

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.957 OF 2004

1. Gangubai w/o Dashrath Varade,
age 33 years, Occ. Household,
2. Bhagwat s/o Dashrath Varade,
age 20 yrs, Occ. Education.
3. Ku. Gita d/o Dashrath Varade,
age 17 yrs, Occ. Education.
4. Pushpa d/o. Dashrath Varade,
age 15 years, Occ. Education,
5. Dnyaneshwar s/o Dashrath Varade,
age 13 years, Occ. Education
6. Santrao s/o Brahmaji Varade,
age 78 years, Occ. Nil.
7. Chandrakalabai w/o Santramji Varade,
age 73 years, Occ. Nil.

Appellant nos. 2 to 5 minors and u/g
of their real mother i.e. petitioner no.
1 and all R/o Khudala, Tq. Pathri,
Dist. Parbhani.

Appellants
(orig. claimants)

VERSUS

1. Dayanand Dhondiram Sonar,
age major, Occ. Business,
R/o. Marda, Tq. Ambajogai,
Dist. Beed.
2. The Branch Manager,
United India Insurance Company Ltd.,
Branch Office at Parbhani,
PRO No.174279, dt.5,2,01 to 4.2.02.

Respondents.

Mr. Girish Rane, Advocate for appellants.

Mr. R.F. Totala a/w Mr. Swapnil Lohiya Advocate for respondent No.2.

...

CORAM : S.G. CHAPALGAONKAR, J.

DATE : RESERVED ON 7 JUNE, 2023

PRONOUNCED ON 28 JUNE, 2023

JUDGMENT :-

1. The appellants/original claimants in MACP No.288 of 2001, filed before the Tribunal at Parbhani, impugns the judgment and award dated 16.12.2003 in this appeal, filed under section 173 of the Motor Vehicles Act before this court.

2. The claimants had approached the Tribunal at Parbhani under section 166 of the Motor Vehicles Act raising claim for compensation of Rs.7.00 lakhs towards accidental death of Dashrath Santramji Varade, who died in a motor vehicular accident dated 8.5.2001. The appellants contended that deceased was returning to village Khedula after closing his shop situated at Pathri on his two-wheeler bearing registration No.MH-22/B-714. Another motor cycle bearing registration no. MH-22/B-5696, came from opposite direction and gave forceful dash to the motorcycle of deceased. The deceased suffered fatal injuries in the said accident. The accident resulted owing to negligence of offending motorcycle rider. Crime No.47 of 2001 was registered against rider of the said motorcycle. It was owned by respondent no.1 and insured by respondent no.2. Hence, they are liable to pay the compensation.

3. Claimants further contend that deceased was running a Kirana Shop so also looking after the agricultural land to earn livelihood for the family. They pleaded cumulative monthly income of the deceased from all the sources @ Rs.15,000/- to Rs.16,000/-. The respondent nos.1 and 2 contested claim before the Tribunal by filing written

statement at exh.12. The evidence of claimant No.1 Gangubai and C.W. 2 Pralhad Kute has been recorded. The Tribunal after hearing the parties passed an award of Rs.2,65,000/- in favour of the claimants. The claimants are before court in this appeal aggrieved by the assessment of compensation made under the award.

4. Mr. Girish Rane learned advocate appearing for the appellants would submit that, the deceased had income from two sources. firstly, from his grocery shop and secondly from agriculture. The Tribunal, inadequately assessed income from grocery shop and no consideration is given to the loss of agriculture income. He invited attention of this Court to 7/12 extracts placed on record before the Tribunal to contend that huge agriculture land was owned by the family of the deceased. Even, more than 12 acres of land was standing in the name of deceased alone. He would also invite attention of this Court to various receipts regarding sale of agricultural goods. Mr. Rane, relying upon the judgment of the Supreme Court in the matter of **National Insurance Company Vs. Pranay Sethi and others reported in (2017) 16 SCC 680, Magma General Insurance Company Ltd., Vs. Nanu Ram and others reported in AIR online 2018 SC 189** would submit that reassessment of compensation is required in facts of this case in terms of settled principles of assessment of compensation as per above referred judgments of supreme court. He would submit that the Tribunal has not awarded the compensation towards future prospects. Even the assessment of compensation under non-pecuniary heads is meager.

