IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 392 OF 2019

Bharti Axa General Insurance Company
Ltd., 222-B Block, Vishnu Vaibhav
Complex, Civil Lines, Nagpur
Tahsil and District – Nagpur,
through its Manager (Legal),
Shri Idris Zahid Khanwala.

.... **APPELLANT**
[Original Respondent No.3] [On R.A.]

...V E R S U S...

1] Sukhdeo s/o Mengaji Sahare,
Age about 56 years. **[Original Claimants No.1 to 4] [On R.A.]**

2] Sau. Sushila Sukhdeo Sahare,
Age 53 years, Occu: Household Work

3] Ku. Jyoti d/o Sukhdeo Sahare,
Age 26 years, Occu: Nil.

4] Ku. Kalyani d/o Sukhdeo Sahare,
Age 24 years, Occu: Nil.

Respondent Nos. 1 to 4, R/o Azad Chowk,
Ward No.4, Sindewahi,
Tahsil Sindewahi, District – Chandrapur.

5] Sumit s/o Ashok Merugwar,
Age 26 years, Occu: Driver
R/o Near Temple, Patideo Mohalla,
Sindewahi, Tah. Sindewahi,
District- Chandrapur. **[Ori. Res. No.1]**

6] Ashok s/o Baliram Merugwar,
Aged about 64 years, Occu: Owner of offending vehicle.
R/o Near Temple, Patideo Mohalla,
Sindewahi, Tah. Sindewahi,
District- Chandrapur. **[Ori. Res. No.2]**

... **RESPONDENTS**

Shri A.P. Bhuibhar, Advocate h/f Shri R.D. Bhuibhar, Advocate for Appellant.
Shri P.R.Agrawal, Advocate for Respondent Nos. 1 to 4.
Shri R.M. Tahaliyani, Advocate for Respondent Nos. 5 and 6.

CORAM : S.M. MODAK, J.
RESERVED ON : 03.05.2021.
PRONOUNCED ON : 07.05.2021.

ORAL JUDGMENT

1] Heard learned Advocate Shri A.P. Bhuibhar holding for learned Advocate Shri R.D. Bhuibhar for the appellant, learned Advocate Shri P.R. Agrawal for respondent Nos. 1 to 4/original claimants and learned Advocate Shri R.M. Tahaliyani for respondent Nos. 5 and 6.

2] The issue involved in this appeal is whether the driver /respondent/ claimant No.1 was negligent in driving a truck on the fateful day, and whether the amount of income of the deceased fixed at Rs.10,000/- per month is proper? The Motor Accident Claims Tribunal, Chandrapur (hereinafter referred to as ‘Tribunal’) held the driver responsible and quantified the income of the deceased Vinod to Rs. 10,000/- per month.

3] These issues were decided by the Tribunal, Chandrapur in Motor Accident Claim Petition (MACP) No. 138/2013 as per the judgment dated 31.10.2018. In fact, the claimants [the legal representatives of the deceased Vinod] have filed Civil Application (CAF) No. 294/2021 for withdrawal of the amount. The appeal is preferred by the Insurance Company/ Original Respondent No.3. The Truck bearing registration No. MH-34-AB-2676 was owned by respondent No.2. In this appeal, the Insurance Company has deposited Rs. 21,11,021/-. So also, the statutory deposit of Rs. 25,000/- is also deposited. This Court on 16.02.2021 observed as under :-

> *"the challenge is only to the quantum of compensation, the parties are put to notice that endeavor will be made to dispose of the appeal at the stage of admission".*

This was clarified on 02.03.2021. The appeal was already admitted. Hence, the word "*finally at the stage of admission*" was deleted.

4] On this background, I have heard learned Advocates who have agreed to hear the appeal on the basis of record and proceedings. The following points arise for my determination:-

1) Whether the Tribunal was right in holding respondent No.1/Driver of the truck rash and negligent? …. In the affirmative.

2) Whether the income of the deceased Vinod at Rs. 10,000/- per month arrived at by the Tribunal is proper ? … In the affirmative.

3) Whether compensation is excessive? … No.

4) Whether the impugned judgment requires interference ? … No.

5) What order ? … As per final order.

Point No.1

The claimants are the father, mother and two daughters of the deceased Vinod. On the fateful day on 31.5.2013 deceased Vinod Sukhdev Sahare alongwith his friend, Tejas Abhay

Kekre attended a marriage reception dinner of Rakesh Thakare. The two friends, after dinner went for eating *Kharra (Pan).* Both were sitting on a bench in front of the flower shop of Prashant Bankar. It was at about 10.00 p.m., respondent No.1 came alongwith his truck and dashed the shop of Prashant Bankar, and also two friends sitting on the bench. Both were injured and died.

