IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.4205 OF 2016

1. Smt. Gitabai Vasudeo Bhil
Age: 41 Years, Occupation: Household

2. Chi. Mohan Vasudeo Bhil
Age: 17 Years, Occupation: Education

3. Chi. Amar Vasudeo Bhil
Age: 13 Years, Occupation: Education

4. Sau. Ritabai Manoj Bhil
Age: 25 Years, Occupation: Household

5. Smt. Bhagabai Tarachand Bhil
Age: 65 Years, Occupation: Household

(Applicant No.1 is natural guardian of applicant Nos.2 & 3 as are her children and minor)
All R/o Indiranagar Zopadpatti
Village Satod, Tal. Yawal,
Dist. Jalgaon … Appellants

Versus

1. Shri. Narendra @ Bhika Prakash Badgujar
Age: 32 Years, Occupation: Driver

2. Shri. Kishor Eknath Badgujar
Age: 48 Years, Occupation: Tractor Owner

3. Sau. Bharati Prakash Badgujar
Age: 50 Years, Occupation: Trolley Owner

All R/o Sakali, Tal. Yawal, Dist. Jalgaon

4. The Bajaj Allianz General Insurance Co. Ltd.
Through Manager,
R/o 2nd Floor, Panna Heights, Opp.
Omkareshwar Mandir, Jainagar, Jalgaon,
Tal. And Dist. Jalgaon … Respondents

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Mr. M.M. Bhokarikar, Advocate for Appellants
Mr. S.S. Bora, Advocate for Respondent Nos. 1 to 3
Mr. Mohit Deshmukh, Advocate for Respondent No.4

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WITH
FIRST APPEAL NO.4400 OF 2023

1. Narendra @ Bhika Prakash Badgujar
   Age: 38 Years, Occu: Agriculture,
   R/o: Sakali Taluka Yawal,
   Dist. Jalgaon

2. Kishor Eknath Badgujar
   Age: 56 Years, Occu: Agriculture,
   R/o: As above.

3. Bharti Prakash Badgujar
   Age: 52 Years, Occu: Agriculture,
   R/o: As above. ...Appellants
   (Original Respondent Nos.1 to 3)

Versus

1. Geetabai Vasudeo Bhil
   Age: 41 Years, Occu: Household
   R/o: Indiranagar Zopadpatti,
   Satod, Taluka Yawal,
   District Jalgaon

2. Mohan Vasudeo Bhil
   Age: 17 Years, Occu: Education

3. Amar Vasudeo Bhil
   Age: 13 Years, Occu: Education

   (Respondent Nos.2 and 3 under guardianship
   of Respondent No.1 Geetabai their natural mother)

4. Ritabai Manoj Bhil
   Age: 25 Years, Occu: Household
   R/o: Indiranagar Zopadpatti,
   Satod, Taluka Yawal,
   District Jalgaon

5. Bhagabai Tarachand Bhil
   Age: 65 Years, Occu: Household
   R/o: As above

6. The Bajaj Allianz General Insurance Co.Ltd.
   Through its Manager,
   R/o: 2nd Floor, Panna Heights,
   Opposite Onkareshwar Mandir,
   Jainagar, Jalgaon ...Respondents

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Mr. S.S. Bora, Advocate for Appellants
Mr. M.M. Bhokarikar, Advocate for Respondent Nos.1 to 5
Mr. Mohit Deshmukh, Advocate for Respondent No.6

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 18th JUNE, 2024
PRONOUNCED ON : 26th JUNE, 2024

JUDGMENT :

1. Admit. Heard finally with the consent of the parties.

2. Both these appeals arise out of the judgment and award dated 26/07/2016, passed by the Chairman, Motor Accident Claims Tribunal, Jalgaon, in M.A.C.P. No.362/2009.

3. For the sake of convenience parties are referred to as 'claimants', 'driver and owners of tractor and trolley' and 'insurance company'.

4. On 15/04/2009, at about 03:30 p.m. Vasudeo Tarachand Bhil accompanied by Ashok was proceeding on foot at Yawal Chopada Road near village Vadhoda. At that time tractor bearing No. MH-19-P-3407 attached with trolley No. MH-19-P-7596, gave dash to deceased Vasudeo and Ashok. Due to the dash Vasudeo sustained multiple injuries and succumbed to the same soon after accident.

