IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 5077 OF 2017

1. Noorjahan Majeed Shaikh
Age- 43 years, Occu- Household,
R/o. Choti Mandi, Daulatabad,
Aurangabad.

2. Shaikh Juneed Majeed Shaikh,
Age- Major, Occu- Agri.,
R/o. As Above.

3. Shaikh Tabassum Rizwan Shaikh
Age- Major, Occu- Household,
R/o. Aurangabad. ….APPELLANTS
[Orig. Claimants]

VERSUS

1. Ambadas Tukaram Tatade
Age- Major, Occu. Nil,
R/o. N-12, D-40/6, Swami Viekanand
Nagar, Aurangabad, Tq. & Dist. Aurangabad.

2. The New India Assurance Company Ltd.,
Through its Divisional Manager, Adalat
Road, Aurangabad. …..RESPONDENTS
[Orig. Respondents]

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Mr. P.C. Mayure, Advocate for Appellants
Mr. Dhananjay Deshpande, Advocate for respondent No. 2

…….

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 20th AUGUST, 2024

ORAL JUDGMENT :

1. Admit. Heard finally.

2. Being aggrieved by the inadequate compensation awarded by Motor Accident Claims Tribunal, Aurangabad, in

Motor Accident Claim Petition No. 45/2016, claimants have approached this Court, under section 173 of Motor Vehicles Act, seeking enhancement of compensation.

3. On 07.09.2015 Shaikh Majid Shaikh Raheman was proceeding towards Ahmednagar in a jeep. When the jeep, reached near Rahimpur phata on Aurangabad-Ahmednagar road, one car bearing registration No. MH-21-S-1033 (for short 'offending vehicle') came from Ahmednagar side and gave dash to the jeep. Shaikh Majid sustained grievous injuries and was shifted to Government Medical College and Hospital, Aurangabad, where doctor declared him dead. His legal representatives therefore filed claim contending that Shaikh Majid (deceased) was 47 years old at the time of accident and was doing fruit selling business and was earning Rs. 20,000/- per month. They therefore claimed compensation of Rs. Rs. 21,35,104/-.

Owner/respondent No. 1 filed written statement and opposed the claim contending that crime is falsely registered against the deceased driver of the offending vehicle. The offending vehicle was validly insured with the 2nd respondent/insurance company, hence, insurance company is liable to pay the compensation.

4. Respondent No. 2/insurance company by filing written statement denied all the averments in the claim petition. It is contended that accident has taken place due to rash and negligent driving of the driver of the offending vehicle, in which deceased was traveling. Income of the deceased claimed by the claimants is denied. Breach of terms of insurance policy was also claimed on the ground that driver of the offending vehicle was not holding valid license.

The Tribunal after recording evidence and hearing the parties partly allowed the claim and awarded compensation of Rs. 7,44,948/- along with interest @ 8% per annum from the date of petition till its realization by fastening joint and several liability on both the respondents. Claimants are aggrieved by the inadequate compensation awarded by the Tribunal.

5. Heard learned advocate for claimants and learned advocate for insurance company. Perused the record.

6. It is the grievance of claimants that though there is ample evidence on record to show that deceased was doing fruit selling business, the Tribunal has erroneously held notional

income of deceased at Rs. 5,000/- per month. The Tribunal has failed to award compensation under the head future prospects. In support of these submissions, reliance is placed on ***Magma General Insurance Co. Ltd. vs. Nanu Ram Alias Chuhru Ram & Ors.***, (2018) 18 SCC 130, ***Syed Sadiq Etc. vs. Divisional Manager, Unite India Ins. Company***, (2014) 4 SCC 735 and ***Maheshwari vs. Ramchandran***, LAW(SC)-2022-12-71.

7. Per contra, learned advocate for insurance company has fairly conceded that Tribunal has failed to award 25% future prospects in terms of decision in ***National Insurance Company Limited vs. Pranay Sethi and others***, (2017) 16 SCC 680. He submits that the Tribunal has rightly held Rs. 5,000/- as notional income of the deceased in absence of any evidence on record in respect of income of the deceased. He submits that only wife was dependent on the deceased and hence one half amount of income needs to be deducted towards personal expenses. He distinguished the authority in the case of Maheshwari (supra) by relying on paragraph 9 of the said decision. He therefore submits that there is no merit in the first appeal and same may be dismissed.

8. Record shows that in support of contention that deceased was selling fruits in front of Daulatabad fort wife of the deceased has stated the said fact in her evidence. One witness namely Shivaji Bhagat was examined, who has stated that deceased Shaikh Majid used to purchase figs and sweet lime from him. He has agricultural land Gut No. 36 at village Fatiyabad, Taluka- Gangapur. He also produced 7/12 extract of his agricultural land on record, which shows that he possesses 1.06 Hectare land in Gut No. 36 along with his brothers. In the crop entry of the year 2014-2015 sweet lime and fig crops are mentioned. There is one well in the said gut number.

