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

FIRST APPEAL NO. 4253 OF 2016

1] Sou. Shakuntala W/o Shivaji Gadamwar
Age: 41 Years, Occu: Household

2] Sandeep S/o Shivaji Gadamwar,
Age: 20 Years, Occu: Education

3] Sou. Marubai W/o Gangaram Gadamwar,
Age: 70 Years, Occu: Household,

All R/o: Annabhau Sathe Nagar, Tamloor,
Tq. Degloor, Dist. Nanded ...**APPELLANTS**
[Ori. Claimants]

VERSUS

1] Samuel S/o Yellappa Yellugoi,
Age: Major, Occu: Business,
R/o: House No.6074, Netaji Nagar,
Zaheerabad, Dist. Meadak (Andhra Pradesh)

2] Shriram General Insurance Com. Ltd.,
Through it's Manager, E-8, EPIP, RIICO
Industrial area, Sitapura, Jaipur,
Rajasthan – 302022 ... **RESPONDENTS**
[Ori. Respondents]

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Mr. Avinash D. Hande, Advocate for appellants
Mr. Abhijit Chaudhari, Advocate for respondent No.2
Non for the Respondent no. 1.

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 27 MARCH 2024

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

1. Heard Mr. Avinash Hande, learned Counsel for the appellants and Mr. Abhijit Choudhari, learned Counsel for respondent No.2. Though the Respondent no. 1 was duly served with notice, but remain absent.

2. The appellants have invoked jurisdiction of this Court under Section 173 of the Motor Vehicles Act, 1988 challenging the judgment and award dated 08.08.2016, passed by the learned Member, Motor Accident Claims Tribunal, Biloli, District Nanded, in M.A.C.P. No.31 of 2013.

3. For the sake of brevity, the parties to the present appeal are hereinafter referred to as the claimants and the respondents.

4. In short, it is the case of the claimants that on 09.04.2013, Shivaji Gadamwar, husband of claimant No. 1, father of claimant No. 2 and son of claimant No. 3, was working as Coolie on Truck bearing No. AP-23-Y-0240. Respondent No. 1 is the owner of said Truck, which was insured with the Respondent No. 2–Insurance

Company. On fateful day, said Truck had been in the bank of Lendi River for loading sand. After the sand was loaded, Truck was proceeding towards village Degloor. The husband of claimant No.1 was sitting on top of the Truck along with other labourers. The Truck Driver driven the truck in high speed, rashly and negligently, due to which at about 4.30 p.m., said Truck turned turtle near the field of Shri Hanmant Patil at Tamloor Fata to Lendi River thereby Coolies/labourers fell down from on road and they burried under the sand and due to asphyxia they died. Said incident was reported to the Police by one Sanjay Kashinath Farse by lodging an F.I.R. bearing Crime No. 65 of 2013 against the Truck driver for the offences punishable under Sections 279, 304-A, 337 and 338 of the Indian Penal Code. Necessary investigation was conducted and on completion of investigation, charge-sheet came to be filed against the Truck driver.

5. According to the claimants, at the relevant time, deceased Shivaji was 42 years old and was doing Coolie work. The deceased was earning Rs.300/- per day i.e. Rs.9,000/- per month. Therefore claimants prayed for compensation to the tune of Rs.12,00,000/-.

6. Respondent No.1 – Truck owner chose not to appear, hence, matter proceeded *ex-parte* against him. Respondent No. 2-Insurance Company filed written statement at Exh.18 and denied claim of complainants. According to respondent No.2 – Insurance Company, on the day of incident, the Truck driver was not having valid driving licence. The claimants claimed exorbitant claim. Further there is breach of policy, hence, prayed for dismissal of the claim petition.

7. On basis of rival pleadings, the learned Member, M.A.C.T., framed issues at Exh.13. The claimant No.1 filed her evidence affidavit at Exh.-26 and produced documentary evidence Exh.27 to 41.

8. On 08.08.2016, the learned Member, M.A.C.T., passed the impugned judgment and award and granted compensation to the tune of Rs. 5,51,500/- in all heads by considering notional income of the deceased of Rs.4,500/- per month. Being dissatisfied from said judgment and award, the claimants are before this Court seeking enhancement of compensation.

