

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

FIRST APPEAL NO. 597 OF 2013

1. Sandhyabai W/o Prakash Kalyankar,
Age : 47 years, Occu. Household,
R/o. Paras Nagar, Near Mahavir Society,
Nanded, Dist. Nanded.
2. Girish S/o Prakash Kalyankar,
Age : 27 years, Occu. Education,
R/o. Paras Nagar, Near Mahavir Society,
Nanded, Dist. Nanded.
3. Namita D/o Prakash Kalyankar,
Age : 24 years, Occu. Education,
R/o. Paras Nagar, Near Mahavir Society,
Nanded, Dist. Nanded.
4. Kalawatibai W/o Ganesh Kalyankar,
(Now deceased) ... Appellants
(Orig. Petitioners)

VERSUS

1. M/s. Navaratana Enterprises,
Through its Competent Authority
Shop No. 32, 139, Behind Zam Zam Bakery,
Secunderabad-500 003 (A.P.)
2. The New India Assurance Company Ltd.,
Through its Branch manager,
Branch at Yeshodeep Building,
Shivaji Road, Parbhani. ... Respondents

.....
Mr S. B. Parnere, Advocate for the appellants
Mr Arun G. Kanade, Advocate for respondent No. 1
Mr M. M. Ambhore, Advocate for respondent No. 2
.....

**CORAM : A. M. DHAVALA, J.
DATE : 24TH JULY, 2018.**

ORAL JUDGMENT :-

1. Heard. Admit. With the consent of the parties, the appeal is taken up for final hearing at admission stage.

2. The appellants are legal heirs of one Prakash, who died at the age of 47 years in road accident due to rash and negligent driving of the vehicle of respondent No. 1 insured with respondent No. 2. The Member, Motor Accident Claims Tribunal (MACT), Hingoli, by judgment dt. 21.08.2007 in MACP No. 251 of 2003 awarded compensation of Rs. 5,70,000/- with interest @ 6% p.a. Being aggrieved by the smaller amount awarded, this appeal is preferred for enhancement. It is submitted that, there was delay of about one year in filing the appeal which was condoned.

3. As per the claim of the appellants, deceased Prakash, on 08.12.2002, was proceeding from Nanded to Hadgaon in a car. Deceased Prakash was driving the car. That time, truck of respondent No. 1 bearing No. AP-11-T-8463 was coming from the opposite side in a rash and negligent manner and it gave dash to the car of the deceased. Prakash sustained serious injuries and died on the spot. The police took cognizance of the accident and filed charge-sheet against the driver of the truck. It is the case of the appellants

that, the deceased Prakash was a farmer having huge land of around 12 Hectors and he was taking cash crops with improved techniques. He was getting annual income of Rs. 3.00 lakhs per annum. The appellants, his wife, one major son, one major daughter and his mother were depending on him. The vehicle was insured with respondent No. 2. Though the appellants claimed compensation of Rs.12,28,000/-, they have restricted their claim to the extent of Rs.8,50,000/-.

4. Respondent No. 1 appeared, but did not file any say. The matter proceeded *ex-parte*. Respondent No. 2 - Insurance Company denied the factum of accident and rashness and negligence for want of knowledge. It denied the age, income and dependents upon the deceased and claimed that there was collusion between respondent no. 1 and the appellants. The owner and insurer of the car were necessary parties to the proceeding. There was contributory negligence on the part of the deceased. The claim is excessive. The issues were framed at Exh. 87.

5. The claimants examined claimant No. 1 alone and relied on documents. The respondent did not examine anyone. The learned Member, MACT, Hingoli held that the deceased was aged 53 years.

The truck driver was rash and negligent. He assumed loss of income to the tune of Rs. 75,000/-, deducted 1/3rd amount towards personal expenses, selected multiplier of 11 and awarded compensation of Rs.5,50,000/- (5000x11), and Rs. 20,000/- towards non-pecuniary losses. Thus, he decreed the claim to the tune of Rs.5,70,000/- with interest at the rate of 6% p.a.

6. Shri. S. B. Parnere, learned counsel for the appellants submitted that the deceased was 47 years and the multiplier should have been 13. Considering his income, loss of income should have been Rs.1,20,000/- per annum with multiplier of 13 and accordingly the compensation should have been awarded. He also relied on *Navjyot Singh Vs. Depository Trust Company and others* reported in 2017 DGLS (SC) 1355, to submit that the deceased was self-employed and he was entitled for 25% additional future prospects. He also argued that, the rate of interest is very low and the non-pecuniary losses are also on lower side.

7. Learned advocate Shri. Ambhore for respondent No. 2 submitted that there was head-on collision and there was contributory negligence on the part of the deceased. He submitted that, the incident took place in the year 2002, and there is no

documentary evidence about the income of the deceased, therefore, it should be assumed at Rs. 3,000/- per month. On the point of interest, he submitted that, there was delay of one year in filing the appeal and, therefore, the interest should not be enhanced. He also pointed out that the deceased was aged 53 years and multiplier should be 11. He submitted that, the learned trial Judge has properly calculated the compensation and no interference is called for.

