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

FIRST APPEAL NO. 603 OF 2021

National Insurance Company Ltd.
Having its Regional Office at 5th
Floor, Fidvi Tower, Opposite Saraf
Chambers, Sadar Nagpur 441 001
through its Regional Manager
National Insurance though its
Divisional Manager, M.G. Road,
Opp. Open Air Theatre, Akola

.... **APPELLANT**

// **VERSUS** //

1. Mrs. Pooja Gopal Thokal
aged 28 years, Occupation : Housewife

2. Anay Gopal Thokal
aged 3 years minor through his mother
and Natural Guardian – Mrs. Pooja
Gopal Thokal

Respondents 1-2 are Original
Claimants and are R/o C/o
Shri Prabhakar Raut, Virahit, Taluka
Murtizapur, District – Akola

3. Mrs. Usha Ramdas Thokal
aged 58 years, Occupation-Housewife

4. Ramdas Devidas Thokal
aged 63 years, Occupation-Business,
Both 3-4 are residents of Wadi,
Taluka Khamgaon, District-Buldhana
{Original non-applicants 4&5}

5. Shivshankar Sakhu Yadav
aged major occupation driver and
reident of C/o Mahendra Pratap
Ramnagina Yadav, "Yadav Road
Lines" Gayatri Nagar, At Post
Chaltan, Taluka Palsana District-
Surat – 394 305, Gujrat {Original
non-applicant 1}

6. Mahendra Pratap Ramnagina
Yadav, "Yadav Road Lines" Gayatri
Nagar, At Post Chaltan, Taluka
Palsana District Surat – 394 305,
Gujrat {Original non-applicant 2}

.... **RESPONDENTS**

Shri C.A. Anthony, Advocate for appellant
Shri S.D. Chopade, Advocate for respondent Nos. 1 and 2

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 17/02/2022

ORAL JUDGMENT

. With consent heard finally at the stage of admission.

2. This is an appeal filed under Section 173 of the Motor Vehicles Act, 1988, assailing the judgment and award dated 13/01/2020, in Claim Petition No. 148/2017. By the impugned judgment, the Claims Tribunal has allowed the claim petition under Section 166 of the Motor Vehicles Act and awarded compensation of Rs.30,46,000/- with interest at the rate of 7% per annum from the date of the petition till final realization.

3. Respondent No.1 is the widow and the Respondent No.2 is the eight months old child of the deceased Gopal Thokal, who expired in a motor vehicular accident on 18/09/2017, involving truck bearing registration no. GJ 19 X 1564. Respondent nos. 1 and 2, who shall be hereinafter referred to as the claimants; claimed that the deceased had expired as a result of the rash and negligent driving of the driver of the offending vehicle. The claimants, therefore, filed the petition under Section 166 of the Motor Vehicles Act, claiming total compensation of Rs.40,00,000/-.

4. The Appellant, insurer of the offending vehicle, resisted the petition on the ground that the driver of the offending vehicle was not holding valid and effective driving license. The Appellant, therefore, claimed that it was not liable to indemnify the insured due to breach of terms and conditions of the policy.

5. The Tribunal upon considering the evidence on record held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal considered the income of the deceased at Rs.14,000/- per month and added 50% towards future prospects. Upon deducting 1/3rd towards personal expenses and on

applying multiplier of 17, the Tribunal computed loss of dependancy at Rs.28,56,000/-. The Tribunal also awarded compensation at Rs.40,000/- each to the claimants towards loss of spousal and parental consortium and the Respondent nos. 4 and 5, the parents of the deceased, towards loss of filial consortium. In addition the Tribunal awarded compensation of Rs.30,000/- towards funeral expenses and loss of the estate. The Tribunal thus awarded total compensation of Rs.30,46,000/-. The Tribunal held that the Appellant insurer as well as the driver and owner are jointly liable to pay the said compensation. Being aggrieved by this judgment and award the appellant – Insurance Company has preferred this appeal.

6. Shri C.A. Anthony, learned Counsel for the Appellants has restricted his challenge only to the quantum of compensation. He submits that the Tribunal has computed the compensation on the basis of notional income of Rs.14,000/- that is 8,000/- towards grocery store and Rs.6000/- as agricultural income. He submits that the agricultural land is owned by the parents of the deceased and as such the Tribunal has erred in considering the agricultural income in computing the compensation. He states that the notional income is on higher side and needs to be scaled down. He further submits that the Tribunal has erred in adding 50%

towards future prospect. Relying upon the decision of this Court in Mangala Salunke and others Vs. Maharashtra State Road Transport Corporation and others, 2005 (4) Mh.L.J. 31, he contends that on similar facts, this Court had considered the notional income at Rs 2,000/- per month.

