IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3242 OF 2015

1] Sadhana Balkrishna Pansambal
Age : 48 years, Occu : Household,

2] Amol s/o. Balkrishsna Pansambal,
Age : 23 yrs. Occu : Education

3] Priyanka Balkrishsna Pansambal,
Age : 21 yrs. Occu: Education

All R/o. Sade, Tq. Rahuri,
Dist. Ahmednagar. ...Appellants
Original Applicants

Versus

1] Mininath Narayan Hapse
Age: 60 yrs, Occu: Business,
R/o. M.P. Society Building Market Yard,
Nagar Manmad Road, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

2] The New India Assurance Co.Ltd.,
Ahmednagar Divisional Office,
At Ahmednagar, Dist. Ahmednagar
Through its Divisional Manager ...Respondents
Original Opponents

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Shri. S.K. Ashraf Patel h/f Shri.Abhijit Avhad, Advocate for appellants
Shri.M.M. Ambhore, Advocate for Respondent No. 2
Respondent No.1 served

CORAM : A.M. DHAVALE, J.

RESERVED ON : 23th JULY, 2018

PRONOUNCED ON : 16th AUGUST, 2018

JUDGMENT :

1. This is an Appeal by the claimants for enhancement of compensation. In MACP No.376 of 2016, the learned Member of the Motor Accident Claims Tribunal, Ahmednagar by judgment dated 9th April 2012 awarded compensation of Rs.4,80,000/- with interest @ 7.5% per annum on account of death of Balkrishna, aged 48 years to the claimants, who are widow then aged 42 years, son Amol 17 and daughter Priyanka 15.

2. As per the case of the appellants, deceased Balkrishna was advocate and was also looking after the dairy business and agriculture and was earning Rs.65,000/- per month. On 20.06.2006 at about 9.30 p.m., while he was cautiously driving his bike from Rahuri factory towards Rahuri by following all traffic rules and taking all the care, Pickup Rickshaw No. MH-06-G-2211 owned by respondent No.1 was

driven from the opposite side in a rash and negligent manner and while overtaking another Rickshaw, it came on the wrong side and gave a dash to the bike of the deceased. As a result, Balkrishna sustained injury mainly to the head and died on the spot. The Rickshaw driver was prosecuted by registration of crime at Cr.No.I-142 of 2006 at Rahuri Police station and was charge-sheeted. The Rickshaw was duly insured with respondent No.2. It is claimed that the deceased was having dairy business by maintaining 9 milching cows of foreign breed Hosten and Jersy. He was earning Rs.30,000/- p.m. by growing crop of sugarcane and onion and Rs.30,000/- by selling milk. Besides, he was practicing advocacy in the court at Rahuri and was earning Rs.5,000/- per month. Due to his sad demise, the claimants were required to dispose of the cows and stop the dairy business. The claimants assessed the loss to the tune of Rs.1,01,40,000/-, but restricted the claim to Rs.50,00,000/-. Respondent No.1 appeared through advocate but did not file written statement. Respondent No.2 by reply Exh.12, denied all averments of the appellants mainly on the ground of want of knowledge. It denied the rashness and negligence of the driver of rickshaw. It disputed its liability with a plea that the driver of the Rickshaw was not holding valid and effective driving licence. The age, income, sources of income of the deceased are also disputed.

3. On these pleadings, the learned Chairman, MACT, Ahmednagar framed issues at Exh.14.

4. The claimants examined claimant No.1- Sadhana and 3 witnesses on the point of source of income. The learned Member of the Claims Tribunal accepted the defence that there was breach of policy by permitting a person not holding driving licence to drive vehicle and it was held that the insurance company was not liable but was directed to pay and recover. The learned Member did not accept the agriculture income and dairy income of the deceased and held that he was earning Rs.5,000/- p.m. from practice as advocate. His age was found to be 48 years. The Tribunal deducted 1/3rd amount towards expenses and held loss of income at Rs.40,000/- p.m. (12X5,000-1/3) selected multiplier of 11. Thus, he awarded Rs.4,40,000/- and additional amount of Rs.40,000/- under conventional heads.

5. Shri.S.K. Ashraf Patel Learned advocate holding for the

learned advocate Shri Abhijeet Avhad for the appellants submits that the Tribunal has held the income of the deceased very low and has ignored material documents and evidence of 3 witnesses examined on the point of income. Besides, very meagre amounts are awarded under the conventional heads. It was also not proved that there was breach of policy. He therefore, argued that appeal be allowed and the compensation amount be enhanced as claimed by the appellants. He relied on the Judgment in the case of ***National Insurance Company Limited Vs. Swarn Singh 2004 (3) SCC 297*** case to submit that a person driving with a learners licence, also creates liability on the insurance company. In this regard, he relied on the Judgment of ***Swarn Singh*** case.

6. The parties relied on number of citations which will be considered in due course.

7. Per contra, learned advocate Shri M.M. Ambhore submitted that the breach of policy has been duly proved. Therefore, the insurance company is not liable. The findings to that effect are based on sound reasons and need no interference. Even on the point of quantum, he submits that

learned Tribunal has considered all aspects and has awarded just and reasonable compensation. Hence, the appeal deserves to be dismissed.

