IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3560 OF 2008

1 Rajashree w/o Rajesh Patil,
Age 29 yrs., Occ. Household,

2 Madhavi d/o Rajesh Patil,
Age 23 yrs., Occ. Education,

3 Varun Rajesh Patil,
Age 21 yrs., Occ. Education,

4 Bhaidas Santosh Patil,
Age 65 yrs., Occ. Nil,

5 Sau. Pushpabai w/o Bhaidas Patil,
Age 60 yrs., Occ. Nil,

All are r/o Siddi Vinayak Colony,
Dhule Road, Amalner,
Tq. Amalner, Dist. Jalgaon.

… Appellants

… **Versus** …

1 Bhimji Vanaji Gavali,
Age – Adult, Occ. Truck Driver
and owner, R/o Moghan,
Tq. & Dist. Dhule.

2 The Oriental Insurance Co. Ltd.,
Through it's Manager,
The Oriental Insurance Co. Ltd.,
Opportunity School No.9, Lane No.5,
Dhule, Dist. Dhule.

… Respondents

…

Mr. S.P. Shah, Advocate for appellants

Mr. R.F. Totala, Advocate for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.

RESERVED ON : 03rd NOVEMBER, 2023

PRONOUNCED ON : 10th JANUARY, 2024

<u>JUDGMENT</u> : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present appeal has been filed by the original claimants for enhancement in the compensation amount granted under Section 166 of the Motor Vehicles Act, 1988 in Motor Accident Claim Petition No.1035/2004 by learned Chairman, Motor Accident Claims Tribunal, Dhule on 01.07.2008. The amount that was claimed as compensation was Rs.8.5 Crores, whereas amount that was awarded as compensation to the claimants was Rs.11,05,432/- together with interest.

2 The claimants are the legal heirs of deceased Rajesh Bhaidas Patil. Original claimant No.1 is widow, claimant Nos.2 and 3 are children, claimant Nos.4 and 5 are parents of the deceased. Deceased along with his cousin brother-in-law Harshdeep and driver Tukaram Bhil were coming to Dhule in a newly purchased car bearing temporary registration No.MH-12/TC-152 on 03.09.2004. Deceased was owner of the car and driver Tukaram was driving it. When they reached near a bridge in village

Rahuri and passed the bridge, a truck bearing No.MH-18/M-552 came from opposite direction in a high speed and dashed to the car, as a result of which there was instantaneous death of Rajesh, Harshdeep and Tukaram. It is contended that Rajesh was a 31 years old young person working as registered Government Contractor and was carrying out business at Amalner in Jalgaon. His limit to take contracts was Rs.7 Crores. He was an income tax payer. Claimants have given the table of the income tax paid in the petition and it is submitted that as a contractor deceased was in need of various vehicles like tractors, hot mix machine, dumper etc. which he himself was owning. He was also in the line of construction of new buildings. Deceased also constructed schools and number of roads in his lifetime. His net profit was increasing. He had the capacity to earn net income up to Rs.1 Crore in future. However, by taking Rs.50,00,000/- as his basic income they have made the calculation and claimed compensation of Rs.8.5 Crores.

3 Original respondent No.1, who is the driver and owner of the Truck did not file written statement, but the vehicle i.e. the truck was insured with respondent No.2 and, therefore, respondent No.2 filed say-cum-written statement at Exh.20. All the allegations in the petition were denied specifically. It was denied that the accident had taken place due to the negligence on the part of the driver of the truck. It was alleged that the

accident was the result of sole negligence on the part of the car driver as he was overtaking another vehicle and in that process came in wrong side before giving dash to the truck. Contentions in respect of age, income, capacity to earn, dependency of the claimants etc. have been specifically denied.

4 Only the claimants have led the oral as well as documentary evidence. Respondent No.2 has not led any type of evidence, after the issues were framed by the learned Tribunal. Taking into consideration the evidence on record the above said decision has been given, which has been challenged only by the original claimants in respect of amount of compensation.

5 Since the scope of the appeal is limited to the enhancement in the compensation and the point in respect of rashness and negligence attributed to the driver of the offending truck bearing No.MH-18/M-552 is not questioned, there is no requirement to have any kind of the discussion on the same. Straightway it can be held that the said finding in respect of Issue No.1 given by the Tribunal has become final and, therefore, liability to pay compensation saddled on respondent Nos.1 and 2, jointly and severally, by the learned Tribunal is required to be upheld. Now, the only question is – Whether the claimants are entitled to get enhancement in the compensation ?