7. Per contra learned Counsel for the claimants submits that the evidence on record proves that the deceased was the only earning member of the family. The widow and the minor child as well as the aged parents were dependent on his income. He submits that the evidence of the Respondent No.4, the father of the deceased shows that the paddy field was being cultivated by the deceased. He, therefore, submits that the Tribunal has not committed any error in considering income of the deceased Rs.14,000/-. He fairly concedes that in terms of the judgment of the Hon'ble Apex Court, future prospects ought to have been at 40%.

8. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties. The only question for consideration is whether the compensation awarded by the Tribunal is just and reasonable compensation.

9. It is not in dispute that the deceased was 29 years of age. He was married about a year prior to his death and he has a child who was barely eight months old as on the date of the accident. The claimant No.1 has deposed that the deceased was running a grocery a shop. She has placed on record the registration certificate at Exh.49. Her evidence further indicates that the deceased was earning Rs. 20,000/- per month from the grocery shop. She has also deposed that deceased was also cultivating a paddy field and getting agricultural income of Rs.2,00,000/- per annum.

10. It is to be noted that the Tribunal has observed that the shop was registered only about two months prior to the death of the deceased. Hence the Tribunal disbelieved the case of the claimant that deceased was earning Rs.20,000/- per month from the said grocery business. In the absence of any other evidence, the Tribunal has considered notional income of Rs. 8,000/- per month towards grocery business.

11. The parents of the deceased are old and the evidence of the father of the deceased indicates that he was totally dependant on the income of the deceased. The claimant no. 1 is the widow, Claimant no.2 is a child of eight month. It is thus obvious that after the death of the

deceased these Claimants as well as the parents would not be able to effectively run the grocery business and they would be forced to employ some other person to run the business. Considering the above circumstances, in my considered view the notional income of Rs.8,000/- cannot be considered to be excess. In Mangla Salunke (supra) notional income was counted as Rs. 2000/- per month. The claim in the said case was of the year 1991. The value of money have gone down substantially over the years. Hence, loss of dependency cannot be computed on the basis of the notional income considered appropriate in the year 1991.

12. The evidence of the claimant also reveals that the deceased was cultivating paddy field. It is true that form no. 7 and 12 are recorded in the name of the parents of the deceased. The evidence of the father of the deceased clearly indicates that he is unable to cultivate the paddy field due to his old age. He has deposed that the paddy field was cultivated by the deceased. He has further stated that his other son is employed in Bombay and that he was dependant solely on the deceased. Under the circumstances, the notional income cannot be said to be exorbitant or excess.

13. The deceased was 29 years of age and was self employed and

in terms of judgment of the Apex Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi and others*** reported in ***2017 (16) SCC 680,*** 40% has to be added towards future prospects. The Tribunal was therefore not justified in adding 50% towards future prospects. Compensation to that extent needs to be reduced. The claimants are thus entitled for compensation as under :

Sr.No.	Particulars	Amount
(a)	Annual income	14000 x 12 = 1,68,000/-
(b)	(+) 40% Future Prospects Rs.67,200/-	Rs.2,35,200/-
(c)	(-) 1/3rd towards personal expenses Rs.78400/-	Rs.1,56,800/-
(d)	(X) Multiplier 17;	Rs.26,65,600/-
(e)	(+) Spousal Consortium; Rs.40000/- (+)Parental Consortium; Rs.40000/- (+)Filial Consortium; Rs.80000/- (+) Funeral Expenses and loss of estate; Rs.30,000/-	Rs.1,90,000/-
(f)	Total (d) + (e)	Rs.28,55,600/-

14. Under the circumstances, the appeal is partly allowed. It is held that the claimants are entitled for Rs.28,55,600/-. 30% of the

compensation be paid to the Respondent no.1 and 10% each to Respondent nos. 4 and 5 with proportionate interest. Since Respondent no. 2 is a minor, 50% of the compensation with proportionate interest thereon be invested in his name through the guardian initially for a period of six years with further renewal till the date the Respondent no.2 attains the age of majority. Balance amount be refunded to the Insurance Company.

JUDGE

Jayashree..