IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1381 OF 2017

1. Suman w/o. Dashrath Varpe
2. Jayashri d/o. Dashrath Varpe
3. Rupali d/o. Dashrath Varpe
4. Gopinath s/o. Pandharinath Varpe ..Appellants

Vs.

1. The Branch Manager,
Bajaj Allianz General Insurance Co.

2. Vikram s/o. Lahu Gavhane ..Respndents

Mr.R.L.Kute, Advocate for appellants
Mr.S.G.Chapalgaonkar, Advocate for respondent no.1

CORAM : R.G. AVACHAT, J.
DATE : NOVEMBER 22, 2021

JUDGMENT :-

This is an appeal for enhancement of compensation granted by the Motor Accident Claims Tribunal, Sangamner, ("the Tribunal", for short) on account of death in a vehicular accident.

2. The appellants herein are original petitioners in Motor Accident Claim Petition No.171 of 2006. The appellants are widow, children and father of the deceased – Dashrath, who, admittedly, died in the vehicular accident. It is the case of the appellants that the deceased was an agriculturist. His was the agricultural land and cash crops like sugarcane and tomato were being raised. The agricultural

income of the deceased was not less than Rs.Six Lakhs per annum. The deceased would also supply milk to the local dairy. He would earn not less than Rs.20,000/- per annum from the milk business. For want of concrete evidence, the Tribunal considered the notional income of the deceased at Rs.4,500/- per month and awarded compensation at Rs.5,96,500/- with interest at the rate of 8% per annum.

3. Mr.R.L.Kute, learned counsel for the appellants, would submit that the evidence in the nature of sugarcane bills were produced before the Tribunal to indicate the agricultural income of the deceased. The bills issued by the local dairy were also tendered in evidence. According to him, the Tribunal ought to have accepted the case of the appellants as it is. Learned counsel has relied on the judgment in the case of **Chameli Devi Vs. Jivrail Mian, AIR Online 2019 SC 1220**, wherein the Apex Court assumed the monthly income of a carpenter at Rs.5,000/- and awarded compensation. According to learned counsel, in the present case, nothing has been awarded towards future prospects. A very meagre amount has been granted under the conventional heads. He, therefore, urged for enhancement of the compensation.

4. Mr.S.G.Chapalgaonkar, learned counsel for respondent no.1 – insurance company, based on the Apex Court judgment in the case of **New India Assurance Co. Ltd. Vs. Charlie and anr., (2005)10 SCC 720**, would submit that the normal rule of deprivation of income is directly not applicable to a case where agriculture is source of the deceased's income. Learned counsel would further submit that the deceased held not more than 2 acres of land. On his demise, the land and the milch cattle have been inherited by the appellants. Learned counsel, therefore, urged for dismissal of the appeal.

5. The Tribunal, in paragraphs 19, 20 and 21 of the impugned judgment, has observed thus :-

> 19. In respect of fixation of quantum of the compensation amount, the Petitioners have contended that at the time of accident Dashrath was doing agricultural as well as dairy business. From agricultural he was earning annual income of Rs. 3,00,000/- and from dairy business he was earning monthly income at Rs. 15,000/- to Rs. 20,000/-. Petitioner had adduced her evidence to that effect on record and deposed that she had filed the documentary evidence to support her contention that deceased Dashrath was earning from agricultural as well as milk business. During cross-examination she admitted that there was partition between her husband and his brother and his brother received 2 acre land and in that land he was taking the agricultural income. She then admitted that last year she had taken the sugarcane and supplied 50 ton sugarcane from that land. She then deposed that in

