IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2890 OF 2021

01 Varsha wd/o Pravin Borkar,
age: 28 years, Occ: Household;

02 Ku. Aditi d/o Pravin Borkar,
age: 5 years, Occ: Nil,
U/g of Appellant No.1-Mother

Both R/o Nandapur,
Tq. Kalamnuri, Dist. Hingoli.

03 Nagorao s/o Narayan Borkar
(died) Appellants

Versus

01 President of Youth Vidhava
Sanjivani Mahila Bachyat Gut,
Office at Nath nagar, Nanded
(owner of Ambulance
No.MH-26-N-3131)

02 United India Insurance Co. Ltd.,
through its Divisional Manager,
Office at Guru Complex, G. G. Road,
Nanded, Tq. & District Nanded. Respondents

Mr. V. B. Dhage, advocate for the Appellants.
Mr. M. V. Thorat, advocate for Respondent No.1.
Mr. V. N. Upadhye, advocate for Respondent No.2.

CORAM : SANDIPKUMAR C. MORE, J.

Reserved on: 04th August, 2022
Pronounced on : 18th August, 2022.

JUDGMENT:

1 The appellants, who are the original claimants in M.A.C.P. No. 296 of 2015, have preferred this appeal for enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Nanded (hereinafter referred to as 'the learned Tribunal') under the impugned judgment and award dated 29.03.2018, passed in the aforesaid Claim Petition.

2 The main contention of the appellants is that the income of the deceased has not been properly assessed by the learned Tribunal. Moreover, the agricultural income of the deceased, as claimed by the claimants, was not at all considered.

3 Brief facts, leading to this appeal, are as under:

Deceased Pravin was the husband of appellant no.1 and father of appellant no.2. On 25.08.2014, Pravin was taking his mother Usha for higher treatment to the hospital at Mumbai in the Ambulance bearing Registration No. MH-26-N-3131. However, at village Kusgaon on Pune-Mumbai Express Way, the driver of the said Ambulance could not control the vehicle due to high speed and gave dash to the divider. Resultantly, Pravin died in the said accident. An offence was registered against the driver of the offending vehicle i.e. the aforesaid Ambulance.

4 The appellants thereafter filed the Claim Petition for compensation of Rs.80,00,000/- by making an averment that Pravin was highly educated and earning salary of Rs.25,000/- per month by serving in the Coaching Class. They claimed that besides the said income, Pravin was also earning Rs. 1,20,000/- per year from the agricultural land. However, the learned Tribunal has awarded compensation of Rs.21,10,000/- only and, therefore, this appeal.

5 The learned Counsel for the appellants has vehemently argued that the learned Tribunal has erroneously calculated the monthly income of the deceased to the tune of Rs.15,000/- and that too including the future prospects. He further submitted that no agricultural income has been considered by the learned Tribunal at all. In support of his submission, learned Counsel for the appellants has placed reliance on the judgment of the Hon'ble Apex Court in the case of **State of Haryana & another Vs. Jasbir Kaur & others**, reported in 2003 (4) ALL MR 742.

6 On the contrary, learned Counsel for the Insurance Company i.e. Respondent No.2 supported the judgment of the

learned Tribunal and in the alternative submitted that even if its held that the deceased was earning income from agricultural land, it be divided by six since the land was jointly held by the deceased with five other persons.

7 I have gone through the entire documents on record and also record and proceedings of the original Claim Petition along with the impugned judgment and award.