8. The points arising for consideration with my findings are as follows :-

1. Whether the insurance company is not liable to indemnify the owner on account of breach of policy ?	In the negative
2. Whether the compensation awarded by the Tribunal is just and reasonable? if not, what order ?	Not just and reasonable. Appeal allowed to enhance compensation **to Rs.7,50,000/-.**

R E A S O N S

9. The respondents have claimed that the owner was the driver and he was not having any valid driving licence. The xerox copy of learning licence of respondent No.1 dated 05.06.2006 is at Exh.43. When witness summon was sent to R.T.O., Shrirampur, it was reported that the record of learning licence is maintained only for six months and there was no permanent licence in the name of respondent No.1. Respondent No. 2 has filed written statement and has specifically denied that the driver of the vehicle was having

effective valid driving licence and it was claimed that therefore, it was not liable to indemnify. The policy of respondent No.1 is at Exh.49. It lays down that the vehicle can be driven by any person including insured, provided that the person holds effective driving licence at the time of accident and is not disqualified from holding and obtaining such licence provided also that the person holding valid effective learners licence may also drive the vehicle and such person satisfy the requirement of Rule 3 of the Central Motor Vehicle Rules, 1989. In the present case, the learners driving licence of respondent No.1 dated 05.06.2006 was in existence on the date of accident i.e. 20.06.2006. Thereafter, the said licence was not renewed. The F.I.R. at Exh.45 shows that the goods Rickshaw gave a dash to the bike of the deceased Balkrishna and it was turtled on the ground and thereafter, Rickshaw driver fled away. The said accident was witnessed by Bajirao. This F.I.R. has been relied upon by the parties.

10. The insurance company has not issued any notice to respondent No. 1 to produce his licence. The copy of charge sheet is not filed. Inquest panchanama and spot

panchanama do not disclose crime number and offence registered against Rickshaw driver. Those do not disclose that the driver was prosecuted for driving the Rickshaw without licence. (offence u/s. 3/181). Merely because Regional Transport Officer, Shrirampur does not have record about the licence of the respondent No.1, it is not sufficient to hold that the insurance company has proved the breach of policy. The insurance company ought to have specifically pleaded that respondent No. 1 was driving the vehicle with learners licence and that time, there was no person holding the valid driving licence sitting by his side. No witness has been examined. There is possibility that respondent No.1 might have obtained licence from another R.T.O. In such situation, filing copy of a charge sheet and issuing notice to the owner for production of licence were essential. In absence thereof, the breach of policy has not been proved, and therefore, findings of the learned trial Judge cannot be sustained. Besides, in ***Swarn Singh's*** case has been held that if the driver was having learners licence, the vehicle was driven by authorized licence holder. Therefore, I find that respondent No.2 is jointly and severally liable with respondent No.1.

11. On the point of quantum, it is claimed that the deceased was a lawyer and was earning Rs.30,000/- per month from dairy business and Rs.30,000/- per month from agriculture source and thus, it is claimed that he was earning Rs.60,000/- per month and Rs.5,000/- from advocacy. The evidence of the claimants shows that he was selling 80 litres of milk in the morning and 80 litres of milk in the evening. He was personally looking after his cows. He had 9 cows of foreign breed (5 Jersy cows and 4 Hosten cows). By selling milk of 160 litresper day to Govardhan Milk Pvt. Ltd., the deceased was earning Rs.1,500/- per day and his net profit was Rs.1,000/-. The claimant No.1 has led evidence that after the death of her husband, there was no one to personally look after the cows, therefore, she sold 5 cows through A.P.M.C. for Rs. 93,000/- She has examined CW3 Prakash Dukare, Supervisor from A.P.M.C. and has relied on the receipts of A.P.M.C. Exh. 27, 28, 29 to show that she has sold 5 cows for Rs.93,000/-. She has deposed that she has sold two more cows, but there is no record to that effect. The claimants have examined CW4-Ashok Mhase, who was Secretary in Govardhan Milk Pvt. Ltd.

Rahuri. He stated that it has a branch at Sade, where Balkrishna was residing. He used to sell about 150 litres of milk every day. From 14.07.2006, the milk supply was closed. He produced receipts Exh.31, 32 and 33 in support of him. Receipt Exh.31 is in respect of sale of milk from 01.07.2006 to 15.07.2006 i.e. much after death of Balkrishna. The sale was of 71 litres milk and income there from is Rs.647/-. The cows were sold on 06.07.2006 and during 01.07.2006 to 06.07.2006, the sale is of only 54 liters. These receipts bear the signatures of Accountant and one more person and its copy was filed before the R.D.C. The receipts Exh.32 and 33 disclose that the sale of milk of around 7o to 80 litres in morning and evening twice a day i.e. around 150 to 160 liters. It is pertinent to note that these receipts disclose huge sale of milk of 150 litres from 21.06.2006 to 30.06.2006. When Balkrishsna had expired on 20.06.2006. These receipts cannot be believed as those are not signed by any responsible person and those are suspicious in view of the huge sale of milk even after the death of Balkrishsna. During 1st July to 6th July, the sale is average 9 litres. These sale figures are inconsistent with the case of the claimants that after the death of Balkrishna, there was no one to personally look after the cows, and therefore, income from dairy business was reduced. There could not have been sale of 72 + 76 litres of milk on 21.06.2006, i.e. on the next day of death of Balkrishna. If these receipts are to be believed, there is no explanation as to how there were no similar sales from 01.07.2006 to 06.07.2006. I find that deceased was having at least 5 cows and he was having some dairy business, he must be having income from dairy business, but the figures of income are highly exaggerated, receipts Exh. 32 and 33 are not reliable.

