

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

FIRST APPEAL NO.945 OF 2020

1. Kalpana Wd/o Dnyandeo Gavhane
Age: 41 yrs. Occ: Household
2. Kiran s/o Dnyandeo Gavhane
Age: 29 yrs. Occ: Agriculture
3. Raosaheb Dnyandeo Gavhane
Age: 26 yrs. Occ: Agriculture
4. Namdeo Vithoba Gavhane
Age: 68 yrs. Occ: Nil
5. Jijabai Namdeo Gavhane
Age: 61 yrs. Occ: Household

All R/o Wadner
Tq. Rahuri, Dist. Ahmednagar

... Appellants
[Original Claimants]

Versus

1. Salim Fattubhai Shaikh
Age: 56 yrs. Occ: Transport
R/o: Khatik Galli, Rahuri
Tq. Rahuri, Dist. Ahmednagar
2. United India Insurance Co. Ltd.
Through its Divisional Manager,
Kisan Kranti Building
Market Yard, Ahmednagar

... Respondents
[Original Opponents]

...

Mr. D. R. Markad, Advocate for the Appellants
Mr. S. R. Bodade, Advocate for Respondent No.2
Respondent No.1 is served

...

**CORAM : SMT. VIBHA KANKANWADI, J.
AND
S. G. CHAPALGAONKAR, J.**

RESERVED ON : 04.07.2023

PRONOUNCED ON : 17.07.2023

JUDGMENT : [PER S. G. CHAPALGAONKAR, J.]

1. The appellants / original claimants in Motor Accident Claim Petition [MACP] No.40/2014 before Motor Accident Claim Tribunal, Ahmednagar [for short 'the Tribunal'] impugns the judgment and award dated 09/01/2019 passed under Section 166, in this appeal filed under Section 173 of the Motor Vehicles Act, 1988 [for short 'the Act'].

2. The claimants had approached the Tribunal seeking compensation of Rs.2,52,70,000/- from the respondents towards accidental death of Dnyandev Namdeo Gavhane [deceased] in an accident dated 15/10/2013. It is the contention of the claimants that the deceased – Dnyandev, while riding his motorcycle was dashed by a tempo registration No. MH-17-AG-4369, owned by respondent no.1 and insured with respondent no.2. According to the claimants, the tempo driver was responsible for the accident. It is further contention of the claimants that deceased – Dnyandev was aged 43 years and was earning Rs.2,00,000/- per month from agriculture and milk supply. He was also owner of a tractor and rickshaw that was adding to his income.

3. The claim petition was contested by respondent no.2 – insurer on the ground that the insured tempo has been falsely implicated and the collusive claim is presented for compensation. In the alternative pleaded that respondent no.1 [owner of vehicle] is guilty of breach of conditions of the policy. On merit, pleaded that the claim is excessive and exorbitant.

4. The Tribunal framed the issues based on the pleadings of the parties. The claimants relied upon the evidence of PW-1 - Kiran and also four other witnesses on the point of income of the deceased either from selling agricultural product or supplying milk to the dairy. The Tribunal, after hearing the parties, concluded that accident occurred due to fault of tempo driver. The income of the deceased from agriculture and from use of the vehicles has been quantified to the tune of Rs.1,98,000/-p.a. Accordingly passed an award for Rs.23,80,000/- along with interest @ 8% p.a. in favour of the claimants. Pertinently, respondent no.2 – insurer accepted the award and released the compensation amount. However, claimants aggrieved by the assessment of compensation, filed this appeal seeking enhancement. Therefore, the contentious issue before this Court is restricted to quantification of just compensation.

5. We have finally heard the appeal at admission stage by consent of the parties, since the record and proceeding from the Tribunal is already received.