8. Learned advocate for respondent No. 1 adopted the arguments of respondent No. 2.

9. On the basis of arguments, the points for my consideration with my findings thereon are as follows:

Sr.No.	Point	Finding
1	Whether the deceased died solely due to rash and negligent driving of truck of respondent No. 1?	...In the affirmative.
2	Whether respondents No. 1 and 2 are jointly and severally liable to pay the compensation to the deceased?	In the affirmative.
3	Whether the trial Judge has not awarded just & reasonable compensation?	In the affirmative.
4	What order?	The appeal is partly allowed.

REASONS**AS TO POINTS NO. 1 & 2 :-**

10. The factum of accident has not been disputed. The police papers submitted by the appellants disclose that the charge-sheet has been filed against the driver of the truck. The respondents have not examined the driver of the truck. When the truck driver was charge-sheeted, the burden was on the respondents to examine the driver and prove that there was contributory negligence of the deceased. No such evidence has been led. Besides, there is no appeal by owner and the Insurance Company. Hence, the finding of the learned trial judge holding the truck driver as 100% responsible for the accident needs no interference. It is not disputed that, the truck of respondent No. 1 was duly insured with respondent No. 2. Therefore, the liability of respondent No. 2 to indemnify respondent No. 1 is also not disputed. Hence, points no. 1 and 2 are answered in the affirmative.

AS TO POINT NO. 3 : -

11. The main arguments are advanced only on the point of quantum. As per the school admission form Exh. 25, the deceased was born on 02.10.1949. Thus, at the time of accident dt.09.12.2002, he was aged 53 years. The learned advocate for the appellant

considered the date as 12.10.1955, which is date of admission and not the date of birth. The finding of learned trial Judge regarding the age and selection of multiplier 11 is proper.

12. The evidence on record shows that, the deceased had agriculture land of 11 Hectar and 98 *Are* and the documents disclose that he was getting income of Rs. 3.00 lakhs. The learned trial Judge erred in considering the agriculture income, as the income of the deceased. The agriculture lands are very much there and those can be cultivated by his legal heirs. The legal heirs have lost the supervisory skill, personal attention and labour of the deceased. The learned advocate Mr Ambhore has rightly argued that the loss of income will have to be assessed only on the point of loss of these aspects.

13. The contention of learned advocate Shri. Ambhore for respondent No. 2 that, the valuation of supervisory skill of the deceased be assumed at Rs. 3,000/- is not acceptable. He was cultivating agriculture land of 12 hectares i.e. around 30 acres. Besides, 7/12 extract discloses that, he was taking irrigated crops like sugarcane, cotton, turmeric etc.

14. Considering the fact that the deceased died in the year 2002 and the fact that the claimant No. 2 was then aged 21 years and must be helping his father to some extent, I assume the value of supervisory skill, personal attention and labour of the deceased at Rs.6,000/- per month. As rightly held in National Insurance Company vs. Pranay Sethi reported in AIR 2017 SC 5157, there should be enhancement of income by 10% for the age group of 50 and above towards future prospects. Thus, the income of the deceased will have to be assumed at Rs. 6600/- per month. The deceased was having a wife, major son, major daughter and old mother. Mother has died. Considering the dependency, I deduct 1/3rd amount towards the personal expenses and hold that the loss of income would be Rs. 4400/- per month i.e. Rs. 52,800/- p.a. The multiplier for the age group between 51 to 55 is 11. Therefore, the loss of income would be Rs. 5,80,800/-. Besides, as per Pranay Sethi's case (supra), the claimants were entitled for amount of Rs.70,000/- towards non-pecuniary losses. The compensation should have been Rs.6,50,800/- rounded to Rs. 6,51,000/-. The learned trial Judge has awarded Rs. 5,70,000/-, which needs to be enhanced to Rs. 6,51,000/-.

15. The learned trial Judge has granted interest at the rate of 6% p.a. which is on lower side. The interest should have been granted at the rate of 9% p.a., however, as rightly pointed out, there was some delay in preferring the appeal and delay has been condoned. Considering the facts, I award interest at the rate of 7.5% p.a.

16. The appeal deserves to be partly allowed. Hence, the order.

ORDER

- (i) The First Appeal is partly allowed.
- (ii) The judgment and award dt. 21.08.2007 passed by the Motor Accident Claims Tribunal, Hingoli, in MACP No. 251/2003 is modified and it is directed that the respondents No. 1 and 2 do jointly and severally pay to the claimants Rs. 6,51,000/- together with interest at the rate of 7.5% p.a.
- (iii) It is reported that, the amount of Rs. 5,70,000/- has already been paid after the judgment of the MACT, Hingoli. The interest will be calculated on the amount due for the period upto the date of payment of Rs.5,70,000/- and subsequent interest for the remaining amount.

- (iv) The respondents shall pay costs to the claimants quantified at Rs. 20,000/- (Rupees Twenty Thousand only).
- (v) An award amounting to decree be drawn up accordingly.

[A. M. DHAVAL]
JUDGE

Punde