5] The Sukhdev father of the deceased/respondent No.1 has not seen the accident. He learnt about the same. He admits about the same in a cross-examination. Learned Advocate Shri A.P. Bhuibhar is right in that behalf. Ravindra Sahare, cousin brother of the deceased is another witness. The spot is situated at a distance of 100 to 150 meters from his house. He went to the spot running when he heard loud noise. However, in cross-examination, he says that he had seen the accident, as he was standing near the Pan Shop.

6] The First Information Report is lodged by Ravindra Namdeo Sahare i.e. the same witness. It is at Exhibit 33. On getting knowledge about the accident, he went to the spot. This portion from the F.I.R. is brought to my notice by the learned Advocate Shri A.P. Bhuibhar. So it is also clear that he had not seen the accident.

7] The crime details form at Exhibit 34 is filed. The learned Advocate Shri A.P. Bhuibhar, vehemently argued that the two witnesses have not seen the accident and there is no evidence about rash and negligent driving of the driver. Whereas according to learned Advocate Shri P.R. Agrawal in the claim petition, test is of the preponderance of probabilities. Only summary inquiry is contemplated. The Tribunal while discussing this issue has elaborately considered the situation at the spot. The Tribunal has also opined about the duty of the Driver to drive the vehicle on a road and not in such a manner, so as to climb on the footpath. The Tribunal observed the extent of damage caused by the vehicle. [Para Nos. 14 and 15]. The suggestion was given to these witnesses that deceased Vinod and his friend were walking on the road in a drunken condition. It was denied. The Post Mortem Report at Exhibit 36 is on record. The Doctor has opined hemorrhagic shock as cause of death.

8] <u>Even though it may be true that both these witnesses have not witnessed the incident, I do not think that the Tribunal has to be blamed</u>. It is pertinent to note that the deceased was not driving a vehicle but he was sitting on a bench. The respondent No.1/Driver ought to have taken care and how he could drive the vehicle in such a manner so as to hit the persons sitting on a Bench near a Floor Shop near the road. It is possible only when, the driver of respondent No.1 has lost control of the vehicle. It may be due to driving vehicle in an excessive speed. It is said that "*circumstances speak for themselves".* It means the impact was so severe that Doctors did not get a chance to treat the deceased – Vinod.

9] There is no case put up that the wrong vehicle is involved. If it is so then does not require evidence of a person who had seen the accident. The other circumstances i.e. extent of damage caused [as evidenced in the spot panchanama], the nature of injuries caused to the deceased, instant death, the deceased was not driving any vehicle but sitting and the truck being a heavy vehicle cumulatively suggest that it was respondent No.1, who was rash and negligent. <u>The argument advanced by learned Advocate Shri A.P. Bhuibhar cannot be accepted</u>. This Court can certainly understand his zeal to argue for protecting the interest of his client. But his argument is not sufficient to overlook the circumstances mentioned above and to give a finding in his favour. So point No. 1 is answered in the affirmative.

Point No.2

10] There are two sources of income of the deceased pleaded by the claimants. They are from agricultural income and milk business income. The Claim Tribunal has quantified income from the milk business to the tune of Rs. 5,000/- per month (Para 26) and Rs.5,000/- from agricultural income (Para 24). There is emphasis by learned advocate Shri A.P. Bhuibhar that there is no evidence about the number of buffalos and cows and there is no evidence of how the deceased has earned Rs.5000/- from the agricultural business. The land stands in the name of the father and comparatively, he was young to work. My attention is also invited to observation by the Tribunal to the effect "t*he applicants have also not been able to place on record any documents regarding four buffalos and two jersey cows owned by Vinod"* [Para-26]

11] Whereas according to the learned Advocate Shri P.R. Agrawal, the income from both the businesses were quantified by the Tribunal on the lower side. Hon'ble Supreme Court and High Courts have quantified the income as elaborated in the following judgments :-

a] ***United India Insurance Co. Ltd. Nagpur V/s Shriram Shankarraoji Deshmukh and others in First Appeal No. 547/2009 decided by this Court on 09.09.2019***.

b] ***Neeta w/o Kallappa Kadolkar and others V/s Divisional Manager, Maharashtra State Road Transport Corporation, Kolhapur, reported in (2015) 3 SCC 590.***

c] ***Sushila wd/o Subhash Mendhe and another V/s National Insurance Company Limited and others reported in 2019 (1) ALL MR 658.***