The Tribunal appears to have misinterpreted said 7/12 extract on record in observing that Shivaji has admitted in his cross examination that in his share of land, fruits are not shown. This observation appears to be contrary to the 7/12 extract on record. Hence said finding of Tribunal is unsustainable.

9. Claimants along with claim petition filed list of documents at Exhibit-31 along with copy of notice issued by Grampanchayat, Daulatabad, dated 21.05.2015 in which it is stated that deceased has encroached by placing cart near

Dakshin Mukhi Hanuman Mandir (Gate). He is called upon to remove the said cart which is an encroachment otherwise Gram Panchayat will remove the same. Claimants have also placed on record NOC dated 30.05.2016 issued by Grampanchayat Daulatabad, thereby giving no objection to the deceased Shaikh Majid thereby permitting him to sell fruits on a cart at Daulatabad. Though, these documents are placed on record, the Tribunal has not marked them as exhibit and has not taken them in consideration.

10. In the light of aforesaid evidence on record, it is clear that deceased was selling fruits on a cart at Daulatabad. The Tribunal has assessed notional income of deceased at Rs. 5,000/-. In Maheshwari (supra), deceased was running a vegetable shop and was also selling beverages and he was 44 years old at the time of accident in the year 2015. Evidence was led by the claimants that deceased used to earn Rs. 1,000/- per day. Considering these facts, Apex Court assessed notional income of deceased at Rs. 15,000/- per month, observing that "*However, taking into consideration the fact that the deceased was maintaining a family of 4 members and living a reasonably decent life, it can be safely be inferred that he was earning not*

less than Rs. 15000.00 per month."

11. In Syed Sadiq (supra), deceased was vegetable vendor and the accident had taken place in the year 2008. It is held:

> *"7. Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the whole-sale market or the farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the appellant/claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the market place which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant/claimant is still capable to fend for his livelihood once he is brought in the market place, we determine the disability at 85% to determine the loss of income.*
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> *8. The appellant/claimant in his appeal further claimed that he had been earning Rs. 10,000/- p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs. 3500/- p.m. considering that the claimant did not*

produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in the case of Ramchandrappa v. Manager, Royal Sundaram Alliance Company Limited, has held as under:

> *13. In the instant case,----------. Secondly, the Appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant."*

Notional income of the deceased was therefore assessed at Rs. 6,500/- per month.

12. Considering the aforesaid ratio and the evidence led by the claimants in the present case it can be safely held that deceased was selling fruits and his monthly income can be assessed at Rs. 10,000/- per month. The Tribunal has erred in holding that no evidence is led by claimants to prove the monthly income of the deceased.

13. There appears merit in the contention of claimants that compensation under the head future prospects is not awarded by the Tribunal. Even, learned advocate for insurance

company has fairly conceded to the same. Considering the age of the deceased, he is entitled for 25% future prospects. In view of ***Sarla Verms & Ors. Vs Delhi Transport Corporation & Anr***., 2009 ACJ 1298 and considering the number of claimants in the present matter, 1/3rd amount will have to be deducted from the income of the deceased towards personal and living expenses. Claimants are therefore entitled for following compensation.

Sr. No.	Heads	Amount (Rs.)
1	Notional Income Rs. 10,000+ future prospects @ 25% i.e. 2500/-	12,500/-
2	Annual Notional Income 12,500 x 12	1,50,000/-
3	Less 1/3rd Deduction i.e. Rs. 50,000/- (1,50,000-50000)	1,00,000
4	Annual Notional Income Multiplied by multiplier of 13 (1,00,000x13= 13,00,000)	13,00,000/-
5	Non Pecuniary damages awarded by Tribunal: i)Loss of Consortium- 1,00,000/- ii) Loss of love and affection- 1,00,000/- iii) Funeral Expenses- 25,000/-	2,25,000/-
6	Total Compensation needs to be awarded	15,25,000/-
7	Compensation awarded by Tribunal	7,44,948/-
8	**Total Enhanced compensation**	**7,80,052/-**

14. In the result, following order:

ORDER

(I) First Appeal is partly allowed with proportionate costs.

(II) Respondents No. 1 and 2 are jointly and severally liable to pay enhanced compensation of Rs. 7,80,052/- to the claimants.

(III) Claimants shall be entitled for interest @ 6% per annum on the enhanced compensation from the date of filing of claim till realization.

(IV) Insurance company to deposit amount of enhanced compensation along with accrued interest in the Tribunal within 12 weeks from the date of uploading of this judgment. On such deposit, claimants will be entitled to withdraw the same.

(IV) Claimants to pay additional Court fees on enhanced amount as per rules.

[NITIN B. SURYAWANSHI, J.]

Bhagyawant Punde