6 Heard learned Advocate Mr. S.P. Shah for the appellants and learned Advocate Mr. R.F. Totala for respondent No.2.

7 It has been vehemently submitted on behalf of the claimants that the learned Tribunal erred in calculating the compensation amount. Voluminous evidence has been filed to prove the income. Claimant No.4 Bhaidas has been examined as CW 2, who has helped the deceased in his business and, therefore, had the knowledge about the documents the deceased was possessing. Rajesh expired in the accident on 03.09.2004 and, therefore, the income tax returns for the Assessment Year 2004-05 and of the Financial Year 2003-04 ought to have been considered by the learned Tribunal. As per the record that has been produced, business income of deceased for that Assessment and Financial Year was Rs.41,17,305/- and he has deducted the taxes i.e. TDS was Rs.15,37,938/-. The income tax returns for the year 2006-07 for the Assessment Year 2007-08 showed the gross income at Rs.32,50,164/- and, therefore, it has been wrongly held that the family has not suffered any financial loss. It is also wrongly held that CW 4 Bhaidas was holding Diploma in Engineering and had taken retirement from the Government service in the year 1997. Deceased Rajesh was BSL (Bachelor of Social Law) and had no experience in engineering work. Therefore, the main brain to the business was claimant No.4 i.e. CW 2. Base of the income of the deceased has been wrongly taken at Rs.8,000/- per month i.e. on the notional income basis and, therefore, a meagre amount has been granted, which cannot be termed as just and fair compensation. Hence,

it is required to be enhanced.

8 Per contra, the learned Advocate for respondent No.2 – insurance company strongly supported the reasons given by the learned Tribunal. It was submitted that the cross of CW 2 Bhaidas is important. He has accepted that Rajesh had no educational background of engineering work. He admitted that he had technical know-how as contractor. Further, it is said that the entire machinery and vehicles are now of the ownership of Partnership Firm, which is still running. CW 2 Bhaidas is looking after the financial matters of the Firm. Even his widow CW 1 Rajashree is now one of the partners. Under the said circumstance there was absolutely no loss of income to the claimants and, therefore, compensation that has been calculated by the learned Tribunal is just and proper.

9 Taking into consideration the rival contentions following point is arising for determination, findings and reasons for the same are as follows.

Sr. Nos.	POINT	FINDINGS
01	Whether the claimants are entitled to get compensation and in view of the appeal for enhancement whether they are entitled to get enhancement in the compensation ? If yes, what should be the just amount of compensation ?	In the affirmative. As per final order.

REASONS

Point No.1 :

10 At the cost of repetition, since the appeal pertains to enhancement only, we are directly considering the evidence in respect of income of the deceased adduced by the claimants. Claimants have examined three witnesses i.e. CW 1 Rajashree – widow, CW 2 Bhaidas – father of the deceased and claimant No.4, CW 3 Vinayak Pimpalikar – the Chartered Accountant, who had filed the income tax returns of the deceased.

11 The claimants have given the calculation of the income tax returns in a tabular form, which runs as follows :

Assessment Year	Financial Year	Business Income	TDS
1999-2000	1998-1999	Rs.2,37,066/-	Rs.75,787/-
2000-2001	1999-2000	Rs.3,68,625/-	Rs.1,75,384/-
2001-2002	2000-2001	Rs.3,57,283/-	Rs.1,26,089/-
2002-2003	2001-2002	Rs.3,13,063/-	Rs.1,28,322/-
2003-2004	2002-2003	Rs.4,53,075/-	Rs.4,27,470/-
2004-2005	2003-2004	Rs.41,17,305/-	Rs.15,37,938/-
03.09.2004	Rajesh Patil died in car accident in Financial Year 2004-05		
2005-2006	2004-2005	Rs.12,90,460/-	Rs.4,27,493/-

However, it is to be noted that CW 1 Rajashree in her examination-in-chief itself has stated that she has no personal knowledge about the income of her husband, but her father-in-law knows about it. Therefore, for a figure of the income, she appears to be not a good witness but in her cross-examination she has admitted that her father-in-law was serving as Sectional Engineer with B & C Department and retired from the same post. Kishor Patil was the cousin brother of deceased, who is a Civil Engineer. She confirms that there is a Partnership Firm consisting of Bhaidas, Kishor, Jayashree (sister-in-law of deceased) and herself under the name and style "M/s. Rajesh Bhaidas Patil". She has also admitted that after her husband expired, remaining part of the work which was taken by way of contract by the deceased was completed by the Partnership Firm. Their Partnership Firm has taken the work of the B & C Department as well as National Highway Authority. Though she has claimed ignorance about application of grant of registration certificate under the name of Partnership Firm, she admits that the Partnership Firm is registered. Thus, what we can get from her testimony is, though she was not aware about the exact amount of income which her husband used to earn; yet, even after the death of her husband the work has been continued by way of forming a Partnership Firm.