6. Mr. Markad, learned Advocate appearing for the appellants would submit that the Tribunal has erroneously discarded major claim for compensation. He would submit that the claimants have categorically pleaded monthly income of deceased as Rs.2,00,000/- per month from various sources like agriculture, dairy business and use of tractor and rickshaw. He would submit that there were five dependents of deceased. However, the Tribunal has accepted the dependency of claimant nos.1, 4 and 5 i.e. widow and the parents only. He would further submit that the assessment of compensation towards non-pecuniary heads is inadequate. Mr. Markad would invite attention of this Court towards copies of 7/12 extracts to demonstrate that the deceased was holding the agricultural land admeasuring 1 Hectare 48 Are in his individual name. Further, he had 1 Hectare 4 Are land jointly along with the claimants. Relying upon the oral and documentary evidence, he would submit that voluminous evidence is available on record to support the case of the claimants that the deceased was earning Rs.2,00,000/- per month. He would therefore urge to allow the entire claim for compensation as per claim petition.

7. Mr. Bodade, learned Advocate appearing for respondent no.2 vehemently opposes the contentions of the appellants. He took us through oral and documentary evidence on record and submits that deceased was an agriculturist. The agricultural land owned by the deceased has been continued in possession of the claimants and they must be getting similar income from cultivation of the agricultural land without any loss owing to death of Dnyandeo. He submits that there is no loss of future earning to the claimants. He would further submit that the Tribunal recorded adequate reasons to discard the case of the claimants regarding income from dairy business. He would further point out that the tractor and rickshaw were not having transport permit and at the most could have been used for cultivation of own agricultural land and transportation of the agricultural material. Hence, no commercial income could have been gathered from use of those vehicles. Mr. Bodade would further submit that the so called bills regarding supply of milk to dairy or sell of agricultural produce are not proved in accordance with law. He would submit that the bare perusal of the documents at Exhibit – 40 and 51 to 55 would show that those are prepared in one and the same handwriting. The signatures and seal of author is missing on each documents. Further, no accounts regarding such transactions are placed on record of the Court. He would therefore submit that no

good reasons are made out to entertain the appeal for enhancement of compensation.

8. We have heard the learned Advocates and perused the record with their able assistance. Apparently, the deceased was an agriculturist holding the agricultural land admeasuring 1 Hectare 48 Are at village Wadner. Similarly, the land admeasuring 1 Hectare 4 Are was recorded in the joint name of claimant nos.1 to 3. It is therefore evident that the deceased being a Karta of the family was cultivating the land for benefit of the family. The claimants have placed on record the documents showing ownership of Dnyandeo in respect of tractor and rickshaw. The Tribunal, on appreciation of evidence, accepted income of the deceased from various sources to Rs.1,98,000/-. The Tribunal discarded the case of the claimants regarding income from milk business.

9. We have perused the material on record and find that there is no convincing evidence regarding the milk business of the deceased. The claimants have not placed on record the particulars of milking cattles possessed by deceased. Further, the books of accounts are not made a part of record. The receipts regarding milk supply at Exhibits – 40, 44, 51 to 55 relied by the claimants have been rightly discarded by the Tribunal since the register showing entries of milk supply is

not produced. Contents of those receipts were based on registers and therefore those receipts were 'secondary evidence'. Only receipts cannot be relied in absence of 'primary evidence'. Though provisions of Indian Evidence Act are not strictly applicable to such proceedings before the Tribunal, still the basic documents should be produced and proved. We find that receipts are doubtful particularly, for want of signatures of author or serial numbers. The bank statements regarding payment of billed amount in the name of deceased could have been easily filed, but those are not made part of record. The claimants have also relied on the oral evidence of PW-3 on the point of milk supply by Dnyandeo. He states that monthly bills were paid to the deceased through bank. However, his testimony sans support of the documentary evidence. Hence, the Tribunal has rightly discarded the said evidence.

10. Although there is no direct evidence of actual income, the Tribunal has considered the income of the deceased to the tune of Rs.4000/- per month from use of the vehicles i.e. tractor and piaggio rickshaw. The Tribunal observed that such income can be assumed. We do not find any fault in the findings recorded by the Tribunal. The deceased must have gainfully using vehicles at least for cultivation of his own agricultural land and transportation of goods to market. In such case notionally indirect income can be assumed against savings

towards transportation expenses that would have incurred by the deceased. But in absence of further evidence, we are unable to accept the contentions of the claimants to grant enhancement on this count.

