IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1143 OF 2006

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1. Smt. Madhubala Nitin Munot,
age 35 years, Occ. Household,

2. Kum. Nupura Nitin Munot,
age 11 years, Occ. Education.

3. Kum. Nikita Nitin Munot,
age 8 years, Occ. Education.

Nos. 2 and 3 are minors, through
Natural Guardian appellant no.1.

4. Kachardas Birdichand Munot,
age 61 years, Occ. Nil.

5. Mrs. Pushpabai Kachardas Munot,
age 56 years, Occ. Household,

All R/o Mayur Apartment, near
Zopadi Canteen, Ahmednagar. ..Appellants..
(orig claimants)

VERSUS

1. Mr. Praveen K. Shevale,
age near about 40 years,
Occ. Business, R/o Dwarka
Apartment, 161/62, Mukundnagar,
Pune – 400 037.

and/or

at present Shevale Automobiles,
Chavan Nagar, Near an Arch (near
Kamani), Beside Shankar Mahepatra
Math, Pune Satar Road,
Pune.

2. The United India Insurance Co. Ltd., having its Divisional Office, at Kisan Kranti Building, Market Yard, Ahmednagar. ..Respondents..

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Advocate for Appellants : Mr N C Garud
Respondent No.1 served – absent.
Advocate for Respondent 2 : Mr S V Kulkarni

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CORAM : V.K. JADHAV, J.
Dated: April 26, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the Judgment and Award passed by the Member, Motor Accident Claims Tribunal, Ahmednagar, dated 23.6.2006 in MACP No. 800/2000, the original claimants have preferred this appeal to the extent of quantum.

2. Brief facts, giving rise to the present appeal, are as follows :-

a] On 1.3.2000 deceased Nitin was proceeding on motor cycle bearing registration No.MH-16-G-2979 from MIDC to Ahmednagar. One Ramchandra Bhagwan Jogdand was the pillion rider. On way, in front of one Hotel, a Milk Tanker bearing registration No.MH-12-7838 came from his back side in excessive speed, driven in rash and negligent manner and gave dash to the motor cycle. In consequent of which, both of them fell down on road. Deceased Nitin sustained serious injuries and died on the spot. The accident had taken place on account of the sole negligence of the driver of the Tanker. The L.Rs. Of deceased Nitin had preferred claim petition before the Tribunal, Ahmednagar for grant of compensation under the various heads. Deceased Nitin was running business of medical shop as he was qualified pharmacist. Besides, medical shop he was also personally cultivating his agricultural land. Furthermore, the deceased had invested money in Temparate Finance Company, Ahmednagar. He was getting remuneration of Rs.30,000/- p.a. from the said company towards the services rendered by him. Deceased Nitin was the only earning member from his family and all the claimants were depending upon his income.

b] Respondent No.1-owner, though, duly served, failed to appear and therefore, claim petition ordered to proceed ex-parte against him.

3. Respondent no.2-Insurer has strongly resisted the claim petition by filing written statement. Respondent-Insurer has denied that the driver of the tanker was at fault. Respondent-insurer also denied the income of deceased Nitin. It is also contended that, the driver of the tanker was not holding valid and effective driving licence and, hence, the insurance company is thus not liable to pay the compensation. The learned Member of the Motor Accident Claims Tribunal, Ahmednagar, by its impugned Judgment and Award dated 23.6.2006 partly allowed the claim petition and thereby directed the respondents no.1 and 2 jointly and severally do pay to the applicants compensation of Rs.10,10,000/- (inclusive of the amount if any paid under no fault liability) with proportionate costs and interest on the unpaid amount at the rate of 9% p.a. from the date of filing of the application till realization of the amount. The appellants-original claimants preferred this appeal to the extent of quantum.

4. Learned counsel appearing for the appellants submits that, the Tribunal has not considered the

income of deceased Nitin from agricultural source. Learned counsel submits that, the Tribunal has also not considered addition of income by considering the future prospectus of deceased Nitin. Learned counsel submits that even the Tribunal has not considered the income of deceased Nitin from the Finance Company. Learned counsel submits that, the Tribunal has not awarded the compensation under the non-pecuniary heads and only awarded the lump sum compensation of Rs.38,000/- for the non-pecuniary loss without specifying the heads. Learned counsel submits that, in view of the decision rendered by the Apex Court in case of **Rajesh Vs. Rajbir Singh** reported in **(2013) 9 SCC 54**, the claimants are entitled for 50% of addition in income by considering the future prospects.

