

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

FIRST APPEAL NO. 129 OF 2014

New India Assurance Company Ltd.,
Aurangabad, Through its Divisional Manager,
Adalat road, Aurangabad.

..Appellant..
(orig respondent No.3.)

VERSUS

1. Shilpa w/o Ganesh Tharewal,
age 33 years, Occ. Household,
2. Akanksha d/o Ganesh Tharewal,
age 14 years, Occ. Education.
3. Riddhi d/o Ganesh Tharewal,
age 12 years, Occ. Education.

(Respondents No. 2 and 3 are
minors u/g of their real mother,
Respondent No.1.)

All R/o Pardeshi Galli, Bhokardan,
District Jalna. .. Resp 1 to 3 orig claimants.

4. Sk. Saida Sk. Rehman,
age major, Occ. Business,
R/o D.No.11-20-14, Hanumanpet,
Kanchikacherla, District Krishna
(Andhra Pradesh)
5. Ankamala Rao J. Venkateshwar Rao,
age major, Occ. Driver,
R/o C/o Saida, Sk. Rehman,
D.No.11-20-14, Hanumanpet,
Kanchikacherla,
District Krishna (Andhra Pradesh State)

...Respondents...
..Resp No.4 & 5 Orig Resp 1 & 2

...
Advocate for Appellant : Mr S G Chapalgaonkar
Advocate for Respondents 1-3 : Mr R V Gore
Respondents No.4, 5 served-absent.

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CORAM : V.K. JADHAV, J.
Dated: April 28, 2016
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ORAL JUDGMENT :-

1. Being aggrieved by the Judgment and Award dated 17.8.2013 passed by the Chairman, Motor Accident Claims Tribunal, Jalna in MACP No.132/2012, the original respondent no.3-Insurer has preferred this appeal.

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

a] On 24.5.2012 deceased Ganesh was proceeding to Sillod from Bhokardan on his motorcycle bearing registration No.MH-12-Z-7841 and one Swapnil was the pillion rider. On way, when they reached within the limits of village Malkheda Pati at about 03.30 p.m., one truck bearing registration No.AP-16-TW-5979 driven by respondent no.2 came from opposite side i.e. Sillod and gave dash to the motor cycle of the deceased. Said truck was driven by respondent no.2 in rash and negligent

manner. In consequence of which, both the riders sustained injuries and died on the spot. The L.Rs. of deceased Ganesh preferred claim petition for grant of compensation under the various heads. According to them, deceased Ganesh was holding Diploma in Mechanical Engineering and, he was running private coaching classes in the name and style as “Pratik Coaching Classes”. In addition to this, he was also personally cultivating his agricultural land. Petitioners were entirely depending upon his income.

b] Respondents No.1 and 2 have failed to appear before the Tribunal though they have duly served and therefore, hearing of the petition ordered to be proceeded ex-parte against them.

c] The appellant/respondent No.3-Insurer has strongly resisted the claim by filing written statement, wherein the respondent no.3 denied all the material facts right from the occurrence of the accident till its liability to pay the compensation to the claimants. It has further contended that deceased Ganesh had

himself contributed negligence. The learned Chairman of the Tribunal by its impugned judgment and award dated 17.8.2013 partly allowed the claim petition with proportionate costs and thereby directed the respondents 1 to 3 jointly and severally to pay the compensation of Rs.17,14,000/- inclusive of No Fault Liability amount with interest @ 7.5% p.a. from the date of petition till realization of the amount. Being aggrieved by the same, the original respondent no.3 – insurer has preferred this appeal.