9. Adv. Avinash Hande, learned Counsel for the claimants submits that the deceased Shivaji was 45 years old at the time of incident and said fact was not challenged by respondent No.2 - Insurance Company. Further, the deceased was earning Rs.300/- per day i.e. Rs.9,000/- per month i.e. Rs.1,08,000/- per year. Therefore, the learned Member ought to have granted higher compensation than the award amount. However, the learned Member wrongly considered notional income of the deceased Rs. 4,500/- monthly, hence, prayed for quashing and setting aside of impugned award to the extent of compensation. To buttress this submissions, he relied on the case of ***Vimal Kanwar and others Vs. Kishore Dan and others – 2013 AIR (Civil) 636.***

10. Per contra, the learned Counsel appearing for respondent No.2 submits that though the claimants have claimed that the deceased was earning Rs.9,000/-, however, the claimants have not examined Employer of the deceased, nor the claimants produced any documentary evidence to prove that the deceased was drawing wages to the tune of Rs.9,000/- monthly in the relevant year. Therefore, in absence of documentary evidence of the income of deceased, the

learned Member, M.A.C.T. considered the notional income of deceased of Rs.4,500/- monthly. and awarded reasonable compensation, hence, prayed for dismissal of the appeal.

11. The learned Counsel for respondent No.2 placed reliance on the case of ***Sanjeev Kumar Samrat Vs. National Insurance Co. Limited and others – (2014) 14 SCC 243,*** wherein, the Hon'ble Apex Court has observed in paragraph No. 23 as under:-

> "*23. It is worthy to note that sub-clause (i)(c) refers to an employee who is being carried in the vehicle covered by the policy. Such vehicle being a goods carriage, an employee has to be covered by the statutory policy. On an apposite reading of Sections 147 and 167 the intendment of the Legislature, as it appears to us, is to cover the injury to any person including the owner of the goods or his authorised representative carried in a vehicle and an employee who is carried in the said vehicle. It is apt to state here that the proviso commences in a different way. A policy is not required to cover the liability of the employee except an employee covered under the 1923 Act and that too in respect of an employee carried in a vehicle. To put it differently, it does not cover all kinds of employees. Thus, on a contextual reading of the provision, schematic analysis of the Act and the 1923 Act, it is quite limpid that the statutory policy only covers the employees of the insured, either employed or engaged by him in a goods carriage. It does not cover any other kind of employee and therefore, someone who travels not being an authorised agent in place of the owner of goods, and claims to be an employee of the owner of goods, cannot be covered by the statutory policy and to hold otherwise would tantamount to causing violence to the language employed in the Statute.*

> *Therefore, we conclude that the insurer would not be liable to indemnify the insured.*"

12. In the case in hand, the claimants raised very limited grievance about meagre compensation of Rs.5,51,500/- instead of Rs.12,00,000/-. On face of record it appears that, the Claimant No.1 Sou. Shakuntala had filed evidence affidavit at Exh.26 and produced documentary evidence at Exh. 27 to 41. However, documentary evidence do not prove income of the deceased Shivaji Gadamwar.

13. The Claimant No.1 herself deposed that her husband Shivaji was working as a Coolie for loading and unloading of sand. Therefore, it appears that the deceased was working either with respondent No.1 Truck owner or someone contractor. Therefore, burden was casted upon the claimants to examine the employer of the deceased, but the claimants failed to examine the employer of the deceased. Admittedly, no documentary evidence produced on record to prove monthly income of the deceased to the tune of Rs.9,000/- per month.

14. On perusal of the impugned judgment, it appears that the learned Member, M.A.C.T. considered notional income of the

deceased at the rate Rs.4,500/- per month and by considering the age of deceased as 45 years, applied the multiplier 13 as per the ratio laid down in the case of ***Sarla Verma and others Vs. Delhi Transport Corporation and another – (2009) 6 SCC 121.*** The learned Member, M.A.C.T. ascertained compensation i.e. 4,500 x 12 = 54,000/- p. a., (-) 1/4th amount deducted as personal expenses of the deceased since the deceased was 45 years old, the multiplier was applied as 13. Rs. 40,500 X 13 = Rs.5,26,500/- + Rs. 25,000/- towards love and affection. The total of above calculation is Rs.5,51,500/-. Therefore, I do not find that the findings recorded by the learned Member, M.A.C.T., while calculating the income of the deceased is illegal, perverse and bad in law. Therefore, no interference is called at the hands of this Court to disturb the findings.

15. Accordingly, the First Appeal is dismissed.

16. No order as to costs. Parties to bear their own costs.

[Y. G. KHOBRAGADE, J.]

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