5. Learned counsel for the respondent-insurer submits that, the Tribunal has considered the income of deceased Nitin from his medical shop business as per the documents produced on record. Learned counsel submits that, the future prospectus can only be considered when there is strong and positive evidence

on record to show that there were definite prospectus of income. Learned counsel submits that in case of **National Insurance Company Vs. Pushpa** reported in (2015) 9 Supreme Court Cases 166 in Paragraph No.5, and in case of **Shashikala and others Vs. Gangalakshmamma and another reported in 2015 ACJ page 1239** the Apex Court held it appropriate to refer the matter to a larger Bench as regards the issue of manner of addition of income for future prospects. In case of **Shashikala** (supra), the request was made for constitution of a suitable larger Bench to decide the issue as to addition of income towards future prospect, in case of self employed or person of fixed wages, to be added to the compensation towards dependency. Learned counsel submits that, the Tribunal has awarded just and reasonable compensation by considering income. Learned counsel submits that, the Tribunal has also awarded just and reasonable compensation under the non pecuniary heads. Learned counsel further submits that, even after death of person who was cultivating the land, corpus of the agricultural land remain as it is and, in that event, there cannot be total loss in the agricultural income.

6. Undisputedly, the accident occurred due to rash and negligent driving of the driver of the tanker alone and the said tanker is owned by respondent no.1 and insured with respondent no.2. Respondent No.2-Insurer has failed to prove that the driver of the tanker was not holding valid and effective driving licence at the time of accident and, respondent no.1 owner has thereby committed breach of conditions of the policy. Respondent-insurer has not preferred any appeal against said finding recorded by the Tribunal nor preferred any cross objection so far as that finding is concerned.

7. Deceased Nitin was running a business of Medical Shop and the claimant no.1 has deposed accordingly and produced on record various documents in support of her evidence before the Tribunal. Claimants have produced on record the certificate issued by the Commissioner Food and Drugs, Maharashtra State

dated 4.2.2006 and said certificate discloses that licence has been issued for running 'Darshana Medical and General Stores' by deceased Nitin came to be cancelled as proprietor of this shop was expired. Admittedly, there is no other member in the family who is qualified Pharmacist for running a medical shop. The claimants have produced before the Tribunal three years income tax returns and those are marked at Exh.37 to 45 respectively. The learned Member of the Tribunal, after considering the entire evidence in this regard has rightly considered the yearly income of deceased Nitin by way of medical business to the tune of Rs.71,000/- p.a.

8. So far as yearly income from the agricultural land is concerned, learned counsel for respondent-insurer has rightly pointed out that, corpus of the agricultural land would remain as it is. In that way, there cannot be any total loss from the agricultural income as such. The claimant no.1 has also admitted in her cross examination that, deceased Nitin was not doing any agricultural operation, but, he was only supervising the same. Furthermore, the Tribunal has also observed

that there is no evidence to show that prior to death of deceased Nitin partition was effected between him and his brothers in respect of agricultural land.

9. Deceased Nitin owned and possessed agricultural land to the extent of 4 acres and 7/12 extracts to that effect are produced on record marked as Exh.29 to 32 respectively. The learned Member of the Tribunal on the basis of evidence adduced before it has observed that, agricultural land business is continued as before and so the case of the claimants cannot be accepted that because of demise of Nitin, family is required to stop the agricultural business and consequently, there is total loss of income. However, the loss in the agricultural income on account of the personal supervision is quite apparent and the claimants are certainly entitled for the compensation to that extent. In a given facts and circumstances of the case, same is appropriate to be considered as Rs.2,000/- p.m. corresponds to Rs.24,000/- per year.

10. Deceased Nitin was rendering services to one

Temperate Finance Private Limited Company and he was one of the Director of the company. He was getting salary of Rs.2,500/- p.m. corresponds to Rs.(2,500 x 12) Rs.30,000/- per year. Certificate has been issued by the Managing Director to that effect and the same is marked as Exh.36. It appears that, the Tribunal has not considered the same. The claimants are entitled for the loss of income on account of the untimely accidental death of deceased Nitin.

