IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1668 OF 2020

United India Insurance Company Ltd.,
Through its Administrative Officer (T.P. Hub)
Hari s/o Shivram Lambhe
Age; 56 years, Occ; Service,
R/o; United India Insurance Company Ltd.
Divisional Officer -I,
Osmanpura, Aurangabad. ... **APPELLANT**
(Ori. Resp. No.2)

VERSUS

1. Papabai Ganpat Madhe,
Age;23 years, Occ; Household,

2. Bhau Ganpat Madhe,
Age; 7 years, Occ. Education,

3. Pramila Ganpat Madhe,
Age; 5 years, Occ; Nil.

4. Kartik Ganpat Madhe,
Age; 3 years, Occ; Nil,

(Nos. 2 to 4 Minor, through
natural guardian mother –
Respondent No.1.)

5. Dhavji Shantaram Madhe,
Age; 62 years, Occ; Nil.

6. Bhimaji Dhavji Madhe,
Age; 57 years, Occ; Household,

All R/o; At Malwadi, Post-Palshi,

Taluka- Parner, District Ahmednagar.

7. Nitin Ramesh Adsul,
Age; 42 years, Occ; Business,
R/o; Tirkal Mala, Parner,
District; Ahmednagar. **...RESPONDENTS**
(Respdt. Nos. 1 to 6 – Orig. Claimants Respdt. No. 7 – Orig. Respdt. No.1)

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Advocate for the Appellant : Mr.Swapnil S. Rathi
Advocate for Respondent Nos.1 to 6 : Mr. Vijay P. Latange

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CORAM : KISHORE C. SANT, J.

Date of Reservation :- 04.07.2024.
Date of Pronouncement : 18.07.2024.

JUDGMENT :

1. This appeal arises out of the judgment and order passed by the learned Member, Motor Accident Claims Tribunal (for short 'MACT'), Ahmednagar, dated 01.01.2020, in MACP No. 89 of 2018.

2. The appellant is the Insurance Company/original respondent No. 2 before the learned Tribunal. Respondent Nos. 1 to 6 are the original claimants, who filed petition before the

Tribunal. Respondent No. 7 is the original respondent No. 1 /owner of the vehicle. For the sake of convenience respondent Nos. 1 to 6 are referred to as the claimants and the appellant is referred to as the Insurance Company and respondent No. 7 is referred to as the owner of the vehicle.

3. The facts in short are that claimant No.1 is the wife, respondent Nos. 2 to 4 are the minor children, appellant Nos. 5 and 6 are the parents of the deceased Ganpat Madhe, who died in an accident that took place on 25.11.2017. The deceased had been to the village Khadkwadi for taking photo copy of some documents, while returning to his village Palashi, on motorcycle he met with an accident near Rokade Vasti. He was dashed by one I-20 Hundai Company Car, bearing No. MH-16-BP-3111, which was coming in opposite direction in rash and negligent manner. The deceased was immediately shifted to the Rural Hospital Takli Dhokeshwar. In the hospital he was declared dead. The claimants who were depending on the deceased filed a claim petition under Section 166 of the Motor Vehicles Act. It is the case of the claimants that the deceased was a young person of 22 years of age. He was having 3 acres irrigated land and was also having milk business. His earning was

Rs. 10,000/- p.m. from both sources. Compensation of Rs. 20 lakhs was claimed. The owner and Insurance Company by filing Written Statement denied the claim.

4. It is the case of the owner that there was no negligence on the part of the driver of the offending vehicle and it is the deceased who suddenly came and dashed to the offending vehicle. A false case came to be registered against the driver of the offending vehicle.

5. The defence of the Insurance Company was also on the lines of the owner. In addition defence of the Insurance Company is that the driver of the offending vehicle was not having valid and effective driving license, amounting to breach of the terms and conditions of the policy and on that count it denied the liability.

6. Learned Tribunal recorded the evidence. Claimant No. 1 examined herself, one Dattatraya Ramchandra Jadhav and Ravindra Bansi Khatate. So far as the documentary evidence is concerned, the claimant relied on police papers, the papers in respect of the vehicle and driving license. The owner as well as the insurance company did not adduce any evidence.

On recording evidence the learned Tribunal hold the income of the deceased to be Rs. 60,000/- p.a. from the agricultural land and Rs.1,00,000/- as net income from the milk business. Thus, the total yearly income was considered to be 1,60,000/- p.a., that is around 13,000/- p.m. By considering number of dependents to be six, it deducted 1/5th amount towards the personal expenses of the deceased. The loss of dependency was considered to be Rs. 1,28,000/-. By applying multiplier of "18" the total loss of dependency was considered to be Rs. 23,04,000/-, considering which the future prospects were considered 50% i.e. Rs. 11,52,000/-. Funeral expenses were considered Rs. 15,000/-, loss of estate was also considered Rs. 15,000/-. The consortium was granted Rs. 40,000/-. Thus, total amount awarded is Rs. 35,26,000/-.