the year 2013-14 sugarcane of Rs. 1,50,000/- was supplied, however, it is the gross amount received, but, cultivation cost was not deducted from it. Petitioner has also examined PW2 Bhausaheb Kasar to show that deceased -Dashrath was receiving agricultural income from his agricultural land. He deposed that he has filed the certified copy of sugarcane supplied by Dashrath Varpe from 1999-2000 to 2006 to 2007. By going through the said sugarcane supply statement it appeared that from year 1999-2000 to 2004-2005, sugarcane of average Rs. 30,000/- to Rs. 40,000/- per year was supplied. Again in year 2006-2007 sugarcane of Rs. 39,369/- was supplied as per Exh. 54 from the field of deceased Dashrath. In the year 2005-2006 sugarcane of Rs. 1,71,250/- was supplied. In cross-examination this witness admitted that the said sugarcane contains the sugarcane supplied by brother of deceased Dashrath namely Kailash Varpe and 63 Ton sugarcane was shown in his name. If his admission is taken into consideration the subsequent admission that for the year 2005-2006 amount of Rs. 62,900/- was given to deceased Dashrath, it would clarify that income of Dashrath from agricultural field was not of Rs. 3,00,000/-per year, but, it is much less.

20. So far as income from milk business is concerned it appeared that from 1.4.2005 to 30.4.2005 deceased Dashrath has received only Rs.1,100/- and from 1.5.2005 to 30.5.2005 he had received Rs.1,000/- and if subsequent receipts are taken into consideration it appeared that he had not received more than Rs.1,400/- per month at any time from milk business.

21. As per the Petitioner total monthly income of deceased - Dashrath from milk business and agricultural was more than Rs. 20,000/-. However, while going through the oral as well as documentary evidence I found that there is no sufficient evidence on record to prove the monthly income of deceased Dashrath. Hence, as per the settled Law income of Dashrath has to be considered on the basis of notional income of agriculturist.”

6. On the death of Dashrath, his agricultural land and milch cattle have been inherited by the appellants herein. As such, due to death of Dashrath, what has been suffered by them, is loss of supervision. The Tribunal was, therefore, right in considering the income of the deceased at Rs.4,500/- per month notionally. This Court do not see any reason to interfere therewith.

7. In the case of **Chameli Devi** (supra), the deceased was a skilled labourer. The Apex Court, therefore, assumed his income at Rs.5,000/- per month and awarded compensation.

8. In the present case, it, however, appears that the Tribunal has not granted anything towards future prospects. A very meagre amount has been granted under the conventional heads. When the impugned award was passed, the Apex Court's judgments in the cases of (i) **National Insurance Company Ltd. Vs. Pranay Sethi and ors., (2017)16 SCC 680**; and (ii) **Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and ors., (2018)18 SCC 130** were not in the field. The amount of compensation, therefore, requires to be reworked out in terms of the observations in the cases of **Pranay** (supra) and **Magma General Insurance** (supra).

9. The established monthly income of the deceased is Rs.4,500/-. Since the deceased was 45 years of age when he breathed last, 25% of his established income is added thereto on account of future prospects. As such, the monthly income would be Rs.5,625/- and the annual income would be Rs.67,500/-. Since the number of dependents is four, $1/4^{th}$ amount is deducted towards personal and living expenses of the deceased. This way, the annual income of the deceased would come to Rs.50,625/- (Rs.67,500 – Rs.16875/-). As he was in the age group of 46-50 years, multiplier of 13 is applied. As such, the amount of compensation on account of loss of dependency would come to Rs.6,58,125/- (Rs.50,625 x 13).

10. The appellants are awarded a sum of Rs.40,000/- each towards loss of consortium and love and affection besides a sum of Rs.30,000/- for funeral expenses and loss of estate, i.e., totaling Rs.1,90,000/- (Rs.40000 x 4 + Rs.30,000). The appellants, however, shall not be entitled for interest *pendente lite* on this amount.

11. In the result, the appeal succeeds in terms of the following order:-

(i) The appeal is allowed.

(ii) The amount of compensation granted by the Tribunal is enhanced from Rs.5,96,500/- to Rs.8,48,125/-.

(iii) The sum of Rs.1,90,000/- granted towards loss of consortium, love and affection, loss of estate and funeral expenses shall not carry interest *pendente lite, i.e., from the date of claim petition to the date of this order.*

(iv) Rest of the terms of the impugned award shall stand unaltered.

(vi) The amount in deposit, if any, with this Court or the Tribunal, be paid to the claimants with interest accrued thereon.

[**R.G. AVACHAT, J.**]

KBP