12 CW 2 Bhaidas in his examination-in-chief has stated that deceased was income tax payer. Deceased used to undertake work order

under different departments like Public Works Department, National Highway Authority, North Maharashtra University, Jalgaon, Nagar Parishad, Chopda, Nagar Parishad, Amalner, Zilla Parishad Division, Dhule, B & C Division, Dhule and others. He has produced on record documents to show that the work was assigned to deceased and certificate regarding the work assigned and in progress. He has stated that in the year 2003-04 the total income derived by the deceased from all sources was Rs.41.17 lacs. It is so shown in the above table for the Assessment Year 2004-05 i.e. Financial Year 2003-04. However, in the cross-examination he also admits that a partnership was formed and according to him, “M/s. Rajesh Bhaidas Patil” Firm was registered six months after death of Rajesh. But the document was prepared much before that i.e. on 08.08.2004. He has also stated that the said document was forwarded to the Registrar of Firms, Bombay during the lifetime of Rajesh. After the completion of the work after death of Rajesh by the Firm the income tax has been paid by the Firm for the year 2003-04, 2005-06 and 2006-07. The accounts are audited. He showed his readiness to produce the accounts. But then still he says that he will not be able to say what was the yearly turnover of the Firm. He has also stated that it was the decision of the deceased to hand over the work to the Firm and it was made known to the departments. He has also stated that the Firm has taken loan from various institutions i.e. Dena Bank, Cholamandalam Finance, Ashok

Leyland and the Cash Credit facility also. He has then claimed ignorance as to how much work was given by various departments after 03.09.2004 to the Firm. Thus, it has been tried to be brought on record that the business has continued even after death of Rajesh and there is no financial loss to the family.

13 The claimants have further by examining CW 3 Vinayak Pimpalikar – Chartered Accountant tried to support their contention, however, his testimony restricted to the income tax returns which were filed through him by the deceased. He has stated that he has done the audit of the business of the deceased since 1999 till death of Rajesh. In the cross-examination he has also admitted that after 03.09.2004 the business continued in the name of Firm "M/s. Rajesh Bhaidas Patil" and the income tax returns have been filed by the Firm. He has claimed ignorance about the turnover of the Firm.

14 Taking into consideration the testimony of these three witnesses it can be said that the claimants have not clearly put all the papers on record. When exactly the Firm was created, what work was assigned to the Firm, is all emerging in cross. As regards the income of the deceased is concerned, there should be all kind of fairness on the part of claimants. Though the TDS has been shown to have been deducted at a huge amount; yet, the income

tax return for the Financial Year 2002-03 Assessment Year 2003-04 is shown at Rs.4,27,470/-; yet, the refund that has been claimed is to the extent of Rs.3,10,090/-. That means, the actual TDS would come to only Rs.1,17,380/-. Of course, we agree to the fact that as the death has occurred on 03.09.2004, the proper year to consider for the income would be the Financial Year 2002-03 and 2003-04, because the subsequent filing of income tax returns is in fact after the death of Rajesh.

15 We do not agree with the findings of the learned trial Judge that since the business has been continued by the Partnership Firm, we will have to take the income of the deceased on the basis of notional income. It will be totally unjust to arrive at the said conclusion. We cannot forget that since 1999 deceased was doing the said business. Though it appears that his qualification was different and the person behind whatever work he was doing was his father or could have been his father; yet, he has paid the income tax. CW 2 Bhaidas was with the requisite qualification and retired from the particular department, might be getting the contracts with his influence or on his own merits of the deceased; yet, the income cannot be considered as the family income. Certainly, deceased had the capacity and by the time he would have gained the experience also. It is not necessary that for such works there is necessity of a particular qualification. A person can

take contract and get the work done from an expert either by employing him or appointing him. Under the said circumstance, we will have to go by the income tax returns, as aforesaid. We are aware about the decision in **K. Ramya and others vs. National Insurance Co. Ltd. and another** reported in AIR 2022 SC 4802 and **Savita Devi vs. Hawa Singh** reported in AIR Online 2017 SC 206. However, in this case it is to be noted that it was not the family business, but it was in the individual name of deceased. After his death the partnership has been formed and then the request was made to assign or allow the Firm to complete the incomplete work. Whatever property has been left including the moveable property in the form of vehicles by the deceased, devolved on CW 1 Rajashree – then she has put it in the *hotch pot* of the Partnership Firm. Therefore, legally and practically it is not the same business which was continued and, therefore, the observations to that effect by the learned trial Judge are wrong.

