

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1309 OF 2013

The Divisional Office	]	
The United India Insurance Co. Ltd.	]	
Divisional Office	]	
Janata Shopping Centre, Navi Peth, Solapur	]	 Appellant.

Versus

1]	Smt. Pramila Raman Ghatule	]	
	Age 47 years, Occupation Household	]	
		]	
2]	Nagesh Raman Ghatule	]	
	Age – 25 years, Occupation – Education	]	
		]	
3]	Vivek Raman Ghatule	]	
	Age 20 years, Occupation Education	]	
		]	
	All resident of Village – Angar, Taluka – Mohol	]	
	District Solapur	]	
		]	
4]	M/s. Kargo Wings (Madras) Pvt. Ltd.	]	
	1/603/E, Near Mahaveer Hospital	]	
	Uriandy Puttur, D K Karnataka	]	 Respondents.

**Ms.Pooja Joshi i/by Mr. A A Joshi for the Appellant.
Mr. R S Alange fo the Respondent Nos.1 to 3.**

**CORAM : R. M. SAVANT, J.
DATE : 09th June 2016**

ORAL JUDGMENT

1 Admit. With the consent of the learned counsel for the parties
heard forthwith.

2 The above First Appeal takes exception to the judgment and order dated 09/01/2013 passed by the learned Additional Ex-Officio Member, Motor Accident Claims Tribunal, Solapur by which order the application filed by the Respondent Nos.1 to 3 herein came to be partly allowed, and the Respondent Nos.1 to 3 were held to be entitled to get total compensation of Rs.9,12,000/- jointly and severally from the Appellant and the Respondent No.4 herein i.e. the original Opponent Nos.1 and 2 respectively.

3 The Respondent Nos. 1 to 3 herein who are the original Applicants are the widow and sons of the deceased one Raman Ghatule who met with an accident which took place on 20/07/2007 in which accident he expired. It seems that the said Raman Ghatule had been to Phaltan for taking Darshan of the Palanquin of Sant Shri Dnyaneshwar Mauli on 18/07/2007. Thereafter on the morning of 20/07/2007 the said Raman Ghatule along with others from his village started returning back to their village Angar in a jeep bearing registration No.MH-13/R-8783. The said jeep was proceeding towards the village Angar along the Pune Solapur road when at about 4.35 am on 20/07/2007 it met with an accident with car container truck bearing registration No.KA-21/6255 which came from the opposite side. Owing to the impact which the car container truck gave to the jeep in which the deceased Raman Ghatule was travelling, the said jeep got tossed and fell in the ditch by the said of the road and sustained heavy damage in the said accident. The said

Raman Ghatule sustained fatal injuries and died within short time after the accident due to the accidental injuries. An FIR came to be registered against the driver of the car container truck.

4 Thereafter the Applicants i.e. the Respondent Nos.1 to 3 herein filed application i.e. Motor Accident Claim Petition No.101 of 2009 in the Motor Accident Claims Tribunal, Solapur. It was the case of the Applicants i.e. the Respondent Nos.1 to 3 herein that the deceased was involved in agricultural operations and that at the same time he was doing milk business and the income of the deceased from both the agricultural operations and milk business was more than Rs.17000/- per month. It was the case of the Applicants that on account of the death of Raman Ghatule, who was the sole earning member of the family, the Applicants have suffered irreparable loss and they have lost their shelter, love and affection. The Applicants therefore claimed compensation in the sum of Rs.25,00,000/- in the said Claim Petition.

5 The Appellant herein who was the Opponent No.2 in the said Claim Petition denied the contentions of the Applicants. It was denied that the car container truck bearing No.KA-21/6255 was being driven in a rash and negligent manner due to which the driver of the said vehicle lost his control and gave a dash to the jeep by entering on the wrong side of the road. The Opponent No.2 thereby denied its liability to pay any compensation.

6 On the basis of pleadings of the parties, the Tribunal framed issues amongst which were the issue relating to, whether the death of the said Raman Ghatule was caused on account of accident dated 20/07/2007 between the container truck No.KA-21/6255 and jeep No.MH-13/R-8783; whether the accident was cause due to rash and negligent driving of the container truck and whether the Applicants are entitled to the compensation and to what extent.

7 In support of their assertion that the said Raman Ghatule was having agricultural income as well as income from milk business, the Applicants examined as many as 5 witnesses. The Applicants have examined one Satyawar Gund (PW 2), Rangnath Sarak (PW3), Nagnath Nakate (PW 4) and Pandurang Nagtilak (PW 5). In the context of the challenge raised in the above First Appeal viz. the quantum of compensation awarded, it would be relevant to briefly refer to the evidence of the said witnesses.

 In so far as PW 2 – Satyawar Gund is concerned, it has come in his evidence that the deceased used to sell milk to Shankar Sahakari Dugh Vyasayee Sanstha Maryadit, Mohol. It has further come in his evidence that the deceased used to deposit 15 to 16 liters of milk every day for which he was paid. The witness produced extracts of payment from 1.1.2007 to 31.3.2007

which disclose that the said deceased Raman Ghatule was paid Rs.16000/- to Rs.17000/- during the aforesaid three months. It has also come in his evidence that after 31.3.2007 milk was not supplied by the deceased Raman.

In so far as the evidence of Rangnath Sarak (PW 3) is concerned, it has come in his evidence that he is working in Krishi Utpanna Bazar Samiti since 2001 as a Secretary and that the deceased Raman had purchased one Jersey cow from Yeshwant Mali for consideration of Rs.20,000/-.

In so far as evidence of Nagnath Nakhate (PW 4) is concerned, it has come in his evidence that he is Bhusar Merchant i.e. grocery shop merchant. It has come in his evidence that he has purchased Jawar and Toor from deceased Raman Ghatule and he had paid Rs.68,504/- and Rs.15,587/- to deceased Raman in respect of which receipts were produced at Exhibits 41 and 42. It has also come in his evidence that he does not have the personal knowledge of the said transaction. However, this witness denied the suggestion that no grains were purchased from deceased Raman Ghatule nor any amount paid to him.

In so far as the evidence of Pandurang Nagtilak (PW 5) is concerned, it has come in his evidence that he is the manager in Yeshshree Trading Company and deceased Raman Ghatule sold Jawar and Gram on

8.5.2007 worth Rs.41,260/-. He also denied the suggestion that the deceased Raman had not sold grains and that they have not paid any amount to him.

8 The Opponent No.1 i.e. the Respondent No.4 herein was duly served but did not appear before the Tribunal. Accordingly ex-parte order was passed by the Tribunal against the Opponent No.1.

9 The Opponent No.2 i.e.. the Appellant Insurance Company filed its Written Statement in the Claim Petition but did not adduce any oral evidence.

10 The Trial Court considered the evidence which was adduced on behalf of the Claimants and answered the issues framed by it against the Appellant i.e. the Insurance Company. The Trial Court also referred to the fact that Exhibits 41 and 42 do not bear the name of the deceased. The Trial Court in the said context observed that it may be that the farmers do not check while taking the receipts whether their names have been mentioned or not. The Trial Court has further observed that ignorance of the farmers cannot absolve the Insurance Company from its liability. The Trial Court was of the view that the receipts for the whole year can be considered for computing the income of the deceased. The Trial court has adverted to the fact that deceased Raman was having agricultural land to the extent of 5 H-86 R and therefore the Trial Court came to the conclusion that the income of the deceased from agricultural land

and milk business would be Rs.10,000/- per month. Since the deceased Raman was 52 years of age when he died, the Trial Court applied the multiplier of 11 and by deducting an amount of 40,000/- as personal expenses from the yearly income of Rs.1,20,000/- and by applying the multiplier calculated the amount on account of loss of future earning in the sum of Rs.8,80,000/-. The Trial Court has awarded Rs.10,000/- to the Applicant No.1 i.e. the widow towards consortium and also awarded Rs.10,000/- each to the Applicant Nos.2 and 3, who are the sons of the deceased Raman Ghatule, for the loss of love and affection. The Trial Court has also awarded funeral expenses in the sum of Rs.2000/-. The total compensation therefore arrived at is Rs.9,12,000/- with interest @ 7% per annum from the date of the Petition till realization. As indicated above it is the said judgment and order dated 09/01/2013 passed by the Motor Accident Claims Tribunal, Solapur, which is taken exception to by way of the above First Appeal.