12] Whereas the learned Advocate Shri A.P. Bhuibhar tried to distinguish facts of those cases from the facts of the present case. In the case of ***Neeta w/o Kallappa Kadolkar*** (supra), the Hon'ble Supreme Court was pleased to fix the income of the deceased at Rs.12,000/- per month [from Carpentery and Agricultural business]. There was no salary certificate. However, on the basis of notification under the Minimum Wages Act, the income from the skilled work of Carpentery was considered. Whereas in the case of ***Sushila wd/o Subhash Mendhe and***

another (supra), this Court considers the observation of Hon'ble Supreme Court in Para-11. In certain cases, documentary proof about salary may not be available. And still, when the employer is deposing, his evidence cannot be discarded merely because documentary proof of salary is not available. This Court, considered Rs.9,000/- per month as a income of the deceased. He was working with Sub Contractor [Rs. 300/- per month] [Para-10]

13] Whereas, in the case of ***Shriram Shankarraoji Deshmukh*** (supra), this Court considered the yearly income of the deceased to Rs. 1,50,000/- from the Milk Business.

14] The proof about exact income will be available when the deceased is getting a salary. If he is self-employed or doing some business, the proof about exact income can be in the form of the books of accounts, income tax return, etc. Every time it is not possible that the person is maintaining the account and paying income tax. There are two aspects, <u>One</u> is whether there is evidence to show the source of income and <u>Second</u> what is evidence about exact income.

15] In this case, there is evidence of Sukhdev father of the deceased and a witness Shankar Meshram [who is purchasing milk daily from the deceased]. The father has described the agricultural lands cultivated and paddy crop being taken by the deceased. One 7/12 extract bearing Survey No. 547 and Jamabandi Patrak [Form 8-A] in the name of deceased Vinod and his father Sukhdev at Exhibit 44 is filed. Two separate lands are shown in it. In addition to that the copy of the sale deed executed by the deceased, thereby purchasing land for Rs.1,15,000/- is filed at Exhibits 45 and 46. Whereas the notebook maintained by the deceased to show the Milk sold every day at Exhibit 47 is tendered in evidence.

16] It is true that there is no evidence as to how many bags of paddy was cultivated. The form 8-A also shows the name of the deceased alongwith his father. From this, it is very clear that the deceased was owning agricultural land from which it is possible to cultivate paddy. The sale-deed also denotes consideration of the land is Rs.1,50,000/-. Both these circumstances indicate that the deceased was an agriculturist. So it is possible for him to cultivate and earn agricultural income. Because it is difficult for non-agricultural person to cultivate and earn from agricultural land. The Tribunal has considered

Rs. 5,000/- per month towards Agricultural Income. I do not think that this is unreasonable and ultimately it is a guesswork one can even say that he was earning Rs. 10,000/- per month. But in view of the evidence about agricultural land, the interference about earning is proper.

17] This is also true for the Milk business. There is no reason to disbelieve the evidence. There is evidence of the father and witness Shankar Mershram. He was running *'Shankar Tea Stall'* and purchasing 10 Liter Milk everyday @ Rs.35/- per Liter. It may be true that the deceased was not issuing any bill but as said above, evidence of two witnesses is sufficient to believe the source of income from the Milk business. Not only that the notebook also mentions the daily sale of Milk from 01.04.2013 up to 24.04.2013. It is in the handwriting of the deceased. The buffalos and cows are sold by the father of the deceased after the death. Here also, the Tribunal has fixed the minimum income of Rs. 5,000/- per month. I do not think it is unreasonable.

So I find no fault in fixing the monthly income of the deceased <u>to the tune of Rs. 10,000/- per month</u>. <u>Issue No.2 is answered in the affirmative.</u>

Point Nos. 3 and 4

Future Prospect

18] The age of the deceased was 27 years old. There is leaving certificate at Exhibit 42 on record. His date of birth is 05.08.1986 and the accident took place on 31.05.2013. It means at the time accident deceased was aged 27 years old. As held in the case of ***Kirti and another V/s Oriental Insurance Company Ltd.,*** *reported in* ***2021 (2) SCC 166*** future prospect can be granted even in case of involving notional income. The principle of future prospect as enunciated in ***National Insurance Company V/s Pranay Sethi, 2017 (16) SCC 680*** was made applicable to earning deceased who is unable to prove actual income though employed. The Tribunal has granted 40% of income towards future prospect. So it comes to Rs. 4,000/- per month the logic is correct.

Deduction towards Personal Expenses.

19] The deceased was a bachelor, the parents and two sisters were other family members. The Tribunal has presumed that the deceased would spent 50% of the income towards his personal expenses. It means there will be a loss of dependency to the tune of 50%. It is correct.

