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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 991 OF 2013

1. Nilesh S/o. Arvind Shah,
Age 38 years, Occ. Business.
2. Nirali d/o. Nilesh Shah
Age 7 years, Occ. Education.
3. Nirav s/o. Nilesh Shah
Age 5 years, Occ. Education,
Nos. 2 and 3 minor through
its guardian No.1.

All R/o. Shendi, Tq. Akole
Dist. Ahmednagar.

.. Appellants
(original claimants)

VERSUS

1. Deoram s/o. Nana Lahamge,
Age 40 years. Occ. Business.
2. Kisan Baburao Yelmame
Age 45 years, Occ. Business,
Both R/o. Wanjar Galli,
Near Laxmi Narayan Mandir
Rajur, Tq. Akole, Dist. Ahmednagar.
3. The United India Insurance Company Ltd.,
Ahmednagar, Hotel Karam Building,
Opp, Bus-stand, Sangamner,
Tq. Sangamner, dist. Ahmednagar.

.. Respondents.
(ori. Opponents)

Mr. V.S. Bedre, Advocate for appellants
Mr. V.Y. Bhide, Advocate for respondent No.1
Mr. S.V. Kulkarni, Advocate for respondent No.3.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 18th APRIL, 2024.

JUDGMENT :-

1. The appellants/original claimants, impugn the judgment and award dated 1.11.2012 passed by the Motor Accident Claims Tribunal Sangamner, Dist. Ahmednagar, in Motor Accident Claim Petition No. 53 of 2009.

2. Mr. Bedre, the learned advocate for the appellants/original claimants submits that appellants are dependents of deceased Neha Nilesh Shah. She died in an accident dated 2.2.2009 that took place within the limits of Akole Police Station. While she was traveling in a jeep bearing Registration No. MH-1 – N 1273, tanker bearing registration No. MH-28/B 5026, gave a forcible dash to the jeep. Consequently, the jeep turned turtle. The deceased Neha suffered fatal injuries as a result of the accident. The offence was registered against both the vehicle drivers. The claimants had filed Motor Accident Claim Petition No. 53 of 2009 before the Tribunal raising claim for compensation under the provisions of section 166 of the Motor Vehicles Act. Although, tribunal allowed the claim, passed a meager award of Rs. 4,30,000/- in favour of the claimants, directing respondent Nos. 1 to 3 to pay the compensation. Mr. Bedre, learned advocate for the appellant further submits that the Tribunal assumed notional income of the deceased @ Rs. 3,000/- p.m. only although, she was helping appellant No.1 Nilesh in his business and also looking after the household work. Her contribution to the family could have been appropriately considered. He would submit that the

notional income of the deceased could have been considered at least @ Rs. 6,000/- p.m. so also claimants could have been adequately compensated towards non pecuniary losses. As such, he seeks enhancement of compensation.

3. Mr. S.V. Kulkarni, learned advocate for the insurer-respondent Nos. 3 submits that the Tribunal has passed just and proper award in absence of the income proof of the deceased. According to him, only claimant Nos. 2 and 3 were dependent on the deceased.

4. Having considered submissions advanced on behalf of the learned advocates appearing for the parties and after going through the record, it is not in dispute that the deceased lost her life in the motor vehicle accident dated 2.2.2009 involving the offending vehicles. Both the vehicles involved in the accident were insured with the respondent No.3 United India Insurance company. The tribunal apportioned the negligence of both the vehicle drivers in equal proportion. Therefore issue raised in this appeal is limited to the quantification of compensation, particularly, correct assessment of income of the deceased.

5. The incident in question occurred in the year 2009. The deceased lost her life leaving behind two minor children aged about 5 and 2 years respectively. The claimant No.1 husband has also lost company of his wife at crucial stage of life. Although, it is contended on behalf of the claimants that deceased use to help claimant No.1 in his cloth shop business, no particulars are brought on record to show nature of her exact contribution. However, fact remains that she was a home maker and backbone of the family consisting of two minors. The issue as regards to what shall be the notional income of a home maker is no more

res-integra. The Supreme Court of India in the matter of *Arunkumar Agrawal and another vs. National Insurance Co. Ltd., reported in (2010) 9 SCC 218*, observed that the contribution of home maker cannot be ignored and appropriate value shall be added to the various services that she renders to the family members.

7. Taking into account the observations espoused in the aforesaid judgment, apparently, the Tribunal was not justified in fixing the notional income of the deceased at Rs. 3,000/- p.m. Considering the fact that accident in question took place in the year 2009, the notional income of the deceased could have been fixed at least @ Rs. 5,000/- p.m. In addition to the notional income, it would be just and proper to add amount towards future prospects @ 40% considering the age of the deceased i.e. 35 years as held by the Tribunal. The award of compensation towards non pecuniary heads appears meager. This court finds that claimants are entitled for Rs. 40,000/ each towards loss of consortium, Rs. 15,000/- towards lost of estate and Rs. 25,000/- towards funeral expenses, in tune with settled principles of assessment of compensation. Therefore award passed by the Tribunal needs to be modified in terms of the assessment indicated hereunder :-

Sr.No.	Particulars	Amount
1.	Annual (Notional) income @ Rs. 5,000/-p.m. x 12	Rs. 60,000/-
2.	Deduct 1/3rd towards personal and living expenses i.e. 60,000-20000	Rs. 40,000/-
3.	Add 40% towards future prospects	Rs. 56,000/-
4.	Apply multiplier of 16 = 16 x 56,000/-	Rs. 8,96,000/-
5	Add 40000 each for loss of consortium	Rs, 1,20,000/-
5.	Add towards Funeral Expenses	Rs. 25,000/-
6.	Add towards loss of estate	Rs. 15,000/-
	Total	Rs.10,56,000/-

8. Hence, the following order :-

ORDER

[A] The first appeal is partly allowed.

[B] The judgment and award dated 1.11.2012 passed by Motor Accident Claims Tribunal, Sangamner is hereby modified. The claimants are held entitled for total compensation of Rs. 10,56,000/- including N.F.L. alongwith interest @ 6 % p.a. from the date of petition till realization of the amount.

[c] The respondent Nos. 1 and 3 shall jointly and severally pay 50% of amount of compensation as assessed to the claimants nos. 1 to 3.

[d] Respondent Nos. 2 and 3 shall jointly and severally pay 50% of amount of compensation as assessed to claimant Nos. 1 to 3.

[e] The award be drawn accordingly on payment of deficit court fees, if any.

[f] The amount deposited in terms of this order be disbursed to the claimants in equal proportion.

[g] Appeal stands disposed of in above terms.

**[S.G. CHAPALGAONKAR]
JUDGE**

grt/-