

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

FIRST APPEAL NO. 600 OF 2016

1. Shri Yuvraj Hiralal Patil
age 40 yrs, Occ. Nil,
 2. Shri Yogesh Hiralal Patil,
age 39 yrs, Occ. Nil.
 3. Shri Narendra Hiralal Patil,
age 37 yrs, Occ. Nil.
 4. Sau. Urmila Shyam Patil,
age 38 yrs, Occ. Nil,
R/o Aurangpura, Tq. Shahada,
Dist. Nandurbar.
- ...Appellants...
(orig claimants)

VERSUS

1. Paratbhai Bhimabhai Godhaniya,
age major, Occ. Truck owner,
R/o Khambhor, Tq. Porbandar,
Dist. Porbandar, Pin 360575.
Gujarat.
 2. TATA AIG General Insurance Co. Ltd.,
202/A, The orion, 2nd Floor,
Koregaon Park Road, Pune.
- ..Respondents..
(orig respondents.)

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Advocate for Appellants : Mr Shrikant S Patil
Advocate for Respondents : Mr. S.S. Patil

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CORAM : V.K. JADHAV, J.

Dated: June 16, 2016

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ORAL JUDGMENT :-

1. Heard finally, with the consent of the parties.

2. Being aggrieved by the Judgment and Award dated 21.11.2014 passed by the learned Additional Member, Motor Accident Claims Tribunal, Shahada in M.A.C.P. No.70/2011, the original claimants preferred this appeal to the extent of quantum.

3. Brief facts, giving rise, to the present appeal are as under :-

a] On 29.10.2010 at about 4.00 p.m. deceased Hiralal was proceeding from Sulwada to Surat alongwith his wife by driving his Indigo Car bearing registration No.MH-39-D-2349. Truck owned by respondent No.1 bearing registration No.GJ-25-T-6023 was coming from opposite direction. The driver of the truck was driving it in excessive speed and in rash and negligent manner. Thus, said truck gave dash to the indigo car from the front side within the limits of village Virpur. In consequence of which, deceased Hiralal had sustained multiple injuries and died on the spot. Claimants preferred claim petition before the Motor Accident Claims Tribunal, Shahada for grant of compensation under various heads. It has contended that, deceased

Hiralal was healthy, hard worker agriculturist. He was cultivating agricultural land personally. He was also doing milk business. He was having a tractor and other agricultural equipments. His total annual income from all sources was about Rs.6.00 lacs. According to the claimants, respondents No.1 and 2 are responsible to pay compensation of Rs.20.00 lacs.

b] Though, respondent no.1 was duly served, failed to appear before the Tribunal and therefore, claim petition ordered to proceed ex-parte against him. Respondent No.2 insurer has strongly resisted the claim by filing written statement at Exh.11. Respondent Insurer has denied the income of deceased, cause of action and liability to pay the compensation. It is also contended that, the driver of the truck was not having valid and effective driving licence at the time of accident and said truck was piled without permit and fitness. It is therefore contended that there is breach of terms and conditions of the policy. It has also denied that, the driver of the truck was responsible for the accident. It has also contended that, owner, driver and insurer of

the vehicle Indigo Car involved in the accident are not added as party to the petition and, therefore, the petition is bad for non-joinder of necessary parties. Respondents also raised a plea of contributory negligence on the part of deceased Hiralal. Learned Member of the Tribunal after considering rival pleadings of the parties to the claim petition and evidence on record partly allowed the claim petition with proportionate costs and thereby directed the respondents to pay jointly and/or severally the compensation of Rs.4,47,000/- inclusive of the amount under 'No Fault Liability' alongwith interest from the date of institution of the petition till realization of the entire amount. Being aggrieved by the quantum of compensation, the original claimants have preferred this appeal.

4. Learned counsel for the appellant submits that, the Tribunal has not considered income of deceased Hiralal. Learned counsel submits that, deceased Hiralal was personally cultivating his agricultural land and he used to give agricultural equipments on rent to other

agriculturists of that area. Deceased Hiralal was giving tractor and trailer on hire basis. He used to plough and sow the lands of other agriculturist and was getting daily income from the agriculturist. After his death, said business has been stopped. Learned counsel submits that, the Tribunal has only considered loss of skilled management and guidance of deceased regarding cultivation of the land and management of the business. Learned counsel further submits that, the Tribunal has awarded very meager amount under the non-pecuniary heads, such as, loss of estate, funeral expenses and further Tribunal has not awarded compensation for loss of love and affection.

