

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

FIRST APPEAL NO.1917 OF 2019

APPELLANT : State of Maharashtra
(Ori. Respt. No.3 on R.A.) Through Superintendent of Police,
Open Jail, Gadchiroli

//VERSUS//

RESPONDENTS : 1. Vanita Wd/o Bhaurao Torankar,
(Ori. Petitioner Nos.1 to 5 Aged about 43 years, Occ.-Household,
on R.A.)
2. Suraj S/o Bhaurao Torankar,
Aged about 22 years, Occ.- Education,
3. Ku. Ashwini D/o Bhaurao Torankar,
Aged about 21 years, Occ.- Education,
4. Prajakta D/o Bhaurao Torankar,
Aged about 19 years, Occ.- Education,
~~Deleted as per Court's~~ 5. ~~Vithobaji S/o Balaji Torankar,~~
~~Order dated 02/02/2022~~ ~~Aged about 70 years, Occ.- Nil,~~

All R/o. Ram Mandir Ward, Armori,
Tq. Armori, District Gadchiroli.
(Ori. Respdt. No.1 on R.A.) 6. State of Maharashtra
through Superintendent of Police,
S.P. Office Complex, Gadchiroli.
(Ori. Respdt. No.2 on R.A.) 7. Dinesh S/o Dilip Dongardive,
Aged about 29 years, Occu. Service,
R/o Gadchiroli Jail, Gadchiroli,
Tahsil & District Gadchiroli.

Shri H.D. Dubey, AGP for the Appellant and Respondent No.6.

Shri PP. Pendke, Advocate for Respondent Nos.1 to 5.

WITH

FIRST APPEAL NO.1369 OF 2019

APPELLANT : Mr. Dinesh S/o. Dilip Gongardive
(Ori. NA No.2 on R.A.) Age 30 Years, Occupation – Service,
R/o. Gadchiroli Jail, Dist. Gadchiroli.

//VERSUS//

RESPONDENTS : 1. State of Maharashtra,
(Ori. NA No.1 on R.A.) Through Superintendent of Police,
Having Its Office at SP Office Complex,
Tahsil & Dist. Gadchiroli.
(Ori. NA No.3) 2. State of Maharashtra,
through Superintendent of Open Jail,
Gadchiroli.
(Ori. Applicant) 3. Smt. Vanita Wd/o. Bhaurao Torankar,
Age 44 Years, Occupation – Household,
(Ori. Applicant) 4. Suraj S/o. Bhaurao Torankar,
Age 23 Years, Occ. - Education,
(Ori. Applicant) 5. Ku. Ashwini D/o Bhaurao Torankar,
Age 22 Years, Occupation – Education,
(Ori. Applicant) 6. Ku. Prajakta D/o. Bhaurao Torankar,
Age 20 Years, Occupation- Education,
(Ori. Applicant) 7. ~~Vithobaji S/o Balaji Torankar,~~
~~Age 71 Years, Occupation Nil,~~
Deleted as per Court's
Order dated 02/02/2022
All R/o. Ram Mandir Ward, Armori,
Tahsil Armori, Dist. Gadchiroli.

Shri H.D. Dubey, AGP for Respondent Nos.1 & 2.
Shri P.P. Pendke, Advocate for Respondent Nos.3 to 7.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 2nd FEBRUARY, 2022.

ORAL JUDGMENT

01] These Appeals under Section 173 of the Motor Vehicles Act,
1988 (for short “the said Act”) challenge the judgment dated 3rd October,

2018, whereby the Chairman, Motor Accident Claims Tribunal, Gadchiroli (hereinafter referred to as the “Tribunal”) partly allowed the MACP No.29/2017 filed by Respondent Nos.1 to 5 in First Appeal No.1917/2019 and Respondent Nos.3 to 7 in First Appeal No.1369/2019 and awarded compensation of Rs.22,42,000/- with interest at the rate of 8% per annum from the date of the petition till final realization.

02] The brief facts necessary to decide these Appeals are as under:

The Respondent Nos.1 to 5 (in F.A. No.1917/2019) and Respondent Nos.3 to 7 (in F.A. No.1369/2019), who shall be hereinafter referred as the Claimants, had filed a claim petition under Section 166 of the said Act before the Tribunal alleging that Bhaurao Torankar had expired in a motor vehicular accident bearing vehicle No.MH-33/C-199. The said vehicle was owned by the State of Maharashtra, the Appellant (in F.A. No.1917/2019) and was driven by the Appellant (in F.A. No.1369/2019), who shall be hereinafter referred to as the driver. The claimants alleged that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Claimants claimed that the deceased was 54 years of age and that he was employed as an accountant at Nagar Panchayat, Armori. The Claimants further claimed that the deceased was cultivating a paddy field and deriving agricultural income of Rs.2,00,000/- per annum.