12. The learned Tribunal erred in totally ignoring the evidence of sale of cows and holding that the dairy business could have been continued by the claimants. The claimant No.1 is a lady and claimant Nos. 2 and 3 were minor students. They have produced documents to show that cows were sold by them on account of death of Balkrishsna, head of the family. In these circumstances, relying on the receipt Exh.31 and the price of Rs.93,000/- of 5 cows sold, I hold that the family of the deceased was having income from the dairy business, but not as shown by them. That time, rate of the milk was around Rs.9.5 per litre.

Considering all these facts, I assume the income from dairy business at around Rs.7,000/- to 8,000/- per month. I quantify the supervisory skill of the deceased and his labour work at Rs.4,000/- p.m. in dairy business.

13. The claimants have stated that they were getting agriculture income of Rs.30,000/- per month. It is a common knowledge that agriculture income is not per month, but per annum. The claimants have produced one receipt showing that during 2005 to 2006, the deceased sold 30.410 ton of sugar cane to Sade Co-operative Society. The claimants have examined Sudhakar Jamdar, Exh.CW2, who has deposed that during 2009, rate of sugarcane was Rs.2100/- per ton. The receipts show part payment @ 1101/- and the value of the sugar cane Rs. 33,483/- was calculated by CW2 in 2009 (receipt, Exh.22). It shows that deceased was paying amount to the Co-operative Society, which was deducted from the said amount. The sugar cane crop was main source of income from the agriculture lands. The copies of account extracts disclose that the deceased and family members are having in their name land of 5 hectors and 17 R. There was sugar cane only in one land of 67 R

(Block No.53/1). When the income of sugar cane is only 33,000/-, it is difficult to accept the claimants' contentions that they were having agriculture income of Rs.3,00,000/-. Considering the total land, I assume that the income from agriculture source was around Rs.60,000/- per annum and deceased might have been doing labour work as well as supervisory work in field which can be valued at Rs.12,000/- per annum.

14. The deceased was a lawyer. It is difficult for a person to do dairy business as well as agriculture business and as well as advocacy at the same time, but since there is sanad, I agree with the learned trial Judge. The deceased might be getting income from practice of Rs.5,000/-. Thus, I calculate loss of income as follows :-

(i) Loss of income from dairy business	Rs. 12,000/-
(ii) Loss of income from agriculture	Rs. 12,000/-
(iii) Loss from practice	Rs.60,000/-
Total loss	Rs.84,000/-

15. Thus, his income would be Rs. 84,000/- as he was self-employed, as per *National Insurance Company Ltd. Versus Pranay Sethi AIR 2017 SC 5157,* I add 10 % towards future prospects. Thus, his income would be Rs. 92,400/-. There were 3 dependents on him. Therefore, there will be 1/3rd deduction from their personal income. Therefore, the amounts of income of the family is exist Rs. 61,600/- X 11. Therefore, the loss of total income is Rs. 6,77,600/-.

16. As per *Pranay Sethi's* case, I award Rs.70,000/- under conventional heads as follows :-

(I)	Loss of consortium	Rs. 40,000/-
(ii)	Loss of estate	Rs. 15,000/-
(iii)	Loss of funeral expenses	Rs. 15,000/-
		Rs. 70,000/-

I award Rs. 70,000/- under conventional heads. Thus, the compensation comes to Rs.7,47,600/- rounded up to Rs. 7,50,000/-.

17. The learned Tribunal has not considered the income of the deceased from agriculture and dairy business and has calculated compensation on lower side which needs to be modified. Hence, the appeal deserves to be partly allowed.

O R D E R

(A) The Appeal is partly allowed.

(B) The Judgment and decree in MACP 376/2016 (Ahmednagar) is set aside and modified as follows :-

Respondent Nos. 1 and 2 do jointly and severally pay to the claimants compensation of Rs.7,50,000/- (inclusive of NFL) along with the interest @ 9% per annum and proportionate costs. After deducting the amounts already paid.

(C) The balance amount shall be paid in following proportion :-

(I) Wife -	50 %
(ii) Daughter Priyanka -	30 %
(iii) Son -	20 %

(D) Out of the remaining amount to be paid, 80% amount shall be invested in Nationalized Bank for the period of six months. The Insurance Company shall issue cheque of due amounts to the claimants as above within two months.

(E) The Award amounting to decree shall be drawn up accordingly.

(**A.M.DHAVALE, J**)

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