Multiplier

20] The Tribunal applied the multiplier of 17 on the basis of judgment in the case of ***Sarla Verma V/s Delhi Transport Corporation*** *reported in* ***2009 (5) Mh.L.J. 775.*** It is correct.

Loss of Consortium

21] The Tribunal has granted Rs. 40,000/- on account of loss of filial consortium in accordance with the ruling in ***Megma General Insurance Company V/s Nanu Ram Alias Chuhru Ram, Civil Appeal No. 9581 of 2018 dated 18.09.2018***. Whereas according to Shri P.R. Agrawal, the amount of consortium should be per person and not a lump sum of Rs.40,000/-. This was elaborated in the case of ***New India Assurance Company V/s Smt. Somwati and others [Civil Appeal No. 3093/2020]*** by Hon'ble Supreme Court. Accordingly, the order granting compensation towards loss of consortium to every claimant was upheld. Loss of consortium includes spousal consortium, parental consortium, and filial consortium. In this case, only compensation towards loss of filial consortium is granted. It means a loss to parents on account of death of the child is not granted. In fact, in the case of ***Magma***

General Insurance Company even compensation on account of loss to the sister of the deceased was included in loss of filial consortium. So in this case, every claimant is entitled to Rs. 40,000/- each. To that extent, the order requires modification. The amount towards funeral expenses is confirmed. In view of this, the claimants are entitled to the compensation at modified rate as follows :-

Monthly income of deceased at the time of death.	Rs. 10,000/-
Income for the purpose of assessment	Rs. 10,000/- x 12 = 1,20,000/-
(+) 40% addition towards future prospects.	Rs. 48,000/-
Total Salary	Rs. 1,68,000/-
(-) 50% deduction.	Rs. 84,000/-
Salary for multiplier	Rs. 84,000/-
(x) “17” multiplier	Rs. 84,000/- x 17= Rs. 14,28,000/- (Compensation towards loss of dependency)
Loss of Consortium : (+) Rs. 40,000/- for each claimant	Rs. 1,60,000/-
(+) Loss of estate	Rs. 15,000/-
(+) Funeral expenses	Rs. 15,000/-
Total compensation payable to claimants	Rs. 16,18,000/- (14,28,000/- + Rs. 1,60,000/- + Rs. 15,000/- + Rs. 15,000/-)

In nutshell, the claimants are entitled to receive Rs. 16,18,000/-.

22. This Court, certainly enhance the amount of compensation, because the Court has to take grant just amount of compensation. It is the duty of the Tribunal. There is no need to file cross-objection, because the life of the deceased is important. No amount of money can compensate it. So the technicalities does not govern the field. This is elaborated by Hon'ble Supreme Court in the case of ***Surekha w/o Rajendra Nakhate and others V/s Santosh s/o Namdeo Jadhav and others*** reported in ***2020 ACJ 2156***. The Insurance Company has deposited Rs. 21,11,021/- on 08.05.2019 and Rs. 25,000/- on 22.02.2019, the amount needs to be disbursed to respondent Nos. 1 to 4 as directed in the proportion mentioned in the direction No.3 of the operative part of the judgment. The appellant needs to deposit the amount which is enhanced by this Court and after deposit, it can be disbursed to respondent Nos. 1 to 4 in the manner mentioned by this Court in the judgment. Hence, I answered point No.3 and Point No.4 in the negative and pass the following order :-

ORDER

1) The appeal is **dismissed.**

2) The judgment of the Motor Accident Claims Tribunal,

Chandrapur dated 31.10.2018 passed in M.A.C.P. No. 138/2013 is modified as follows :-

(i) The appellant and present respondent Nos. 5 and 6 / original respondents are directed to pay Rs.16,18,000/- (Rs. Sixteen Lakhs Eighteen Thousand Only) towards the compensation jointly and severally alongwith the interest @ Rs. 8% per annum from the date of filing of petition till realization.

(ii) The amount be apportioned amongst the respondent Nos. 1 to 4 as follows :-

Respondent No.1	Father	Rs. 4,15,000/-
Respondent No.2	Mother	Rs. 7,40,000/-
Respondent Nos.3 and 4	Sisters	Rs. 2,31,500/- each

(iii) Amount already deposited be adjusted. Appellant to give details [principal amount and interest] to Respondent Nos. 1 to 4.

(iv) The appellant is directed to deposit the amount enhanced by this Court along with interest @ 8% from date of petition till realisation and then it be disbursed to respondent Nos. 1 to 4.

(v) Cost of Respondent Nos. 1 to 4 be paid by appellant and Respondent Nos. 5 and 6.

3) Civil Application stands disposed of.

4) The respondent Nos. 1 to 4 are directed to pay deficit court fee.

(S.M.Modak,J)

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