16 Taking into consideration the income tax returns for the Financial Year 2002-03 and Assessment Year 2003-04, the business income of the deceased was Rs.4,53,075/-. As aforesaid, we cannot take into consideration the TDS as refund was also claimed and, therefore, we consider that the deceased had the capacity to earn Rs.4,50,000/- per year. Further, in

view of **National Insurance Company Limited vs. Pranay Sethi and others** [2017 AIR (SC) 5157] the future prospects are required to be added. As per the record, the date of birth of Rajesh was 11.11.1972 and he expired on 03.09.2004. Therefore, at the time of his death he was around 32 years old. He was self employed and, therefore, in view of paragraph No.61(iv) of **Pranay Sethi** (supra) addition of 40% of the established income should be added towards future prospects. That amount comes to Rs.1,80,000/- (40% of Rs.4,50,000/-). Therefore, the income for our calculation purposes would come to Rs.6,30,000/- (Rs.4,50,000/- + Rs.1,80,000/-). It has come on record that the family of deceased consisted of five persons and, therefore, in view of **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another** [(2009) 6 SCC 121], ¼th of the income is required to be deducted towards personal expenditure. That amount comes to Rs.1,57,500/- (¼th of Rs.6,30,000/-). Therefore, the net income would come to Rs.4,72,500/- per annum (Rs.6,30,000/- - Rs.1,57,500/-). Further, in view of **Sarla Verma** (supra) and the fact that the deceased was aged 32, the multiplier that would apply is 16 and after applying the multiplier, the loss of income for the claimants would be **Rs.75,60,000/-** (Rs.4,72,500/- x 16). Thereafter amount of Rs.50,000/- is awarded each to claimant Nos.1 to 3 towards loss of consortium, love and affection respectively. That amount comes to **Rs.1,50,000/-**. Amount of Rs.40,000/- each is given to claimant Nos.4 and 5 i.e. the parents towards loss of consortium/filial in view of **Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram and others** [2018 (4) TAC 345]. That amount comes to **Rs.80,000/-**. Amount of **Rs.50,000/-** is awarded towards loss of estate and an amount of **Rs.15,000/-** towards funeral in view of **Pranay Sethi** (supra) and **Magma General Insurance Co Ltd.** (supra). Thus, the claimants would be entitled to get compensation of **Rs.78,55,000/-** (Rs.75,60,000/- + Rs.1,50,000/- + Rs.80,000/- + Rs.50,000/- + Rs.15,000/-).

17 This amount of Rs.78,55,000/- would be then inclusive of the amount awarded by the Tribunal, which itself was inclusive of amount of Rs.50,000/- towards No Fault Liability i.e. Rs.11,05,432/-. We are also taking note of the fact that in the meantime original claimant Nos.2 and 3 have become major. Accordingly, the point is answered in the affirmative and distribution is made.

18 Note has been taken that when the claim petition was filed, age of claimant Nos.4 and 5 was 65 and 60 respectively. Claimant No.4, on whom claimant No.5 is dependent, is getting pension and, therefore, we are inclined to grant more amount to the widow and then to the children of deceased. The rate of interest that was awarded was @ 7.5%, however, taking into consideration the present rate of interests and the enhancement

that we are granting, we grant the rate of interest @ 6% per annum. Since the interest for about 19 years would come around Rs.89 lacs, we are considering it also for the distribution.

19 In view of the findings to both the points the appeal deserves to be allowed partly, as certainly they are not entitled to get the amount claimed by them.

20 For the aforesaid reasons we proceed to pass following order.

ORDER

1 First Appeal stands partly allowed.

2 The Judgment and Award passed in Motor Accident Claim Petition No.1035/2004 to the extent of grant of compensation stands modified as follows :

> "i) It is hereby held that claimants are entitled to receive amount of Rs.78,55,000/- (inclusive of amount of Rs.11,05,432/- awarded by the Tribunal, which itself was inclusive of amount of Rs.50,000/- towards No Fault Liability) together with interest @ 6 % per annum from the date of the petition i.e. 20.12.2004 till its realization.
>
> ii) The amount which has been already withdrawn by the

claimants should be deducted from the above awarded amount.

iii) From the rest of the amount, 12.5 % amount each be given to claimant Nos.4 and 5 towards their full and final share from the compensation amount and to be distributed 50% to their account in any Nationalized Bank and 50% to be kept in FDR for a period of 13 months in the said Nationalized Bank.

iv) From the rest of the amount, 15 % amount each be given to claimant Nos.2 and 3 towards their full and final share from the compensation amount and to be distributed 50% to their account in any Nationalized Bank and 50% to be kept in FDR for a period of 03 years in the said Nationalized Bank.

v) Rest of the entire amount be given to the share of claimant No.1 and to be distributed 50% to her account in any Nationalized Bank and 50% to be kept in FDR for a period of 03 years in the said Nationalized Bank.

vi) Award be prepared accordingly."

(ABHAY S. WAGHWASE, J.) **(SMT. VIBHA KANKANWADI, J.)**

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