5. Claimants mother, widow and children of deceased Vasudeo filed M.A.C.P. No.362/2009 seeking compensation of Rs.5,00,000/- for death of Vasudeo. They claimed that at the time of death deceased was 42 years old and owned bullock-cart. He used to transport agricultural produce in his bullock-cart to market place and earn net income of Rs.15,000/- per month. All claimants were

dependent on him. Insurance company, driver of tractor and owners of tractor and trolley are therefore, jointly and severally liable to pay compensation of Rs.5,00,000/- to claimants.

6. Driver, owners of tractor and trolley filed written statement and denied the claim contending that driver was driving tractor-trolley in moderate speed and by observing rules of traffic, and deceased and his companion were at fault. Tractor and trolley were insured with insurance company and therefore, insurance company is liable to pay the compensation.

7. Insurance company by filing written statement denied the claim. It was claimed that driver was not holding valid and effective driving license to drive tractor-trolley. There was no compliance of Sections 134(c) and 158(6) of the Motor Vehicles Act. Without prejudice to the said contention, it is claimed that deceased was rash and negligent and hence, the accident took place.

8. Tribunal after recording evidence partly allowed the claim, holding that driver and owners of tractor and trolley are jointly and severally liable to pay compensation of Rs.4,92,000/- (including no-fault liability amount of Rs.50,000/-), with interest at the rate of 7.5% per annum from the date of filing of petition till it’s realization and dismissed the claim as against insurance company. The compensation amount was apportioned between claimants.

9. Driver and owners of tractor and trolley have filed First Appeal No.4400/2023 questioning the exoneration of insurance

company and claimants have filed First Appeal No.4205/2016 for enhancement of compensation.

10. Heard learned advocates for respective parties at length. Perused the written notes of arguments filed by claimants and the record.

11. Learned advocate for driver and owners of tractor and trolley by relying on ***Mukund Dewangan Vs. Oriental Insurance Company Limited***, ***(2017) 14 SCC 663***, submits that Tribunal has erred in recording finding that since driver of tractor-trolley did not possess license for trolley, there is a breach of condition of insurance policy and hence, insurance company is not liable to pay compensation. He submits that said finding is contrary to the ratio in ***Mukund Dewangan*** (supra). Even otherwise dash was given by tractor and not by the trolley and since tractor is covered by insurance policy, insurance company is liable to pay the compensation.

12. In reply, learned advocate for insurance company submits that judgment in ***Mukund Dewangan*** (supra) is referred to the Constitution Bench and therefore, the same may not be of any help to driver and owners of tractor and trolley. He submits that Tribunal has categorically held that there is nothing on record to show that trolley bearing No.MH-19-P-7596 was insured. Therefore, the Tribunal is justified in exonerating insurance company.

13. Learned advocate for claimants strongly urged for

enhancement of compensation submitting that the Tribunal has wrongly held notional income of deceased at Rs.3,500/- per month. In fact, the notional income ought to have held at the rate of Rs.5,000/- per month as there is evidence of widow of the deceased which shows that deceased was doing transportation of agricultural produce through his bullock-cart and was earning Rs.15,000/- per month. In support of his submissions, he relied on ***Savitha v. M/s Chodamandalam M.S. General Insurance Co. Ltd. and Others, [AIR 2020 SC 3224]*** and ***Kajal v. Jagdish Chand and Others, [AIR 2020 SC 776]***. According to him, minimum wages payable to skilled workman were held to be Rs.4846/- per month by the Apex Court. Further submission is that the Tribunal has failed to take into consideration future prospects of the deceased and award compensation under that head. According to him just and fair compensation is not awarded by the Tribunal and claimants are entitled for enhanced compensation of Rs.10,67,500/-.

14. Perusal of record indicates that Tribunal has exonerated insurance company on the ground that trolley was not insured and the driver at the relevant time was not holding license to drive trolley. In ***Mukund Dewangan*** (supra), Apex Court has held,

> *"43. Section 10(2)(a) to (j) lays down the classes of vehicles to be driven not a specific kind of motor vehicles in that class. If a vehicle falls into any of the categories, a licence holder holding licence to drive the class of vehicle can drive all vehicles of that particular class. No separate endorsement is to be obtained nor provided, if the vehicle falls in any of the particular classes of Section 10(2). This*

> *Court has rightly observed in Nagashetty (supra) that in case submission to the contrary is accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle it by itself does not mean that driver ceased to have valid driving licence. In our considered opinion, even if such a vehicle is treated as transport vehicle of the light motor vehicle class, legal position would not change and driver would still have a valid driving licence to drive transport vehicle of light motor vehicle class, whether it is a transport vehicle or a private car/tractor attached with trolley or used for carrying goods in the form of transport vehicle. The ultimate conclusion in Nagashetty (supra) is correct, however, for the reasons as explained by us."*

The case of driver, owners of tractor and trolley is squarely covered by the above ratio.

