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

FIRST APPEAL NO. 1064/2008
WITH
FIRST APPEAL NO. 164/2010

FIRST APPEAL NO. 1064/2008

1. The Manager, M/s. Bajaj Allaniz General Insurance Company Ltd., having its office at Second Floor, Rajendra Bhawan, Adalat Road, Aurangabad.

...**APPELLANT**

// VERSUS //

1. Smt. Anuradha, wd/o Dnyandeorao Dhore, aged about 47 years, Occ. Household work

2. ~~Pankaj S/o Dnyandeorao Dhore~~
   ~~Aged about 29 years, Occ. Service,~~
   (Deleted since expired on 19.07.2016 as per Court's order dated 15.01.2021)

3. Kalpesh S/o Dnyandeorao Dhore, aged about 32 years, Occ. Service,

4. Kum. Pallavi D/o Dnyandeorao Dhore, Aged about 22 years, Occ. Nil,

   The Respondent Nos. 1 to 4 all
   R/o. Aasra Colony No. 1 near Sant Tukaram Hospital, Ring Road, Akola, Tah & Dist. Akola.

5. Satish Ramdas Ingle,
Aged – adult, R/o. Vishwakarma Nagar,
Mothi-umri, Akola, Tah. & Dist. Akola.

.... **RESPONDENTS**

None present for appellant.
Shri A. P. Wachasundar, Advocate for respondent Nos. 1 to 4.

WITH

FIRST APPEAL NO. 164/2010

1. Smt. Anuradha, wd/o Dnyandeorao Dhore,
aged about 47 years, Occ. Household work

2. ~~Pankaj S/o Dnyandeorao Dhore~~
~~Aged about 23 years, Occ. Service,~~
(Deleted as expired on 19.07.2016 as per Court's order dated 15.01.2021)

3. Kalpesh S/o Dnyandeorao Dhore,
aged about 27 years, Occ. Service,

4. Ku. Pallavi D/o Dnyandeorao Dhore,
Aged about 25 years, Occ. Nil,

The Respondent Nos. 1 to 4 all
R/o. Aasra Colony No. 1 near Sant Tukaram
Hospital, Ring Road, Akola, Tah & Dist. Akola.

.... **APPELLANTS**
(On RA)

// VERSUS //

1. The Manager, M/s. Bajaj Allaniz General Insurance Company Ltd., having its office at Second Floor, Rajendra Bhawan, Adalat Road, Aurangabad.

2. Satish Ramdas Ingle,
Aged – adult, R/o. Vishwakarma Nagar, Mothi-umri, Akola, Tah. & Dist. Akola.

...**RESPONDENTS**
(On RA)

Shri A. P. Wachasundar, Advocate for appellants.
None present for respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

CLOSED FOR THE JUDGMENT: 05.02.2021
PRONOUNCING THE JUDGMENT : 11.03.2021

JUDGMENT

The claimants, as well as the Insurance Company, have challenged the judgment and award dated 13.05.2008 passed by the Claims Tribunal, Akola in MACP No. 53/2006. By the impugned judgment, the Claims Tribunal has held that the claimants are entitled for compensation of Rs. 3,00,000/- with interest @ 9% per annum from the date of the petition till final realization. The Tribunal has directed the Insurance Company to pay said amount and recover the same from the owner of the offending vehicle.

2. The brief facts necessary to decide these appeals are as under:-

On 09.08.2005, an auto rikcshaw bearing No. MH-30-P-5917, which was owned and driven by the respondent Satish Ingle dashed against the bicycle of Dnyandeorao Dhore. Said Dnyandeorao Dhore sustained injuries in an accident. He was shifted to the hospital and he expired on 24.02.2006. The appellant No. 1 in First Appeal No. 164/2010 is the widow and the appellant Nos. 2, 3 and 4 are the children of the deceased Dnyandeorao Dhore. They shall be hereinafter referred to as 'the claimants'. The claimants filed a petition under Section 166 of Motor Vehicles Act (short 'the M. V. Act') on the premise that the accident was caused due to rash and negligent driving by the driver of the offending vehicle and that the deceased had expired as a result of the injuries sustained in the accident. They claimed that they had incurred expenses of RS. 3,00,000/- towards medical expenses. The claimants stated that the deceased had taken voluntary retirement and that he was engaged in agricultural work and getting agricultural income of Rs. 1,25,000/- to Rs. 1,50,000/- per annum. The claimants stated that they were solely dependent on the come of the deceased. The claimants therefore claimed total compensation of Rs.5,00,000/- from the owner/Insurer of the offending vehicle.

