IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 206 OF 2021

1) Vimalbai W/o Vishwanath Bhalerao
Age: 35 years, Occu: Labour,
R/o Panchala,
At present Risala Bazar, Hingoli,
Tq. & Dist. Hingoli

2) Udhav Vishwanath Bhalerao
Age: 19 years, Occu: Nil,
R/o As above

3) Baburao Vishwanath Bhalerao
Age: 10 years, Occu: Nil,
R/o As above

4) Bali d/o Vishwanath Bhalerao
Age: 15 years, Occu: Nil,
R/o As above

Appellant Nos. 3 and 4 are Minor
under guardianship of real mother
Vimalbai Vishwanath Bhalerao,
Age: 35 years, Occu: Household,
R/o As above

5) Sumanbai nivruti Bhalerao
Age: 65 years, Occu: Nil,
R/o As above … **APPELLANTS**
(Orig. Claimants)

VERSUS

1) Vijay Ramdas Kalley
Age: 40 years, Occu: Business,
R/o Ansingh, Tq. Washim,
District Washim
(Owner of Matador No.MH 30-A-9225)

2) The Oriental Insurance Co. Ltd.,
Through Branch Manager
Old Motor Stand, Washim,
(For service of notice)
Daulat Building, Shivaji Chowk,
Parbhani ...**RESPONDENTS**

....

Mr. Pavankumar S. Agrawal, Advocate for appellants
Mr. P. C. Mayure, Advocate for respondent No.1
Mr. V. N. Upadhye, Advocate for respondent No.2

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 23.02.2023

J U D G M E N T :-

By consent of the parties, heard finally.

2. The appellants are the claimants in M.A.C.P. No.62 of 2003. The same was instituted before the Motor Accident Claims Tribunal at Hingoli. The learned Member of the tribunal allowed the claim vide judgment and award dated 29.11.2008 and granted compensation of Rs.1,59,000/- along with interest at the rate 6% p.a.

3. It is the case of the appellants that deceased Vishwanath died in the motor vehicle accident dated 09.06.2002. The offending matador bearing No.MH-30-A-9225 dashed against his bicycle. He

suffered fatal injuries. According to the appellants/claimants, they were dependent on the income of the deceased. He was the sole bread earner of the family. The respondent – insurance company opposed the claim before the tribunal. The learned tribunal considered notional income of the deceased to the tune of Rs.15,000/- per annum and applying multiplier of 15, passed the total award of Rs.1,59,000/-.

4. Mr. Agrawal, learned Advocate for the appellants submits that the learned tribunal has committed grave error while considering the notional income of the deceased as 15,000/- per annum. The deceased was 35 years of age and maintaining the family of five persons. Considering the minimum wages prevailing during the relevant period, the income of the deceased ought to have been considered minimum at the rate Rs.3,000/- per month. He would submit that the multiplier is wrongly applied by the tribunal. The compensation towards future prospects is not granted. He would submit that the tribunal granted inadequate compensation towards non pecuniary heads.

5. Mr. Upadhye, learned Advocate appearing for respondent No.2 supported the judgment passed by the tribunal. He would

submit that in absence of income proof, the learned tribunal has rightly referred to the schedule under the provisions of Section 163-A of the Motor Vehicle Act and considered the notional income at the rate Rs.15,000/- per annum. He would submit that the claimants have not recorded any evidence that would demonstrate the income at the time of death of the deceased Vishwanath. He would submit that the assessment of compensation is just and proper. No interference in the award passed by the tribunal is required in this appeal.

6. Mr. Mayure, learned Advocate for respondent No.1 opposes the prayers in the appeal and adopts the argument of learned Advocate Mr. Upadhye, appearing for respondent No.2.

7. The deceased Vishwanath was 35 years of age at the time of accident. The accident took place in the year 2002. He was maintaining the family of five persons. The learned Tribunal has considered notional income of deceased @ 15,000/- per annum. However, no specific reasonings has been recorded for the same. The schedule under the provisions of Section 163-A of the Motor Vehicle Act would not be strictly applicable in a claim filed under Section 166 of the Motor Vehicle Act.

8. In my considered view, the minimum earning of the person who was maintaining the family of five persons could not have been less than Rs.30,000/- per annum. Accordingly, I deem it fit to fix the income of the deceased as Rs.30,000/- per annum considering minimum wages at the relevant time. Multiplier of 16 would be applicable to the age of the deceased.

9. The Hon'ble Supreme Court of India in the matter of ***National Insurance Company Limited Vs Pranay Sethi and others – (2017) 16 SCC 680*** has laid down the principles for assessment of compensation in the matters arising out of the Motor Accident Claims. Applying the same principles, it would be necessary to add 40% of the assessed income towards future prospects of the deceased. Since there are five dependents, the 1/4th of the income of the deceased will have to be deducted towards his personal and living expenses. The claimants would also be entitled for the compensation of Rs.70,000/- towards non pecuniary heads.

10. The fallout of the aforesaid discussion is that the claimants are entitle for enhanced compensation as under:-

Sr. No.	Compensation	Amount (Rs.)
1.	Loss of Future Earning 2500 X 12	30,000/-
2.	After adding 40% towards future prospects	42,000/-
3.	Deduction of 1/4th towards personal and living expenses	31,500/- -----------------
4.	Applying multiplier of 16	5,04,000/-
5.	Add compensation towards non pecuniary losses	+70,000/-
	Total =	**5,74,000/-**

The award of the tribunal needs to be modified to that extent.

11. At this stage, Mr. Upadhye, the learned Advocate appearing for respondent No.2 submits that the claimants had approached this Court along with application for delay condonation. This Court condoned the delay of 1109 days vide order dated 25.01.2021 in Civil Application No. 5641/2012. While condoning the delay, this Court had put a rider that the claimants would not be entitled for interest for the period of delay. In view of the aforesaid facts, I pass the following order:

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

(i) The First Appeal is partly allowed.

(ii) The claimants are entitled for total compensation of Rs.5,74,000/- along with 6% simple interest per annum from the date of filing of claim petition (excluding the delayed period of 1109 days) till realisation of amount.

(iii) Respondent Nos. 1 and 2 shall jointly and severally pay the compensation amount to claimants within a period of 60 days from the date of award along with proportionate cost.

(iv) The amount paid/deposited under the award of Tribunal be appropriated.

(v) Award be drawn accordingly.

[S. G. CHAPALGAONKAR, J.]

SMS