The Claimants, therefore, claimed total compensation of Rs.30,00,000/-.

03] The Owner as well as the driver denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. They also denied that the deceased was in employment as an Accountant and was drawing salary of Rs.10,543/- per month and that he was deriving agricultural income of Rs.2,00,000/- per annum.

04] The Tribunal, upon considering the evidence adduced by the Claimants, held that the deceased was employed as a Clerk-cum-Accountant at Nagar Panchayat, Armori and he was drawing salary of Rs.10,543/- per month. The Tribunal further held that if the deceased were to be alive, he would have worked with Nagar Panchayat Establishment and would have earned Rs.20,000/- to 25,000/- per month. The Tribunal further held that the deceased was cultivating an agricultural land admeasuring 81R and held that the loss towards managerial skills would be around Rs.3,000/- per annum. The Tribunal deducted 1/3rd income of the deceased towards personal expenses and upon adding 15% towards future prospect and applying multiplier of 11, computed loss of dependency at Rs.20,72,070/-. The Tribunal also awarded compensation of Rs.1,00,000/- towards love and affection, Rs.40,000/- towards loss of consortium and Rs.30,000/- towards funeral expenses and loss of estate. The Tribunal, therefore, awarded total compensation of Rs.22,42,000/-. Being aggrieved by the said judgment, the

owner and the driver of the offending vehicle have filed these appeals.

05] Shri H.D. Dubey, learned AGP for the State/Owner submits that the evidence of PW-2 proves that the deceased was drawing monthly salary of Rs.10,543/-. He, therefore, contends that the Tribunal was not justified in considering the salary of the deceased at Rs.20,000/- to Rs.25,000/- on the premise that the deceased would have earned a higher salary if he were to be alive. He further submits that the deceased was not in permanent job and, as such, the Tribunal has erred in adding 15% towards future prospect. He further submits that the Claimants have not adduced any evidence to prove that the deceased was deriving an income of Rs.2,00,000/- as agricultural income. He submits that 7/12 extract at Exh.51 indicates that the deceased owned land admeasuring 81R. The claimants have not proved that the said land was cultivated and hence, the Tribunal has erred in considering Rs.3,000/- towards loss of managerial and supervisory skills. He submits that the compensation awarded by the Tribunal is not just and reasonable.

06] *Per contra*, Shri P.P. Pendke, learned counsel for the Claimants submits that the Nagar Panchayat had already sent a proposal to the Government to appoint the deceased as a Clerk or Lineman. He further submits that the deceased would have earned Rs.20,000/- to 25,000/- per month if his life was not cut short in an unfortunate accident. He further

submits that 7/12 extract at Exh.51 shows that the deceased owned an agricultural land. He submits that there is no reason to believe that the deceased was not cultivating the field. He further submits that considering the number of dependants, the Tribunal ought to have deducted 1/4th towards personal expenses. He submits that the compensation awarded by the Tribunal is just and reasonable and does not warrant any interference.

07] I have perused the records and considered the submissions advanced by learned counsel for the respective parties. The only point for consideration is whether the compensation awarded by the Tribunal is just and reasonable.

08] It is not in dispute that the vehicle bearing No. MH-33/C-199, which was owned by the State was involved in the accident. The Tribunal has recorded a finding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Hon'ble Supreme Court in the case of Archit Saini and Ors. Vs. The Oriental Insurance Company Ltd. and Ors. reported in (2018) 3 SCC 365 has reiterated that the nature of proof in cases concerning accident claims is qualitatively different from the one in criminal cases, which must be beyond any reasonable doubt. In a recent decision in the case of Anita Sharma and ors. Vs. The New India Assurance Co. Ltd. and Ors. reported in (2021) 1 SCC

171, the Hon'ble Apex Court has held thus:

“22. ...The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in Dulcina Fernandes v. Joaquim Xavier Cruz MANU/SC/1028/2013 : (2013) 10 SCC 646 wherein this Court reiterated that:

*7. It would hardly need a mention that the plea of negligence on the part of the first Respondent who was driving the pick-up van as set up by the claimants **was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt.** (Bimla Devi v. Himachal RTC [MANU/SC/0577/2009 : (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri.) 1101])*

(emphasis supplied)