3. Mr. Chapalgaonkar, the learned counsel appearing for the appellant submits that, deceased Ganesh was entirely at fault and in fact, he had gone to wrong side and gave dash to the truck coming from the opposite direction. Learned counsel submits that, the Tribunal has erroneously held that, the driver of the truck had contributed negligence to the extent of 40%. Learned counsel submits that, in fact, deceased Ganesh was entirely responsible for the accident and, the driver of the truck cannot be held responsible in any manner for the said accident. Learned counsel further submits

that, there is no proof that deceased Ganesh was running coaching classes and was getting income from the same. Learned counsel submits that, so far as income from the agricultural land is concerned, there cannot be a total loss of income of the agricultural land, since corpus of the land would remain as it is. Learned counsel submits that, the claimants have not produced on record any 7/12 extract to show that after death of deceased Ganesh, agricultural land remained uncultivated. Learned counsel, in the alternate, submits that, at the most, loss of agricultural income can be considered in terms of lack of skilled and experienced supervision over the cultivation of the land. Learned counsel submits that, the Tribunal has awarded excessive and exorbitant amount of compensation.

4. Mr Gore, the learned counsel for appearing respondents-original claimants submits that, the driver of the truck was at fault and deceased Ganesh had not contributed negligence. Learned counsel submits that, the claimants have not challenged the findings recored by the Tribunal to the extent of contribution of

negligence on the part of deceased Ganesh. The learned counsel submits that, deceased Ganesh was a Diploma holder in Mechanical Engineering. He was running private coaching classes in the name and style as 'Pratik' Coaching classes. Learned counsel submits that, there is no question of any registration of such a coaching classes any where. Learned counsel submits that, original admission forms of near about 30 students have been produced before the Tribunal. Learned counsel submits that, even the claimants have examined two witnesses whose children were taking coaching in the said class and, they have paid coaching charges to deceased Ganesh. Learned counsel submits that, deceased Ganesh was personally cultivating his agricultural land and, the claimant no.1 being widow and claimants no.2 and 3 being minor children, there is nobody in the family to look after the agricultural land after demise of Ganesh. Learned counsel submits that, in that way, there is loss of agricultural income. Learned counsel submits that, the Tribunal has considered the case from all the angles and accordingly awarded just and reasonable compensation. Learned

counsel submits that, no interference is required and the appeal be dismissed with costs.

5. It appears from the police papers that, deceased Ganesh was going from Bhokardan to Sillod and the truck was coming from his opposite side i.e. from Sillod. On careful perusal of the contents of the spot panchnama Exh.25, it appears that, since deceased was going to Sillod it was expected of him to keep the left side of the road i.e. Southern side. The truck was coming from the direction of Sillod i.e. from West. It was expected to keep its left side of the road i.e. towards North (Northern side). Spot of the accident as shown in the spot panchanam Exh.25 is at a distance of less than 1/4th of the width from Northern end of the road. Learned Chairman of the Motor Accident Claims, Tribunal, Jalna, has, therefore, rightly observed that deceased Ganesh went to wrong side to great extent and truck was rightly coming by keeping the left side of the road. However, considering the size of the vehicles involved in the accident, the fact that respondent no.2 could have stopped the truck when he had noticed that

the bike was approaching towards his truck from his front side. The learned Chairman of the Tribunal has rightly come to the conclusion that deceased Ganesh has contributed negligence to the extent of 60% and 40% by driver of the Truck. Furthermore, same is also not challenged by the respondents-claimants by filing any appeal or by filing any cross objection.

6. So far as income of deceased Ganesh from the coaching class is concerned, there is no direct income proof as such of the said income. However, certificate produced at Exh.33 shows that deceased Ganesh was having diploma in mechanical engineering and original admission papers of the students were placed on record before the Tribunal unmistakably pointed out that, deceased Ganesh was running coaching class named and styled as 'Pratik' Coaching Classes. Furthermore, claimants have also examined one Shankar Sapkal, who has deposed that his daughter a student of 10th standard was registered with the coaching class of the deceased and he paid Rs.4,000/- towards first installment of her fee. Admission forms of his daughter

signed by him and also by deceased Ganesh produced on record and the same is marked as Exh.37. Furthermore, one another witness Ramkishan Talekar also deposed before the Tribunal that, his grand son Sanket, a student of 10th standard was also registered with the coaching class of the deceased and he paid installment of Rs.4,000/-. The original admission papers of his grand son is placed on record and the same is marked as Exh.39. However, the claimants have not produced on record income tax returns, if at all deceased Ganesh was earning Rs.8,000/- per student of a batch of 30 students in total. Furthermore, it appears from the original admission papers placed on record of the other students, the fees of Rs.8,000/- is nowhere shown in any of the admission papers including the admission papers placed before the Tribunal and proved through the witnesses.