11 On behalf of the Appellant – Insurance Company the principal contention urged was that there was no evidence on record to justify the amount of Rs.10,000/- as monthly income which was arrived at by the Tribunal of the deceased Raman Ghatule from agriculture as well as milk business. It was the submission of the learned counsel for the Appellant that the evidence of the witnesses of the Claimants does not substantiate the case of the Applicants – Respondent Nos.1 to 3 that the deceased Raman Ghatule was

doing business in milk and was also earning from agriculture. The learned counsel for the Appellant sought to draw this Court's attention to the statements which have come in the evidence of the witnesses which evidence has been referred to herein above. It was therefore the submission of the learned counsel for the Appellant that the amount of Rs.8,80,000/- arrived at by the Tribunal for the loss of future income was excessive.

12 Per contra, the learned counsel appearing for the Respondent Nos. 1 to 3 Shri Alange would submit that in fact the compensation awarded by the Trial Court was on the lower side considering the fact that meagre amounts have been awarded for the loss of consortium, for the loss of love and affection and even for the funeral expenses. The learned counsel for the Respondent Nos.1 to 3 sought to place reliance on the judgment of the Apex Court reported in 2015 ACJ 598 in the matter of Neeta and others v/s. Divisional Manager, Maharashtra State Road Transport Corporation. Relying upon the said judgment it was the submission of the learned counsel for the Respondent Nos.1 to 3 that the Tribunal was right in computing the loss of future income on the basis of the income which it had arrived at on the basis of the evidence on record.

13 Having heard the learned counsel for the parties, I have considered the rival contentions. The question that is posed is whether the

amount computed on account of loss of future income can be said to be excessive. In the said context it is required to be noted that there is evidence on record to indicate that the deceased Raman Ghatule had purchased a Jersey cow and was supplying milk to the Co-operative Milk Society. It has also come on record that the said deceased Raman Ghatule was holding agricultural land to the extent of 5H – 86 R. The income from agriculture was sought to be brought on record through the evidence of PW No.4 and PW No.5. The income from milk business was also sought to be substantiated through the evidence of PW No.2 and PW No.3. Though the learned counsel for the Appellant – Insurance Company sought to make dents in the evidence of the said witnesses, if one considers the evidence as a whole, then the finding arrived at by the Tribunal that the income of the deceased Raman Ghatule from agriculture as well as milk business could be Rs.10,000/- per month cannot be said to be excessive or extravagant. It is also required to be noted that the Tribunal in view of the fact that no evidence had come on record to show that milk was supplied after 31/03/2007 had pegged the income from the milk business at Rs.1000/- per month and the rest of the income was from agriculture.

14 Now coming to the judgment of the Apex Court in Neeta's case (supra), in the said judgment the Apex Court held that the claimants would be entitled to an amount on account of loss of future income. The Apex Court has

observed in the said case that in the case of private employment, the future prospects can be taken into consideration to determine the loss of dependency. The Apex Court in the said case had awarded the following sums which are reflected in paragraph 12 of its judgment :-

Sl. No.	Heads	Claimants of Kallappa	Claimants of Vijay
1	Loss of dependency	Rs.17,28,000/-	Rs.17,28,000/-
2	Funeral expenses	Rs.25,000/-	Rs.25,000/-
3	Loss of love and affection (Children)	Rs.1,00,000/-	Rs.3,00,000/-
4	Loss of love and affection (parents)	Rs.1,00,000/-	Rs.50,000/-
5	Loss of estate	Rs.1,00,000/-	Rs.1,00,000/-
6	Loss of consortium	Rs.1,00,000/-	Rs.1,00,000/-

No doubt in the said case the deceased were younger in age, however what would change is the application of the multiplier. In the instant case, the Tribunal has applied the multiplier of 11 whereas in the case before the Apex Court the multiplier of 16 was applied as the deceased were below age of 50 years (i.e. both the deceased were about 33 years of age). In the light of the amounts which are awarded by the Apex Court in Neeta's case whilst modifying the judgment and order passed by the High Court, the sums awarded by the Tribunal in the instant case cannot be said to be excessive or on the higher side. In fact on account of loss of consortium or on account of loss of love and affection to the children only Rs.10,000/- have been awarded whereas the Apex Court in the said case awarded an amount of Rs.1,00,000/-.

15 Hence taking an over all view of the matter the compensation awarded by the Tribunal cannot be said to be such that requires to be interfered with by this Court in its Appellate Jurisdiction. Hence there is no merit in the above Appeal which to accordingly stand dismissed.

[R.M.SAVANT, J]