09] In the instant case, it is not in dispute that a charge-sheet was filed against the driver of the offending vehicle for driving the vehicle in a rash and negligent manner and thereby causing death of Bhaurao Torankar due to his rash and negligent act. In consonance with the beneficial object underlying the enactment, filing of charge-sheet against the driver, after due

investigation, can be considered as sufficient proof of negligence. The onus was therefore on the driver to adduce controverting evidence. In his evidence DW-2, the driver of the vehicle has simply denied that he was the driver of the offending vehicle. He has admitted that the charge-sheet has been filed against him. Suffice to say that a mere denial is not sufficient to controvert the evidence adduced by the Claimants. Under these circumstances, there is no reason to interfere with the finding recorded by the Tribunal that the accident was caused due to rash and negligent driving by the driver of the offending vehicle.

10] As regards the quantum of compensation, it is not in dispute that the deceased was employed as Clerk-cum-Accountant at Nagar Panchayat, Armori on temporary basis. The salary certificate at Exh.61 shows that the deceased was drawing salary of Rs.10,543/- per month. Hence, the loss of dependency ought to have been computed on the basis of last drawn salary and not on the basis of the presumption that the deceased would have earned Rs.20,000/- to 25,000/- if he were to be appointed as a Clerk or Lineman in Nagar Panchayat Establishment.

11] Furthermore, apart from the bare statement of the Claimants that the deceased was cultivating a paddy field and was earning Rs.2,00,000/- as agricultural income, there is absolutely no evidence to prove the type of cultivation and the annual agricultural income earned by

the deceased. It is to be noted that 7/12 extract at Exh.51 indicates that the deceased owned land admeasuring 81R. The said document does not indicate that the said land was under cultivation. Under the circumstances, the Tribunal was not justified in adding Rs.3,000/- towards managerial/supervisory skills.

12] It is also not in dispute that the deceased was not in permanent employment and hence, the Tribunal was not justified in adding 15% towards future prospect. The Tribunal has also erred in deducting 1/3rd towards personal expenses when the evidence on record reveals that there were four dependants and in terms of the judgment of the Hon'ble Supreme Court in the case of Sarla Verma (Smt) & Others Vs. Delhi Transport Corporation & Another reported in (2009) 6 SCC 121, 1/4th was required to be deducted from the income of the deceased towards personal expenses. Under the circumstances, the compensation awarded by the Tribunal cannot be considered to be just and reasonable.

13] The deceased was drawing salary of Rs.10,543/- per month. His annual income works out to Rs.1,26,516/-. Since he was 54 years of age and not in permanent employment, 10% needs to be added to his income towards future prospect and 1/4th needs to be deducted towards personal expenses. Considering the age of the deceased, the multiplier applicable is of 11. The Claimants are also entitled for compensation towards loss of spousal

consortium, filial consortium and parental consortium in addition to compensation towards loss of estate and funeral expenses. The Claimants are, therefore, entitled for compensation as under:-

I.	Loss of dependency—	
i.	Annual income	Rs.10,543/- (10,543×12) = Rs.1,26,516/-
ii.	Addition of 10% towards future prospect	Rs.12,651/-
iii.	Total income	Rs.1,39,167.60
iv.	1/4 th deduction towards personal expenses	Rs.34,791.90
v.	Total income after deducting personal expenses	Rs.1,04,375.70
vi.	Loss of dependency on applying multiplier of 11	Rs.11,48,132.70 (1,04,375.70×11)
II.	Compensation payable on other conventional heads	
i.	Loss of spousal, filial and parental consortium	Rs.2,00,000/- (40,000×5)
ii.	Funeral expenses and loss of estate	Rs.30,000/-
	Total compensation payable—	Rs.13,78,132.70 Rounded off= Rs.13,78,133/-

14] Under the circumstances, the Appeals are allowed. It is held that the Claimants are entitled for compensation of Rs.13,78,133/- (Rupees Thirteen Lakhs Seventy Eight Thousand One Hundred Thirty Three Only) along with interest at the rate of 8% per annum from the date of the petition till final realization. The Claimant No.1, being the widow, would be entitled for 40% of the compensation and the Claimant Nos.2, 3 and 4, being the

children of the deceased, would be entitled for 20% of the compensation each along with proportionate interest accrued thereon. After adjusting the said amount, the balance amount along with proportionate interest accrued thereon be refunded to the Owner, the Appellant in First appeal No.1917/2019.

15] Both Appeals stand disposed of in above terms. Pending applications, if any, stand disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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