7. So, in view of the above, it would be just and appropriate to consider the income of deceased Ganesh from his coaching classes @ Rs.15,000/- per month. Deceased Ganesh was holding diploma in mechanical

engineering and, it appears from the admission papers placed on record that he was getting good response from the students for his coaching classes. Even though there is no evidence to show that the deceased Ganesh had future prospects, however, considering his qualification and the fact that he was getting good response for his coaching classes, I do not find any fault in the order of the Tribunal by adding 30% of income towards his future prospects.

8. The Tribunal has however, committed mistake in considering the loss of total income from the agricultural source. It appears that the Tribunal has considered Rs.60,000/- per year from the land admeasuring 1H 26 R. It is true that there cannot be any loss so far as agricultural land is concerned for the reason that corpus of the land would remain as it is. However, the tribunal has considered the loss of agricultural income at some higher side. Deceased Ganesh was personally cultivating the land and it also appears from the record that, widow and minor children are not in a position to look after the lands personally.

In view of that there can be loss in the agricultural income by way of lack of personal, skilled and experienced supervision, Rs.2,000/- p.m. would be just and proper.

9. In view of the above discussion, if income of deceased Ganesh from the coaching class is considered as Rs.15,000/- per annum, then yearly income comes to $(Rs.15,000 \times 12) = Rs.1,80,000/-$ per year and, if the loss of agricultural income is considered to the tune of Rs.2,000/- p.m, then that comes to $(Rs.2,000 \times 12) = Rs.24,000/-$ pa. Furthermore, in the given facts and circumstances of the case, addition of 30% income towards future prospects can be considered and by deducting $1/3^{rd}$ income of deceased Ganesh for his personal expenses, total loss of income/dependency comes to Rs.1,66,400/-. If the said amount is multiplied by multiplier '**16**' then total loss of income comes to Rs.26,62,400/-. Deceased Ganesh had contributed negligence to the extent of 60% and therefore, 40% of the loss of income as worked out herein above, the total compensation comes to

Rs.10,64,960/-. The Tribunal has awarded interest @ 7.5 % p.a. instead of 9% p.a.

10. I do not find any fault in the impugned Judgment and Award granting compensation of Rs.1.00 lac under the non pecuniary heads.

11. In view of this, the claimants are entitled for the total compensation of Rs.11,64,960/-. Hence, following order.

O R D E R

- I. First Appeal is hereby partly allowed with proportionate costs.
- II. The Judgment and Award dated 17.8.2013 passed by the Chairman, Motor Accident Claims Tribunal, Jalna, is hereby modified in the following manner :-

“The Respondents No. 1 to 3 shall jointly and severally pay the petitioners/claimants Rs.11,64,960/-(Rs. Eleven Lacs Sixty Four Thousand Nine Hundred Sixty only) inclusive of 'No Fault Liability' compensation awarded under section 140 of the Motor Vehicles Act with interest @ 9% p.a. from the date of petition i.e. from 6.8.2012 till realization of the amount.”

IV. Rest of the Judgment and Award passed by the learned Chairman, Motor Accident Claims Tribunal, Jalna in M.A.C.P. No.132/2012 stands confirmed.

V. In the circumstances, there shall be no order as to costs.

VI. Award be drawn up in tune with the modifications, as aforesaid.

VII. Appeal is disposed of accordingly.

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

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aaa/-