for respondent no.1.
Mr.Dhananjay Deshpande, Advocate for respondent no.2.

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CORAM : S.G.DIGE, J.
DATE : 13.09.2022

PER COURT :

1] Being aggrieved and dissatisfied by the judgment and award passed by the Motor Accident Claims Tribunal, Jalna, the present appellants – original claimants filed this appeal for enhancement of compensation.

Brief facts of the case are as under:

2] On 24th April, 1998 at about 15.30 hours when Krishna was returning home from the duty on bicycle from the Jalna-Mantha Bypass road, truck bearing No. MCA-3105 came from backside in high speed and in rash and negligent manner and gave dash to the Bicycle. Due to the said accident, Krishna died on the spot. A crime was registered against truck driver.

3] The appellants – original claimants filed claim petition for getting compensation before the Motor Accident Claims Tribunal, Jalna [for short ‘the Tribunal’]. The Tribunal has awarded the compensation. The said judgment and order was challenged by respondent no.2 –

Insurance Company before this Court. This Court [Coram : M.T.Joshi, J.] has disposed of the Appeal filed by respondent no.2 and remanded the matter to the Tribunal, Jalna for re-consideration of the evidence. After remand of the matter, the Tribunal has passed the judgment and order. The said judgment and order is under challenge.

4] It is the contention of the learned counsel for the appellants that the Tribunal has awarded only Rs.50,000/- as compensation. The Tribunal has not considered the income of the deceased as well as not awarded future prospects and not awarded the compensation under other heads, hence, requested to allow the appeal.

5] It is the contention of the learned counsel for the respondents that the order passed by the Tribunal is legal and valid. Earlier the appellants had made false statement before the Tribunal and on that basis the compensation was awarded. The said judgment and order was challenged before this Court. This Court has observed

that the statements made by the appellants are false, hence, the matter was remanded to the Tribunal for fresh hearing for re-consideration of the evidence and on that basis the Tribunal has considered the evidence and passed the order. The said order has been passed after considering all the evidence, hence, no interference is required in the said order.

6] I have heard all learned counsel. Perused the judgment and award passed by the Tribunal. The Tribunal has awarded Rs.50,000/- as compensation to the appellants, which is granted under no fault liability. In earlier judgment and award the Tribunal had awarded the amount of Rs.2,88,000/- to the appellants as compensation. In the said judgment and order, the Tribunal had considered monthly income of the deceased at Rs.3,000/- per month and on that basis calculations were done. But the said judgment and order was challenged by respondent no.2 on the ground that the father of the deceased had deposed before the Court that he had only one son but in fact there were other

two sons. The age of the claimants were shown differently. On that counts, the appeal was preferred before this Court. After hearing both the parties, this Court [Coram : M.T.Joshi, J.] remanded the matter before the Tribunal for re-consideration of the evidence. Thereafter, the impugned order is passed by the Tribunal. In my view, the Tribunal has erred in not considering the income of the deceased. It has come in the evidence of PW-1 that the deceased was getting monthly salary of Rs.3630/-. Salary certificate is produced on record. But the Tribunal has not considered this fact. To prove salary certificate, employer was necessary to examine but he was not examined, hence, I am considering Rs.2,500/- as notional income of the deceased Krishna. At the time of accident, deceased was 25 years old. As per the view taken by the Hon'ble Apex Court in the case of **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in 2009 [5] Mh.L.J. 775, multiplier of 18 is applicable. No future prospects are awarded by the Tribunal. The Hon'ble Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others**

reported in [2017] 16 SCC 680 has held that if the deceased is below 40 years of age and he is self-employed, he is entitled for 40% additional income, hence, I am considering 40% additional income. No pecuniary loss is given under the head of loss of estate, funeral expenses and filial consortium. I am considering it as Rs.70,000/-.

7] Considering the above calculations, the appellants are entitled for the following compensation:-

Notional monthly income of the deceased	Rs.2,500/-
40% future prospects as per Pranay Sethi case [2,500/- 40% = 1000]	Rs.2,500/- + Rs.1000/- = Rs.3500/-
Deceased was Bachelor, hence, $\frac{1}{2}$ deduction	Rs.3500-1750 = Rs.1750 per month
Annual income of deceased	Rs.1750 x 12 = Rs.21,000/- p.a.
Deceased was 25 years old multiplier 18	Rs.21,000 x 18 = 3,78,000/-
Non pecuniary head	Rs.70,000/-
Total	3,78,000/- + 70,000/- = Rs.4,48,000/- with interest 7.5% p.a. from the date of application till realization.

Now crucial aspect is in respect of awarding the interest on enhanced amount. The original claim petition was filed in the year 1998. After decision on it by the Tribunal, respondent no.2 preferred appeal, on the ground that false statement was made by the father of the deceased before the Tribunal and on that basis, earlier the Tribunal has granted compensation. This Court has considered the said fact and remanded the matter for re-consideration. Hence, the appellants are entitled for the interest on the enhanced amount from the order of this Court dated 13.01.2015.

8] In view of above, I pass following order :-

ORDER

i] The appeal is partly allowed.

ii] NFL amount of Rs.50,000/- shall be deducted from the enhanced amount. The appellants are entitled for enhanced amount of Rs.3,98,000/- @ 7.5% p.a. interest from 13th January, 2015.

iii] The appellants are permitted to withdraw the amount after deposit by respondent no.2.

iv] Respondent no.2 is directed to deposit the amount within four weeks before the Motor Accident Claims Tribunal, Jalna.

v] First Appeal is disposed of accordingly.

[S.G.DIGE]
JUDGE

DDC