5. Learned Advocate Mr. Totla a/w Mr. Swapnil Lohiya appearing for respondent no.2, supports the judgment passed by the Tribunal. Learned advocate would submit that no concrete material has been placed on record of the Tribunal to establish income of the deceased. The Tribunal, on guess work passed the adequate award. He

would further submit that, in case of agriculture income, loss of earning cannot be considered since the land continues to be under cultivation by the family members and they generate similar income as earned during lifetime of the deceased. He would further submit that assessment of the compensation has been made considering the price index in the year 2001. Learned advocate for respondent no.2 has placed on record written notes of argument.

6. Having considered the submissions advanced and on perusal of the pleadings and the evidence on record, it can be gathered that dispute in the present appeal is restricted to assessment of compensation. The Tribunal while dealing with the issue of income of the deceased concluded that the deceased had grocery shop in small village and his income cannot be asserted more than Rs. 2000/- p.m. Accordingly, the income of the deceased is assessed at Rs.24,000/- p.a. and the same is taken as basis for passing the award.

7. Apparently, income from agriculture land is not considered for the reason that agriculture land stands in the name of parents of the deceased and even appellant/claimant no.1, in her cross-examination, admitted that land was being cultivated jointly. It is difficult to accede with the reasoning adopted by the Tribunal, particularly, in light of the documentary evidence available on record in this case. It is a matter of general perception that in small villages, the main source of earning is from agriculture and in addition, certain businesses are adopted to generate supplementary income. In this case, the deceased had his grocery shop. The 7/12 extract placed at Exhibit 65 on record of Tribunal would show that the deceased had more than 12 Acres of land in his own name, apart from family holding. In that view of the matter, though, there may not be total loss of income from the agriculture, loss for want of skilled supervision of the deceased cannot be ignored. In that view of

the matter, considering the acreage of the land and other material indicating the sale of various, agricultural product in market by the deceased, this Court is inclined to consider loss of supervision to the tune of Rs.2,000/- p.m. i.e. Rs.24,000/- per annum in addition to loss of income from grocery shop.

8. In view of the aforesaid finding, total income of the deceased would come to Rs.48,000/- per annum. The age of deceased at the time his death has been worked out by Tribunal on the basis of driving license, which records his Date of birth as 10.1.1963. The accident took place on 8.5.2001, hence age of the deceased as on the date of his death is fixed as 38 years. In that view of the matter, applying principles of assessment of compensation as laid down in case of **National Insurance company V. Pranay Sethi** (*supra*) addition of 40 % of the assessed income of the deceased, by way of loss of future prospects has to be considered. Similarly, there were 7 dependents of the deceased as on the date of death, hence 1/5th amount of his income needs to be deducted towards personal and living expenses.

9. The claimants are also entitled for compensation to the tune of Rs.70,000/- towards non-pecuniary heads. In addition to aforesaid compensation, considering the law laid down by the Supreme Court of India in the matter of **Magma General Insurance** (*supra*), this Court is inclined to independently grant Rs.20,000/- (Rs. Twenty Thousand) to each of the claimant's Nos 2 to 7 towards loss of consortium considering fact that accident occurred in the year 2001.

10. In view of the aforesaid findings, the claimants would be entitled for the compensation as per Chart given below along with interest on enhanced amount @ 7 % Per Annum:-

Compensation	Amount (Rs.)
Loss of Annual Earning Rs. 4000 ×12	Rs.48,000/-
Add 40% Future Prospects Rs.19200 + 48000	Rs.67,200/-
After Deduction of 1/5th Towards Personal Expenses	Rs 53,760/-
After applying multiplier of 15 to age of 38 years	Rs. 8,06,400/-
Add Non-Pecuniary Losses	Rs.70,000
Loss of consortium of Rs.20,000/- each to claimant nos.2 to 7	Rs.1,20,000/-
Total	Rs 9,96,400

11. In the result, the appeal deserves to be partly allowed by modifying the award passed by Tribunal in following terms.

ORDER

- i. The First Appeal is hereby partly allowed.
- ii. Respondent nos.1 and 2 shall jointly and severally pay the total compensation of Rs.9,96,400/- (Rs. Nine Lakh Ninety Six Thousand and four hundred) to the claimants along with interest @ 7% per annum from the date of filing of the petition till realization of the entire amount after appropriating amount already released/paid to claimants as per award of Tribunal.
- iii. The claimant no.1 shall have 25% share of the compensation amount. The claimant nos.2 to 5 shall take 15% each. Rest of the 15 % amount be given in equal proportion to the claimant nos.6 to 7.

- iv. On deposit of amount, claimants shall be entitled to withdraw as per apportionment indicated above.
- v. The claimants shall pay deficit Court Fees, if any.
- vi. Award be drawn up accordingly.

[S.G. CHAPALGAONKAR]
JUDGE

aaa-

...