3. The respondent No. 1 denied that the accident was caused due to his negligence. He stated that the vehicle was duly insured and that the appellant - Insurance Company, is liable to pay the compensation.

4. The appellant – Insurance Company denied claim raised by the claimants and further raised a defence that the respondent No. 1 Satish Ingle was not holding a valid and effective driving licence as on the date of the accident. The appellant – Insurance Company denied its liability to indemnify the insured in view of breach of terms and conditions of the policy.

5. Upon considering the evidence adduced by the claimants, the Tribunal has held that the accident was caused due to rash and negligence driving by the driver of the offending vehicle. The Tribunal also recorded a finding that the Dnyandeorao had expired as a result of the injury sustained in the accident. The Tribunal has held that the claimants are not entitled for medical expenses in claims arising from accidental death. The Tribunal did not accept the case of the claimant that the deceased was earning Rs. 1,25,000/- to 1,50,000/- as agricultural income and considered the income of the deceased as Rs. 75,000/- and held that the claimants are entitled for compensation of

Rs. 3,00,000/-.

6. The Tribunal further held that the respondent No. 1 had valid licence from 29.12.1998 till 28.12.2001 and that it was renewed from 21.06.2002 to 20.06.2005 and further from 16.08.2005 to 16.08.2008. Taking note of the fact that the accident had taken place on 09.08.2005, the Tribunal held that the respondent No. 1 was not holding a valid licence as on the date of the accident. The Tribunal therefore directed the Insurance Company to pay the compensation with liberty to recover the same from the Insured. Being aggrieved by this judgment, the claimants and the Insurance Company have filed these appeals under Section 173 of the M. V. Act.

7. Shri A. P. Wachasundra, learned counsel for the claimants submits that the Claims Tribunal has committed gross error in discarding the medical bills and in not awarding any compensation towards medical expenses. He further submits that the Claims Tribunal has not appreciated the evidence on record and has erred in computing the loss of dependency on the basis of income of Rs. 75,000/-. He further states that the compensation awarded by the tribunal is not in consonance with the guidelines laid down by the Apex Court. He therefore urges that the compensation needs to be enhanced.

8. The respondents have challenged the judgment on the ground that that the claimants have failed to prove the income of the deceased and hence, cannot raise any grievance on the quantum of compensation assessed by the Tribunal. It is further stated that the Tribunal has erred in directing the Insurance Company to pay compensation with liberty to recover the same from the insured.

9. I have perused the record and considered the submissions advanced by the learned counsel for the claimants.

10. There is no challenge to the finding that the accident was caused due to rash and negligence driving by the driver of the offending vehicle and further that the death of the Dnyandeorao Dhore was due to the injuries sustained in the accident. The challenge is restricted to the quantum of compensation and directions to the Insurance Company to pay the compensation and recover the same from the insured.

11. As regards the quantum of compensation, the evidence of PW-1, Anuradha Dhore reveals that the deceased was in the employment of Maharashtra Cotton Growers Federation, Akola. He had taken voluntary retirement in the year 2003 and since then, he

was looking after agricultural land. She has deposed that they own 20 acres of land and that they would derive agricultural income of Rs. 1,25,000/- to 1,50,000/- per annum. She has produced 7/12 extract (at Exh.72) in respect of the agricultural land.

12. She has further deposed that her husband was under treatment from the date of the accident till the date of his death i.e. from 09.08.2005 till 24.02.2006. She has stated that during this period they have spent of Rs. 3,00,000/- towards medical expenses. She has produced injury certificate, discharge card, X-ray reports, medical bills, blood report etc. which are at Exh. 44 to 65. She has also produced receipts of payments made to Mankar Critical Care at Exh. 68 collectively. She has also produced medical bills at Exh. 79 and 85.

13. In her cross-examination, she has stated that her son Pankaj, claimant No. 2 was a student and doing his course in BCA and that the claimant No. 3 Kalpesh was working in Showroom Ashok Leyland Company. She has stated that presently the agricultural land is not being cultivated.