8 It is significant to note that the present appeal is filed only on the ground that the learned Tribunal has not properly considered the income of the deceased from service of the coaching class and income from the agricultural land is not at all considered. On going through the evidence on record, it is clearly evident that there is only one certificate on record produced by the claimants in respect of income of the deceased from alleged service in coaching class. The owner of the said coaching class, who is witness no.2 Shri Trimbak Shankarrao Deshmukh is examined by the claimants. On perusal of his evidence, it reveals that though this witness had stated that at the time of death, deceased was drawing salary of Rs. 25,000/- per month and he had issued salary certificate to that effect, which is at Exhibit-37, but in the

cross-examination itself, he has admitted that he did not produce any documents such as income expenditure account, balance sheet for the period from 01.04.2014 to 31.08.2014. He has also admitted that he did not produce any document for the aforesaid period showing that how many teachers were working in his coaching class. Likewise, he has also admitted that no documents of deduction of Provident Fund of his employees were filed on record. Further, he has admitted that his gross income up to the date 31.03.2014 was Rs.4,43,131/-. It is significant to note that the claimants have produced the said certificate showing that the deceased was earning monthly income of Rs.25,000/- from such coaching class service. Under such circumstances, it is highly difficult to believe that deceased was drawing salary of Rs. 25,000/- per month when the gross income of said witness i.e. owner of the Coaching Class was only around Rs.4,43,000/- per year. It is to be noted here that in view of the cross examination of this witness, the learned Tribunal has arrived at a conclusion that the deceased might be earning Rs. 15,000/- per month, including future prospects. Therefore, taking into consideration the gross income of the witness, who had provided service to the deceased, it is highly unbelievable that he was paying that much monthly salary to the deceased, as claimed in the Certificate at Exhibit-37.

I, therefore, come to the conclusion that the learned Tribunal has rightly assessed the income to the tune of Rs.15,000/- per month of the deceased through service in coaching class, including the future prospects.

9 So far as another contention of the claimants that the deceased was also earning Rs.1,20,000/- per year by way of agricultural income is concerned, there is absolutely no documentary proof on record to show that the deceased was having any agricultural land standing in his name. The learned Counsel for the appellants-claimants heavily relied upon the judgment in the case of **State of Haryana Vs. Jasbir Kaur** (*supra*), wherein the Hon'ble Apex Court has considered monthly income of the deceased, in that case, at Rs.3000/- per month despite there being any documentary evidence to that effect. The Hon'ble Apex Court, in para 8 of the judgment, has made following observations:

> "8. It is clear on a bare reading of the Tribunal's decision as affirmed by the High Court that no material was placed before the former to prove as to what was the income. As rightly contended by learned counsel for the appellants, there was not even any material adduced to show type of land which the deceased possessed. The

> matter can be approached from a different angle. The land possessed by the deceased still remains with the claimants as his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered. Furthermore, there was no material before the Tribunal to arrive at the figure of Rs.4500 per month. No reason has been indicated to arrive at this figure. In the light of what has been discussed above about "just compensation" the income cannot be estimated without any material to justify the estimation. In the normal course, we would have remitted the matter back to the Tribunal for fresh consideration. But considering the fact that one young person lost his life and the matter was pending before the Tribunal and the High Court for some years, we feel it appropriate to take all relevant factors into consideration, and decide the matter. Gauzing the relevant aspects, noted above, the monthly income is fixed at Rs. 3000/- per month, and after deducting Rs. 1000/- for personal expenses, financial contribution so far as the claimants are concerned is fixed at Rs. 2000/- per month."

10 However, on going through the facts of that case, it appears that the deceased was not having income from other sources and the claimants were relying only on the pleadings

whereby monthly income of the deceased was shown as Rs. 4500/- per month. The facts of the said case certainly differ from the instant case and, therefore, when the Tribunal has already considered the income of the deceased from his service in coaching class properly, there is no need to consider the agricultural income of the deceased for want of proof.

11 Thus, considering all these aspects, this Court finds that the Tribunal has properly assessed the income of the deceased including future prospects and also awarded other components such as loss of consortium, loss of estate and funeral expenses, as per the guidelines of the Hon'ble Apex Court laid down in **Sarla Verma & others Vs. Delhi Transport Corporation & another**, reported in (2009) 6 SCC 121. Hence, no interference is required in the impugned judgment and award passed by the learned Tribunal.

12 In the result, Appeal stands dismissed.

(SANDIPKUMAR C. MORE)
JUDGE

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