IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1499 OF 2004

United India Insurance Co. Ltd.,
Parbhani, through it's Divisional
Manager and Authorised Representative
and Signatory, Nanded Divisional
Office, Guru Complex, G.G. Road,
Nanded, District Nanded.

.. APPELLANT

VERSUS

1. Baliram S/o. Tukaram Mundhe
Shelmohekar, Age : 52 years,
Occ. Service, resident of 26-B,
Sec.1, M.A.U. Campur, Parbhani.

2. Chandrakalabai w/o. Baliram Mundhe
Shelmohekar, aged 47 years, Occ. Household,
resident of as above.

3. Pralhad S/o. Annasaheb Patange,
Age major, Occ. Service
R/o. C-4, Sec.1, M.A.U. Campus, Parbhani. .. RESPONDENTS.

Mr. A.B. Gatne, Advocate for appellant,
Mr. M.P. Kale, Advocate for respondent Nos. 1 and 2
Mr. A.D. Namde and K.B. Kulkarni, Advocate for respondent No.3

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 13TH FEBRUARY, 2024
PRONOUNCED ON : 21st FEBRUARY, 2024.

JUDGMENT:-

1. The appellant insurer/Original respondent No.2 approached

this Court under section 173 of the Motor Vehicles Act 1988, impugning the judgment and award dated 13.7.2004 passed by the Motor Accident Claims Tribunal, Parbhani, in M.A.C.P. No. 401 of 2001, by which the tribunal passed an award of Rs. 10.25,000/- alongwith interest @ 9 % p.a. in favour of the respondent Nos. 1 and 2 (claimants).

2.. The claimants had approached the tribunal by filing M.A.C.P. No. 401 of 2001, thereby raising the claim for compensation of Rs. 10,00,000/- under section 166 of the Motor Vehicles Act towards the accidental death of their Son Shivaji. The claimants contends that the Shivaji was traveling in the offending jeep bearing Registration No. MH-22/B-8158 owned by respondent No.3. Because of the rash and negligent driving of the jeep driver, it met with an accident. Shivaji suffered fatal injuries in said accident. According to the claimants, Shivaji was in the business of manufacturing chili powder and other spices and running a Unit in the name and style of Shivaji Food and Spices Limited. Further, he was looking after the cultivation of agricultural lands.

3. The appellant/insurer by filing written statement refuted the contents of the claim petition. The Tribunal, after considering the submissions of the parties and evidence on record passed an award of Rs. 10,25,000/- together with interest @ 9% p.a. from the date of petition in favour of the claimants and directed the original respondent Nos. 1 and 2, to jointly and severally pay the same.

4. Mr. Gatne, learned advocate appearing for the appellant submits that the award passed by the Tribunal is erroneous on many counts. He fairly concedes that the appeal is restricted to assessment of

quantum only. He would submit that the deceased was a bachelor. The claimants are the parents. Their dependency can not exceed more than 50% on income of the deceased. However, the Tribunal erroneously assumed their dependency to the extent of 2/3rd of the income of the deceased. He would further point out that in absence of the evidence regarding actual income of the deceased, the Tribunal worked out dependency of the claimants at Rs. 60,000/- per annum and passed excessive and exorbitant award.

5. Mr. M.P. Kale, learned advocate appearing for the respondents/claimants justifies the award passed by the Tribunal. He would submit that the Tribunal did not consider future prospects while assessing compensation amount. If compensation towards future prospects is added, there would be no reason to reduce the award even accepting contentions of appellant.

6. Having considered the submissions advanced and after going through record, it can be gathered that the claimants have pleaded that the deceased was in the business of manufacturing spices and looking after the unit, namely, Shivam Foods and Spices Limited. Further he was adding to income by cultivating the land. The claimant No.1 filed his evidence affidavit and reiterated aforesaid contentions. However, during the course of cross examination, he admitted that deceased Shivaji was not paying Income Tax and he was in business of trading grains since 4 to 5 years prior to his death. Pertinently no documentary evidence to indicate running the business in the name of the deceased or his actual income from business could be produced. However it can be gathered from documents that deceased had Agriculture land in his name.

7. Looking to the overall evidence on record, it is difficult to draw any definite conclusion regarding actual income of the deceased. The Tribunal while making assessment of compensation, has notionally considered the income of the deceased from all sources to the extent of Rs. 90,000/- p.a. and dependency of the claimants to the extent of 2/3rd of such income. Considering the fact that the deceased was educated young man and holding agricultural land, there is no reason to cause interference in conclusions arrived at, by the Tribunal regarding notional income of deceased @ 90,000/-p.a. However, since deceased was a Bachelor, the dependency of the claimants will have to be brought down to ½ of the income of the deceased.

8. As rightly pointed out by Mr. M.P. Kale, learned advocate for the claimants, nothing has been added by Tribunal towards future prospects of the deceased. The deceased being aged about 21 years and a bachelor, 40% amount needs to be added towards future prospects. Further, multiplier of 18 would be applicable to his age. The Tribunal granted paltry sum towards loss of consortium, funeral expenses and loss of estate. There appears force in submissions advanced on behalf of claimants. If compensation amount is re-calculated in terms of the aforesaid observations and in light of principles of assessment of compensation espoused by Supreme Court of India in case of ***National Insurance Co. vs Pranay Sethi reported in (2017) 16 SCC 680***, compensation towards loss of earning can be reassessed as shown below in the tabular form :-

Sr.No.	Particulars	Amount
1.	Annual income	Rs. 90,000/-
2.	Dependency of claimants = 90000 Add : 40% towards future prospects 90,000 + 36,000 = 1,26,000 Dependency of claimants 50% = 63,000	Rs. 63,000
3.	Apply multiplier of 18 : 63,000 x 18	Rs. 11,34,000
4.	Add Rs. 80,000 towards consortium Add Rs. 25,000 towards funeral expenses Add Rs. 15,000 towards loss of estate.	Rs. 1,20,000/-
		Rs. 12,54,000/-

9. If the aforesaid calculation is considered, even assuming 50% dependency of claimants as argued on behalf of appellant and after adding amount towards future prospects, there would be no reduction in award passed by the Tribunal. Further in absence of cross objection or appeal by claimants there is no reason to otherwise disturb award that has been passed by tribunal. Consequently there is no merit in appeal.

Hence, the appeal stands dismissed with cost.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-