IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3591 OF 2018

1. Smt. Varsha Deepchand Bagul
   Age: 30 years, Occu.: Household

2. Chi. Hrushikesh Deepchand Bagul
   Age – 5 years, Occu. Education

3. Ku. Pooja Deepchand Bagul
   Age – 9 years, Occu. Education.

   (Appellant no.1 is for herself and as
   Natural Guardian for appellants Nos. 2 and 3)

4. Smt. Hirabai Vitthal Bagul
   Age – 74 years, Occu. Household

   All the appellants are residing at
   Rameshwar Colony, Jalgaon. … Appellants
   (Orig. Claimants)

Versus

1. Smt. Kamlaben Natubhai Gyanchandani
   Age – Major, Occu. - Business,
   R/o. Ukai, Taluka Songad,
   Dist. Surat (Gujrath)

2. The New India Assurance Company Ltd.
   Through The Divisional Manager,
   Khandesh Mill Complex, Nehru Chauk,
   Jalgaon.

3. Shri Sharad Vitthal Bagul
   Age -22 years, Occu. -
   Rameshwar Colony, Jalgaon.

   Respondent No.3 deleted as per
   Court's order dated 09.10.2018) … Respondents

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Mr. Madhav M. Bhokarikar, Advocate for Appellants
Mr. M.R. Deshmukh, Advocate for Respondent No.2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 16th OCTOBER, 2024

ORAL JUDGMENT :

1. Heard.

2. Admit. Taken up for final hearing with consent of the parties.

3. This appeal filed under section 173 of the Motor Vehicles Act by claimants, challenges the judgment and award dated 25.01.2008 passed by the Motor Accident Claims Tribunal, Jalgaon in M.A.C.P. No.122/2004.

4. Admitted facts are that, on 21.12.2003 Dipchand Vitthal Bagul (hereinafter referred to as 'the deceased') was travelling along with his relative, on motorcycle No.MH-19/ W-2140, from Jalgaon to Chopda, on State Highway No.6. When the motorcycle reached in Musali Shiwar in front of Kabra Plast, one truck bearing No.GJ-19/T-1518 coming from Erandol and gave dash to the motorcycle. Deceased expired on the spot of accident. Claimants, therefore, filed claim petition for compensation of Rs.8,00,000/-, contending that deceased was serving in Sahara Finance Services and was getting salary of 1,800/- per month. He was also serving with Sham Distributors as a salesman and was getting salary of Rs.3,000/- per month. Hence, he was earning Rs.4,800/- per month.

5. Insurance company opposed the claim by filing written statement. The Tribunal, after recording evidence awarded compensation of Rs.2,61,000/- along with interest @ 6% p.a. Claimants are aggrieved by inadequate compensation awarded by the Tribunal. Hence, the present appeal for enhancement of compensation.

6. Heard learned advocate for appellants/claimants and learned advocate for respondent no.2/insurance company. Though served, none for appears for respondent no.2. Perused the record.

7. Admittedly, claimants have examined witness No.2 – Shamkant Ramesh Wani, who has deposed that deceased was working in Sham Distributors and his basic salary was Rs.2,200/- per month, in addition he was getting Rs.800/- as incentive. He has proved certificate (Exhibit-31) showing that deceased was working as Salesman from January 2002 to December 2003 and salary slip (Exhibit-32) showing the total salary of deceased was Rs.3,000/- per month.

Witness No.3 – Ansari Awez Mustafa is examined, who has deposed that he is running Sahara Finance Company and deceased was working in his office as a part time employee and he was paying Rs.1,800/- per month to the deceased. He has proved the salary certificate (Exhibit-34) to that effect.

8. The above evidence is sufficient to indicate that deceased was getting Rs.3,000/- per month from his employer Sham Distributors and Rs.1,800/- from Sahara Finance Services. Insurer has seriously disputed the said earning, stating that nothing is brought on record by both the witnesses showing that deceased was employed with them. The said objection is liable to be rejected at the threshold. It is well settled that claimants have to prove their case on the touchstone of preponderance of probability and they need not prove their case beyond reasonable doubt. The evidence on record is sufficient to prove that deceased was earing Rs.4800/- per month and he was supporting family of five persons/claimants.

9. The Tribunal has wrongly appreciated the evidence in respect of income of the deceased and has erred in assessing his monthly income at Rs.2,200/- by ignoring positive evidence brought on record by the claimants.

10. Tribunal has deducted 1/3rd amount towards personal expenses of the deceased, which should be 1/4th as there are

five claimants. Tribunal has also erred in not awarding compensation towards loss of consortium. In view of decision in ***National Insurance Co. Ltd and Anr Vs. Pranay Sethi and Others, 2017 AIR (SC) 5157***, claimants are entitled for Rs. 44,000/- each towards consortium. Appellants are also entitled for funeral expenses of Rs.16,500/- and loss of estate of Rs.16,500/-. The Tribunal has further erred in applying multiplier of 16. Considering the fact that deceased was 38 years old at the time of accident, multiplier of 15 is applicable.

11. In view of the aforestated discussion, claimant is entitled for following compensation.

Sr. No.	Heads	Amount (Rs.)
1.	Monthly Income of Deceased	4,800/-
2.	Annual Income (4,800 x 12)	57,600/-
3.	Future Prospects @ 40% i.e. 23,040 (23,040 + 57,600)	80,640/-
4.	Less 1/4th deduction i.e. Rs. 20,160/- (80,640 - 20,160)	60,480/-
5.	Multiplier of 15 (60,480 X 15)	9,07,200/-
6.	Non-pecuniary Losses: (I) Consortium Rs.44,000/- each i.e. 1,76,000 (ii) Funeral Expenses Rs.16,500/- (ii) Loss of Estate Rs.16,500/-	2,09,000/-
7.	Total compensation needs to be	11,16,200/-

	awarded (Rs.9,07,200 + 2,09,000/-)	
8.	Compensation awarded by the Tribunal	3,11,100/-
9.	**Total Enhanced Compensation (11,16,200 – 3,11,100)**	**8,05,100/-**

12. Learned advocate has rightly pointed out that though the present first appeal was filed in the year 2009, which was dismissed in default on 02.12.2011 and it was restored on 09.10.2018. Therefore, appellants are not entitled for the interest for this period.

13. In the result, following order:-

ORDER

(i) First Appeal is partly allowed with proportionate costs.

(ii) Impugned judgment and award dated 25.01.2008, passed by Member of M.A.C.T., Jalgaon in M.A.C.P. No.122 of 2004 is modified and appellants/claimants are held entitled for enhanced compensation of Rs.8,05,100/- to be paid by respondents No.1 and 2 jointly and severally within 12 weeks from the date of uploading of this judgment.

(iii) The insurance company shall deposit the enhanced compensation along with accrued interest @ 6% per annum on the enhanced compensation from the date of filing of claim petition till realization.

(iv) It is made clear that appellants shall not be entitled for the interest of the period from 02.12.2011 to 09.10.2018.

(v) Rest of the award is maintained.

(vi) Appellants/claimants to pay court fees on enhanced compensation as per rules.

[NITIN B. SURYAWANSHI]
JUDGE