14. A perusal of 7/12 extract in respect of Gat No. 63 of village Wallabhnagar, Gat No. 8/1 of village Malkapur and Gat No. 314 of

village Shivapur at Exh. 82, reveals that Gat No. 63 is recorded in the name of the claimant – Anuradha Dhore, deceased Dnyandeorao Dhore and two other persons, whereas Gat Nos. 8/1 and 314 are recorded in the name of deceased. Survey record indicates that the deceased had cultivated cotton and *tur* in land admeasuring 2.16 H.R. in Gat No. 63 and in Gat No. 314 in the year 2004-2005. The claimants have not produced survey record in respect of subsequent years. There is absolutely no evidence on record to indicate that the agricultural land has not been cultivated since the death of the deceased. The claimants have also not given any details of the yield and her statement that they used to derive income of Rs. 1,25,000/- to 1,50,000/- is not supported by any other evidence. Under such circumstances, the Tribunal was justified in computing the loss of dependency on the basis of notional income of Rs. 75,000/-.

15. It is seen that the Tribunal has not awarded any compensation towards future prospects and on other conventional grounds, viz loss of consortium, funeral expenses and loss of estate. The Tribunal was also not justified in declining to award compensation towards medical expenditure. The compensation awarded by the Tribunal is therefore, not 'just compensation'.

16. The evidence of record indicates that deceased was 50 years of age and his income is considered as Rs. 75,000/- per annum. The claimant No. 2, since deceased, was 29 years of age. There is nothing on record to indicate that he was dependent on the income of the deceased, hence cannot be considered as a dependent. Considering that three members of the family were dependent on the income of the deceased, 1/3rd needs to be deducted towards personal expenses of the deceased. Considering the age of the deceased, 10% needs to be added towards future prospects and loss of dependency needs to be assessed on applying multiplier of 13. In addition, the claimant is also entitled for compensation on other conventional heads viz, loss of consortium, loss of estate and funeral expenses, in addition, compensation towards medical expenses.

17. It is to be noted that the evidence on record reveals that said Dnyandeorao Dhore was admitted in Malokar Hospital on 31.08.2005 and he was discharged from the Hospital on 10.09.2005. The receipts dated 31.08.2005 reveals that the total expenditure in the Hospital was Rs. 48,850/-. The amount of Rs. 55,000/- was paid in advance and Rs. 6150/- was refunded. The claimants have also produced medical bills, a perusal of which reveals that they had

incurred medicine expenditure of Rs. 30,612/-. Thus, the claimants are entitled for compensation of Rs. 79,462/- towards medical expenditure.

18. Keeping in view the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sehti and others, (2017 16 SCC 680)***, the compensation is computed as under:-

	Loss of dependency	
	Annual Income	Rs. 75,000/-
	10% addition towards future prospect	Rs. 7,500/-
	Total Income	**Rs. 82,500/-**
	1/3rd deduction towards personal expenses	Rs. 27,500/-
	Total income after deducting personal expenses	Rs. 55,000/-
	Loss of dependency on applying multiplier of 13.	Rs. 7,15,000/-
	Compensation payable on other conventional heads.	
	Loss of spousal and parental consortium	Rs. 1,20,000/-
	Funeral expenses and loss of estate	Rs. 30,000/-
	Medical Expenses	Rs. 79,462/-
Total Compensation payable		Rs. 9,44,462/- (Rounded up 9,45,000/-)

19. The respondent No. 2, driver-cum-owner of the vehicle has not assailed either the findings or breach of terms and conditions of policy or direction of ‘pay and recover’. The challenge raised by the Insurance Company cannot be sustained as it is well settled that the M. V. Act, being beneficial principle of legislation, the rights of

claimant/third party needs to be protected by directing the insurance company to deposit the amount with liberty to recover the same from the insurer. Hence, there is no merits in challenge raised by the appellant - Insurance Company.

20. Under the circumstances and in view of the discussion (supra) appeal No. 1064/2008 is dismissed. Appeal No. 164/2010 is allowed.

21. The impugned judgment and award dated 13.05.2008 is set aside.

22. The appellants/claimants are held to be entitled for compensation of Rs. 9,44,462/- rounded to Rs. 9,45,000 with interest @ 7% per annum from the date of the petition till the date of the judgment and from the date of the appeal till final realization.

23. The Insurance Company to deposit the balance amount within a period of four months before the Claims Tribunal, Akola.

24. The appellants shall pay deficit court fees, if any.

25. The claimant No. 1 shall be entitled to withdraw 50% amount of the compensation along with proportionate interest and the

claimant Nos. 3 and 4 shall be entitled to withdraw 25% each with proportionate interest thereon.

26. Appeals stand disposed of in above terms.

(**SMT. ANUJA PRABHUDESSAI, J.)**

Gohane.