15. There is no substance in the contention of insurance company that since the decision in ***Mukund Dewangan*** (supra) is referred to Constitution Bench, the same would not be of any help to the driver and owners of tractor and trolley. It is well settled that till the decision is reversed or modified by Larger Bench in reference, it holds the field.

16. In view of the evidence on record and considering the date of incident i.e. 15/04/2009, the Tribunal has rightly held notional income of deceased as Rs.3,500/- per month. Since deceased was 42 years old, Tribunal has rightly applied multiplier of 14. However, without assigning any reason Tribunal has failed to

award compensation towards future prospectus, which needs to be awarded at the rate of 25% of computed income, in terms of ratio in ***National Insurance Co. Ltd. v. Pranay Sethi and Others, 2017 (16) SCC 680***. As per the calculation in this decision, future prospectus at the rate of 25% of monthly income of deceased comes to Rs.875/-, therefore, monthly income, after adding future prospectus would be Rs.3,500/- + Rs.875/- = Rs.4,375/- per month.

17. Considering the number of dependent claimants is five, Tribunal ought to have deducted 1/4th amount in view of ratio in ***Smt. Sarla Verma and Others v. Delhi Transport Corporation and Another, AIR 2009 SC 3104***. However, Tribunal has erroneously deducted 1/3rd amount towards loss of dependency. Tribunal has awarded Rs.75,000/- towards consortium to widow only. As per ratio in ***Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram and Others, AIR 2019 SC (Supp) 906***, loss of consortium of Rs.44,000/- is payable to each claimant. Since there are five claimants, 5 x 44,000/- = Rs.2,20,000/- is payable towards consortium.

18. Without assigning reasons Tribunal has failed to award compensation towards non-pecuniary losses. Rs.16,500/- is payable to claimants towards loss of estate. Funeral expenses at the rate of Rs.16,500/- is payable to claimants. However, Tribunal has awarded Rs.25,000/- towards funeral expenses and the same is not liable to be disturbed. Therefore, total non- pecuniary losses would be

Rs.2,20,000/- (loss of consortium) + Rs.16,500/- (loss of estate) + Rs.25,000/- (funeral expenses) = Rs.2,61,500/-.

19. In view of the aforestated discussion, claimants are entitled for following compensation:-

Sr. No.	Heads	Amount (Rs.)
1	Notional income computed by Tribunal Rs.3,500/- + future prospectus at the rate of 25% of computed income Rs.875/-	Rs.4,375/-
2	Monthly dependency compensation after deduction towards personal and living expenses (Rs.4375 – Rs.1094)	Rs.3,281/-
3	Annual dependency Compensation (Rs.3,281 x 12)	Rs.39,372/-
4	Pecuniary Losses (Annual dependency multiplied by multiplier) (Rs.39,372 x 14)	**Rs.5,51,208/-**
5	Non-pecuniary Losses:- Loss of Consortium Rs.44,000/- to each claimants (Rs.44,000 x 5) = Rs.2,20,000/- Loss of Estate = Rs.16,500/- Funeral Expenses = Rs.25,000/- (as already granted)	**Rs.2,61,500/-**
6	Total compensation needs to be awarded	**Rs.8,12,708/-**
7	Compensation awarded by the Tribunal	**Rs.4,92,000/-**
	Total Enhanced Compensation (Rs.8,12,708 – Rs.4,92,000)	**Rs.3,20,708/-**

20. In the result, following order:-

O R D E R

(I) First Appeal No.4400/2023 is allowed.

(II) The finding recorded by the Tribunal thereby exonerating insurance company from paying compensation is hereby set aside. The insurance company is held liable to pay the compensation amount to the claimants.

(III) Compensation amount, if any, deposited by the driver and owners of tractor and trolley be refunded to them, if not already withdrawn by claimants .

(IV) First Appeal No.4205/2016 is allowed.

(V) Claimants are held entitled for enhanced compensation of Rs.3,20,708/-. The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of filing of claim petition, till 2017 and thereafter interest at the rate of 6% per annum till realization of the amount.

(NITIN B. SURYAWANSHI, J.)