7. Learned Advocate Mr. Rathi, for the Insurance Company vehemently argued that the Tribunal has wrongly considered the income to be of Rs. 1,60,000/- p.a. in case of an agriculturist, there is no total loss of earning. The loss is only to the extent of supervisory and managerial expenses. It is further argued that the deceased was doing milk business. The milk business continued even after the death of the deceased and

there are the receipts to show the milk was supplied even after his death i.e. from 25.11.2017 to 30.11.2017. Thus, there is no loss of income from the milk business. The land is held by the family and not only by the deceased. Though the owner of the diary, in his evidence, stated that the supply of milk to his diary was stopped, he submits that it cannot be said that the entire milk business was stopped. Thus, there is no loss even of the milk business. He thus prays that the income ought to have been considered at the most 3,000/- p.m. towards supervisory and managerial expenses i.e. Rs. 36,000/- p.a.

8. Learned Advocate Mr. Latange for Claimants submits that infact after the death of deceased the milk was supplied only for four days but the business was subsequently stopped. Only because the milk was supplied for 5 to 6 days after the death cannot lead to a conclusion that the milk business was continued. Since the cattle were there, the milk was supplied. It cannot not be expected that the cattle would be sold immediately on the next day of the death. He submits that the main earning source of milk business which was carried out by the deceased himself is stopped. Now no family member is in a position to carry out the said business. He pointed out the

observations of the Court that there was no agricultural income seen from 7/12 extract after the death of the deceased.

9. So far as, the authorities are concerned, the learned Advocate for the appellant relied upon the judgment reported in case of **Divisional Officer, United India Insurance Co. Ltd., v. Smt. Pramila Raman Ghatule and Others, reported in 2016 (3) T.A.C. 378 (Bom.), Savita and Others vs. Divisional Manager reported in 2018 (2) T.A.C. 376 (SC)** and **Bajaj Allianz General Insurance Company Ltd. Vs. Jijabai Anil Koli and Ors., reported in AIR Online 2021, Bom. 680**, wherein, the notional income was considered to be 4,000/- p.m. However, the deceased in that case was working as supervisor on brick kiln. Since there was no income it was notionally considered to be Rs. 4,000/- p.m. However, in that case the accident took place on 06.05.2011. In this case the deceased was doing milk business, therefore, the above ratio is not applicable to this case.

10. In the case of **Arun Tulshiram Borkar v. Bhagwan Govindrao Bolkar reported in AIR Online 2019 Bom. 2318**, **Shobha Sanjay Lipne v. Rahul Laxman Walke, reported in AIR Online 2019 Bom. 1124**. All these judgments are in respect of

notional income in the facts of those cases.

11. In the case of **Jarinaben Widow of Shabbirbhai Malek v. Dipakbhai Vakalabhai Shukla reported in AIR Online 2023 Guj. 273,** the deceased was in the business of milching and animal husbandry. There was no cogent and reliable evidence on record about the income of the deceased. The income was therefore assessed at Rs. 5,000/- p.m., considering the minimum wages for stoppage of work as Rs. 4,980/-. In that case an accident had taken place on 16.09.2012. Therefore, the ratio of the above case law also cannot be considered for the reason that there was absolutely no evidence to show the income of the deceased, whereas in the case at hand there is evidence of supply of milk wherein approximately the milk was supplied for 42,000/-p.m. The Court thus, considered that the deceased must be getting income of Rs. 10,000/- p.m. from his business. This finds is based on some evidence i.e. of the diary income and therefore, the ratio of the case of **Jarinaben** (supra) is also not applicable to the case at hand.

12. So far as the judgment in the case of **Branch Manager v. Santosh Tuljapa Gurav reported in AIR Online 2019**

Karnataka 1624. In that case accident took place on 03.10.2010. The deceased was working as an agriculturist and doing milk business. There was no documentary evidence to show the income of the deceased, thus the notional income was considered to be of Rs. 5,500/-. This Court finds that there is gap of 7 years and even this judgment is not applicable to the facts of the case at hand since in this reported case there was no evidence to show the income from the milk business. The Court affirmed this judgment and the trial Court as well as High Court did not call for interference. In fact this Court finds that even the case of Savita (supra) is also not applicable.

13. So far as the case of Union of India and Others Vs. Sudhanshu Jyoti and Ors. reported in 2016 (3) T.A.C. 383 (Pat.). The Court in the aforesaid case has confirmed the findings of the trial Court. There the deceased was engaged in agricultural operation and also doing milk business. The income of the deceased was considered to be Rs. 10,000/-, which was not held to be excessive. It was the case where an accident had taken place in July, 2007. The Court considered yearly income of the deceased to be Rs. 1,20,000/-.

14. Considering all these judgments, this Court finds that there is no error committed by the learned trial Court. The learned trial Court has rightly considered the income of the deceased to be of Rs. 60,000/- p.a. from the agricultural land and total income of Rs. 1,60,000/-. The loss of future prospect and the multiplier are rightly applied by the trial Court. Thus, this Court does not find any reason to call for any interference in the impugned judgment and order. Consequently the appeal deserves to be dismissed and the same is hereby dismissed. No order as to the costs.

(KISHORE C. SANT)
JUDGE

1. After pronouncement of judgment the learned Advocate for the respondents/Claimants requests that the amount lying in this Court be directed to be disbursed to the Claimants.

2. The prayer is opposed by the learned Advocate for the appellant.

3. In view of above, office is directed to disburse the amount after four weeks from today.

(KISHORE C. SANT)
JUDGE

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