IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.785 OF 2020

Reliance General Insurance Company,
Through its Manager,
570, Naygaon Cross Road,
Next to Royal Indl. Estt.,
Wadala (W), Mumbai 400 030 ..Appellant

Vs.

Dnyaneshwar @ Dnyandeo
Vitthal Yadav, died
Shobha Dnyandeo Yadav
and ors. ..Respondents

Mr.S.S.Patil, Advocate for appellant
Mr.V.B.Jagtap, Advocate for respondent nos.1A and 1F

AND
CIVIL APPLICATION NO.10146 OF 2021
IN FIRST APPEAL NO.785 OF 2020

Dnyaneshwar @ Dnyandeo
Vitthal Yadav, died
Shobha Dnyandeo Yadav
and ors. ..Applicant

Vs.

Reliance General Insurance Company,
Through its Manager,
570, Naygaon Cross Road,
Next to Royal Indl. Estt.,
Wadala (W), Mumbai 400 030 ..Respondents

Mr.V.B.Jagtap, Advocate for applicants
Mr.S.S.Patil, Advocate for respondent no.1

CORAM : R.G. AVACHAT, J.
DATE : SEPTEMBER 29, 2021

ORDER :-

The appellant – insurance company has preferred this appeal against the judgment and order dated 20.03.2019 passed by the Motor Accident Claims Tribunal, Newasa ("the Tribunal", for short) in Motor Accident Claim Petition No.250 of 2014. Vide the impugned judgment and award, a total sum of Rs.35,14,000/- has been awarded along with interest at the rate of 8% per annum from the date of petition till realisation thereof, as compensation on account of injuries and permanent disability suffered by the claimant in a vehicular accident. The challenge is basically to the quantum of compensation.

2. The victim of the accident passed away, pending this appeal. His legal representatives have been brought on record. Since the award became part of his estate, his legal representatives are entitled to defend the same.

3. The victim of the accident suffered left hemiparesis with total vegetative state. As such, it is 100% disability. The Tribunal observed that the injured would be required to take treatment for whole of his life.

4. Heard learned counsel appearing for the parties.

5. Mr.S.S.Patil, learned counsel appearing for the appellant-insurance company, would submit that the injured (since deceased) was agriculturist by profession. The respondents-legal representatives of the deceased have inherited his agricultural land. On demise of the injured during pendency of this appeal, his legal representatives continued to earn the agricultural income. There is evidence to indicate that the widow of the deceased is a skilled agriculturist. According to learned counsel, the Tribunal ought not to have notionally considered income of the deceased at Rs.10,000/- per month. He would further submit that the Tribunal had granted compensation under conventional and new found heads. The same is not sustainable. Learned counsel, therefore, urged for reducing the amount of compensation substantially.

6. Mr.Jagtap, learned counsel appearing for the respondents – legal representatives, would, on the other hand, submit that the deceased was a skillful agriculturist. On his disablement in the accident and demise as well, the legal representatives have suffered incalculable loss. The value of the services of the deceased is more than Rs.10,000/- per month. According to learned counsel, the Tribunal has rightly awarded compensation under various heads in the facts and circumstances of the case.

7. Admittedly, the deceased had suffered injuries in the accident involving motor vehicle. He suffered left hemiparesis with total vegetative state and the assessed disability was 100%. It is informed that the injured passed away during pendency of appeal, as a result of the injuries suffered in the accident. The Tribunal has observed it to be a case of living death. It considered notional income of the deceased at Rs.10,000/- per month. Considering the age of the deceased as 46 years, it made addition of 15% of the established income towards future prospects and applied multiplier of 13. It

awarded Rs.5,00,000/- for reimbursement of the medical expenditure incurred for treatment of the deceased besides Rs.2,00,000/- towards future treatment and Rs.3,00,000/- towards attendance charges. The Tribunal granted Rs.1,20,000/- on account of pains and sufferings to the wife and children. It granted Rs.4,00,000/- towards pains, sufferings and trauma, loss of amenities, loss of expectation of life, etc. The Tribunal also granted Rs.2,00,000/- towards 100% total disablement of the injured.

8. The Tribunal has granted compensation under various heads as the injured went in vegetative state. I do not propose to reproduce the observations made by the Tribunal in justification of awarding the compensation. I do not propose to interfere with the amount of compensation granted under other heads.

9. Admittedly, the deceased was an agriculturist. His agricultural land has been inherited by the respondents-legal representatives. The widow of the deceased is a skilled agriculturist. This Court would be justified in reducing the

amount of compensation in the totality of the facts and circumstances of the case. The compensation was awarded considering the fact that the injured would live long in vegetative state; his wife would be required to attend him all along; and that she would suffer loss of matrimonial pleasure, etc. Therefore, without reducing the amount of compensation granted under other heads, this Court is inclined to reduce the compensation to some extent as income has been considered on higher side.

10. There is evidence to indicate that due to disablement of the injured (deceased), the family has suffered loss of income. The Tribunal has quantified the income of the deceased at Rs.10,000/- per month notionally. Fifteen percent thereof has been added thereto towards future prospects. For want of there being any concrete evidence about income of the deceased, the notional income considered by the Tribunal is found to be on higher side. This Court, therefore, proposes to award the compensation on account of loss of income considering the income of the deceased at Rs.7,500/- per

month (inclusive of addition on account of future prospects). In view of the above, the amount of compensation payable to the claimants needs to be worked out as under:-

Particulars		Figures in Rupees
Income of deceased per annum (Rs.7,500/- per month x 12 months)		90,000
	:-	90,000
Applying multiplier of 13, amount of compensation on account of loss of dependency (Rs.90,000 x 13)	:-	11,70,000
Amount of compensation	Rs.	11,70,000

Thus, on account of loss of future income, the claimants would be entitled to get Rs.11,70,000/-.

11. In view of the above, the appeal partly succeeds in the following terms :-

(i) The impugned award is modified only to the extent of compensation towards loss of future income.

(ii) The respondents/legal representatives shall be entitled to get Rs.11,70,000/- (Rupees Eleven Lakhs Seventy Thousand only) as compensation towards loss of future income (instead of Rs.17,94,000/- as determined by the Tribunal) with 8% interest per annum, thereon.

(iii) Rest of the terms of the impugned award to stand unaltered

(iv) The appeal stands disposed of accordingly.

(v) The respondents/claimants be paid the amount with interest accrued thereon. Balance amount be paid back to the appellant-insurance company immediately. Civil Application No.10146 of 2021 stands disposed of accordingly.

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

KBP