5. Learned counsel for respondent no.2-Insurer submits that, the Tribunal has rightly considered that there is no loss of future income as such and, the appellants-claimants being major sons have lost skill of management and guidance of deceased Hiralal regarding cultivation of land and management of business. Learned counsel submits that, even after death of deceased Hiralal, corpus of the land remained as it is,

and, so also the agricultural equipments. Further, claimant no.1 has admitted in his cross-examination that, after death of his father, he alongwith his other brothers cultivating the agricultural land and further also carrying the business of giving agricultural equipments on rent to agriculturists. Learned counsel submits that, in the backdrop of these admissions, the Tribunal has rightly considered loss of supervisory charges though on hire side. Learned counsel submits that the Tribunal has rightly awarded just and reasonable compensation considering the facts and circumstances of the case. Learned counsel submits that, no interference is required. There is no substance in the appeal and the appeal is thus liable to be dismissed with costs.

6. The owner and respondent No.2-insurer have not preferred any appeal nor they filed any cross objection to the findings recorded by the Tribunal. It is thus clear that the claimants have succeeded in proving that accident had taken place on 29.10.2010 on account of negligence of the driver of the truck bearing registration

No.GJ-25/T-6023 and deceased Hiralal died on account of the injuries sustained by him in the said accident. Further, the Tribunal has also recorded findings that respondent no.2 insurer has failed to prove breach of the policy conditions on the part of respondent no.2-insurer of the truck. In view of this, present appeal is restricted to the extent of quantum alone.

7. According to the claimants, deceased Hiralal was earning from his agricultural land, from the business of giving agricultural equipments on hire and from the milk business. So far as earnings of deceased Hiralal from milk business is concerned, admittedly, there is no evidence to that effect. Learned Member of the Tribunal has, therefore, rightly discarded the same. So far as agricultural income and income from the said business is concerned, even after death of deceased Hiralal, corpus of the land and said agricultural equipments remained as it is. Even claimant no.1 has also admitted in his cross examination that, after death of his father, he started cultivating the land personally owned and possessed by deceased father Hiralal with the help of his

other brothers. He has further admitted in his cross examination that, even the claimants are giving said agricultural equipments on hire basis to the agriculturists as it was prior to the accidental death of their father. In view of the above, there is no total loss of future income as such. Learned Member of the Tribunal has rightly observed that the claimants have lost skilled management and guidance of deceased regarding cultivation of land and carrying out business of agricultural implements. I do not find any fault in the impugned judgment and award to the extent that Tribunal has considered loss of future income in the form of supervisory charges to the extent of Rs.6,000/- p.m. However, it appears that the Tribunal has awarded meager amount of compensation under the non pecuniary heads, such as, loss of estate, funeral expenses etc. It further appears that the Tribunal has not awarded the compensation under the head of loss of love and affection. The learned Member of the Tribunal has awarded only Rs.5,000/- for loss of estate. Considering the management skill and other activities being carried out by deceased Hiralal during his

lifetime, it would be just and appropriate to award Rs.20,000/- for loss of estate instead of Rs.5,000/-. Furthermore, deceased Hiralal met with an accidental death on Sulwada to Surat road. After accident he was taken to PHC Chapawadi by private vehicle where Medical Officer declared him dead on arrival. After postmortem, dead body of Hiralal was handed over to the claimants and thereafter it was brought to his native. It is obvious that, the claimants incurred expenses for transportation of the dead body as well as funeral. The claimants have claimed Rs.30,000/- on account of the same. I am inclined to award the same. So far as loss of love and affection is concerned, the appellants-claimants are major sons and daughter. Considering their age, it would be just and appropriate to award Rs.5,000/- each for loss of love and affection. So, in view of the above, re-calculation of the compensation to that extent is required to be done.

8. Thus, break up of compensation under the various heads, which can be broadly categorized, is as under :-

(* amount awarded by the Tribunal)

Loss of future income/dependency	Rs.4,32,000/- (*)
Loss of Estate.	Rs.0,20,000/-
Funeral expenses	Rs.0,30,000/-
Loss of love and affection	Rs.0,20,000/-
(Rs.5,000/- each x 4)	=====
	Rs.5,02,000/-

9. In view of the above findings and observations, the claimants are entitled for the compensation of Rs.5,02,000/- with interest as awarded by the Tribunal. Hence, I proceed to pass the following order.

ORDER

- I. Appeal is hereby partly allowed with proportionate costs.
- II. The Judgment and Award passed by the Additional Member, Motor Accident Claims Tribunal, Shahada dated 21.11.2014 in MACP No.70/2011, is hereby modified in the following manner :-

“Respondents No.1 and 2 are hereby directed to pay jointly and severally the compensation of Rs.5,02,000/- (Rs. Five lacs two thousand only) inclusive of 'No Fault Liability' amount received by them

under Section 140 of the Motor Vehicles Act to the claimants along with interest at the rate of 9% p.a. from the date of institution of the petition i.e. from 12.5.2011 till realization of entire amount.

- III. Rest of the Judgment and Award passed by the Tribunal stands confirmed.
- IV. Award be drawn up in tune with the modifications, as aforesaid.
- V. Appeal is accordingly disposed of.

sd/-
(V.K. JADHAV, J.)

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aaa/-