11. So far as addition of income by way of future prospects is concerned, in the case of New India Assurance Co. Ltd. Vs. Smt Alpa Rajesh Shah and ors reported in 2014 (4)ALL MR 172 (supra), this Court has taken a view that only when there is strong and positive evidence on record to show that there were definite prospects of increase in the income of deceased in future, such a case can be treated as an exceptional case in which future prospects of increase in the earning can be considered. It is true that, issue as to addition towards future prospects in case of self employment or person with fixed wages has been

referred to the larger Bench. Pendency of such reference does not prevent courts from adopting such course as is held in the case of **Manager National Insurance Co. Ltd., Vs. Sanju P. Paul and another** reported in **2013 AIR SCW 609.** However, in absence of any positive evidence about the future prospects, only on the basis of young age of deceased Nitin, addition in the income for future prospects can be considered in the facts and circumstances of the present case.

12. It also appears from the impugned Judgment and award that the Tribunal has awarded lumpsum compensation of Rs.38,000/- under the non pecuniary loss without specifying heads. Learned counsel appearing for the appellants/original claimants by relying on a case of **Sanobanu Nazirbhai Mirza and Ors. Vs. Ahmedabad Municipal Transport Service,** reported in **2013 (6) ALL MR 981 (S.C.)**, submits that, the Tribunal has awarded a very meagre compensation under the non-pecuniary heads. In a case relied upon by the learned counsel for the appellants-original claimants is concerned, no proposition of law is laid

down as such and the same can be considered in light of the facts and circumstances of each case. In the present case, however, the Tribunal has awarded very meagre amount of compensation under the non-pecuniary heads. In the present case, considering the age of the appellant/claimant no.1, loss of consortium of Rs.15,000/- would be appropriate, Rs.10,000/- for loss of estate, Rs.10,000/- each for minor claimants no.2 and 3 for loss of love and affection and Rs.20,000/- towards funeral expenses would be just and proper.

13. In the case in hand, the learned Member of the Tribunal has erroneously applied the multiplier '18' instead of '17'. In view of the above discussion and also by applying correct multiplier, re-calculation of the compensation is required to be done. Thus, income of deceased Nitin is considered as Rs.71,000/- p.a. from the medical shop business, Rs.24,000/- p.a. from the agricultural source and Rs.30,000/- from Finance Company. Thus, total loss of income per annum comes to Rs.1,25,000/-. After deducting $1/3^{rd}$ amount from his income as personal expenses an amount of

Rs.83,334/- comes to loss of income/dependency and by applying multiplier '**17**' total compensation comes to Rs.14,16,678/-

14. Furthermore, the claimants are also entitled for the compensation under the non pecuniary heads as worked out herein before. Thus, break up of the compensation under various heads which can be broadly categorized, as under :-

1.	Loss of future income/ dependency	Rs.14,16,678/-
2.	Loss of Consortium	Rs.00,15,000/-
3.	Loss of Estate	Rs.00,10,000/-
4.	Loss of Love and affection (minor claimants 2,3 Rs.10,000 each)	Rs.00,20,000/-
5.	Funeral charges	Rs.00,20,000/-
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		Rs.14,81,678/-

Thus, the claimants are entitled for the total amount of Rs.14,81,678/- alongwith interest as awarded by the Tribunal. Hence, the following order.

ORDER

I. First Appeal is hereby partly allowed with proportionate Costs.

II. The Judgment and Award dated 23.6.2006 passed by the Member, Motor Accident Claims Tribunal, Ahmednagar in MACP No.800/2000 is hereby modified as under :-

"The opponents No.1 and 2 shall jointly and severally do pay to the claimants compensation of **Rs.14,81,678/-** (Rs. Fourteen lacs eighty one thousand six hundred and seventy eight only) (inclusive of the amount if any paid under No Fault Liability) with proportionate costs and interest on the unpaid amount @ 9% p.a. from the date of filing of the application till realization of the entire amount.

III. Rest of the Judgment and Award passed by the learned Member of the Motor Accident Claims Tribunal, Ahmednagar in MACP No.800/2000 stands confirmed.

IV. Award be drawn up in tune with the above modifications.

V. First Appeal is disposed of.

(V.K. JADHAV, J.)

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