11. It is trite that in case of agriculture income of deceased, the future loss of earning cannot be considered to the dependents, particularly when land owned by the deceased passed on to the dependents and cultivation of the land and generation of income continues to them. The law on this point is settled in the case of **New India Assurance co, Vs. Charlie and Others** reported in (2005) 10 SCC 720 and **Ponnumany alias Krishan Vs Mohanan and Others** reported in AIR 2008 SC 2014. In the present case, claimant Nos. 2 and 3 are major sons of deceased and they are cultivating family land. However, in such cases, the loss towards skillful and experienced management of agriculture by the deceased cannot be ignored. In the present case, the family owns pieces of irrigated land yielding cash crops and horticulture as has been established from unimpeachable evidence in the form of 7/12 extract. The Tribunal has considered loss of income of the deceased @ Rs.1,50,000/-per annum, although it can be assumed towards loss for want of skillful management of the deceased. We do not find any fault in such assessment. Suffice to observe that such loss must be treated to be loss towards management and skillful guidance in cultivation of the agriculture

land and not direct loss of income of the deceased. In this background, we are not inclined to accept the case of the claimants to consider any more loss of dependency to them owing to death of Dnyandeo.

12. The Tribunal has considered the dependency of claimant nos.1, 4 and 5 only on the ground that claimant nos.2 and 3 are major sons of the deceased. However, where the family was dependent on agriculture income from joint cultivation, the young claimant nos. 2 and 3 would largely depend on the father who was a Karta / Manager of the family. Only because, they have attained the age of majority, their dependency would not completely cease to exist. The Supreme Court in the case of **National Insurance co. Vs Birender and Others** reported in (2020)11 SCC 356 laid down that the claim by major sons of the deceased would be maintainable when they were largely dependent on income of the deceased father. Further in the present case only loss towards skillful management of agriculture by the deceased is considered for which the claimants were fully dependent on him. In that view of the matter, all the claimants will have to be treated as dependents on the income of deceased. We find that the Tribunal has fell in error while applying 1/3rd deduction towards personal and living expenses of the deceased. In facts of the case, the Tribunal ought to have applied 1/4th deduction considering the

dependency of all five claimants.

13. The Tribunal awarded Rs.70,000/- towards loss of consortium, loss of estate and funeral expenses. However, considering the law laid down by the Supreme Court of India in the case of **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram and Ors.** reported in (2018) 18 SCC 130, claimant nos.2 to 5 are entitled for compensation towards loss of consortium to the tune of Rs.40,000/- each.

14. For the aforesaid reasons, the compensation needs to be re-assessed, as under:

Sr. No.	Head	Amount
1.	Annual income of the deceased	Rs.1,98,000/-
2.	Addition of 25 % of the total income for future prospectus [Rs.1,98000/- + Rs.49,500/-]	Rs.2,47,500/-
3.	1/4 deduction towards personal and living expenses [2,47,500 - 61875]	Rs.1,85,625/-
4.	Multiplier by '14' [Rs.1,85,625 x14]	Rs.25,98,750/-
5.	Add loss of consortium to claimant nos.1 to 5 Rs.40000/- each [Rs.40000x5]	Rs.2,00,000/-
6.	Add funeral expenses and loss of estate Rs.15000/- each [15000x2]	Rs.30,000/-
	Total	28,28,750/-

(Rupees Twenty Eight Lakhs Twenty Eight Thousand Seven Hundred Fifty Only)

15. In light of the above, the appeal deserves to be partly allowed by passing following order:

ORDER

- (i) The appeal is partly allowed.
- (ii) The judgment and award dated 09/01/2019 passed by the M.A.C.T, Ahmednagar, in MACP No.40/2014 is modified.
- (iii) The opponent nos.1 and 2 shall jointly and severally pay the compensation of Rs.28,28,750/- [Rupees Twenty Eight Lakhs Twenty Eight Thousand Seven Hundred Fifty Only] to the claimants [inclusive of NFL] along with interest @ 8% p.a. from the date of filing of the claim petition.
- (iv) The amount of compensation already paid / released as per award passed by the Tribunal shall be appropriated.
- (v) On depositing of compensation amount, it be released in favour of the claimants as per apportionment appearing in Clause No.3 of the order passed by the Tribunal.
- (vi) On depositing of deficit court fees, if any, the modified award be drawn in the aforesaid terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE