**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO.241 OF 2019**

1. Smt. Pratikala Gambhir Patil,
   Age 33 years, Occu. Household

2. Mayuri Gambhir Patil,
   Age 11 years, Occu. Education

3. Yash Gambhir Patil,
   Age 9 years, Occu. Education

4. Rohit Gambhir Patil,
   Age 7 years, Occu. Education,

   Nos.2 to 4 minors, u/g of Natural
   Guardian mother appellant No.1

5. Smt. Sonubai Vasant Patil
   Age 58 years, Occu. Nil

   All R/o Mukti, Tal. & Dist. Dhule … Appellants
   (Original Petitioners)

Versus

1. Ramsing Ramswaroop
   Age 41 years, Occu. Driver,
   R/o Hisampur Marje Mandwa,
   Khaga, Fatehpur

2. Rajendrasing Jernalsing Cheema,
   Age adult, Occu. Owner of Vehicle
   R/o Kannamwar Ward, Ballarpur,
   Dist. Chandrapur (Maharashtra)

3. The New India Insurance Company Limited
   (summons to be served on
   The Branch Manager,
   The New India Insurance Co. Ltd.,
   Yashovallabh Complex,
   Opp. Municipal Corporation, Dhule … Respondents
   (Original Opponents)

…

Ms. Sabahat T. Kazi, Advocate for Appellants
Mr. A. S. Usmanpurkar, Advocate for Respondent No.3

…

**CORAM : NITIN B. SURYAWANSHI, J.**

**RESERVED ON : 18th JULY, 2024**
**PRONOUNCED ON : 06th AUGUST, 2024**

**JUDGMENT :**

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

2. This appeal filed by claimants challenges judgment and order dated 11/09/2018, passed by the Motor Accident Claims Tribunal, Dhule, in M.A.C.P. No.35/2015.

3. Deceased Gambhir was husband of appellant No.1, father of appellant Nos.2 to 4 and son of appellant No.5. On 22/11/2014 at about 09:00 am, he was riding motor cycle bearing No.MH-18-AL-4046, along with Ravindra Bhil being pillion rider. On National highway No.6, in front of Hotel Anand, respondent No.1 driver drove truck bearing No.MH-34-AB-6410 in rash and negligent manner, and dashed with the motorcycle of deceased. Due to the dash, deceased and Ravindra sustained grievous injuries. Deceased was admitted in Sudha Hospital, Dhule, where two operations were performed on him. However, he succumbed to the injuries. Claimants, therefore, filed claim petition contending that deceased was earning Rs.8,00,000/- to Rs.10,00,000/- per annum from agricultural land. In addition, he was doing milk business and was earning Rs.1,000/- to Rs.1,200/- per day. C.R. No.315/2014 was registered with Dhule Police Station against the driver. Claimants, therefore, claimed compensation of Rs.70,00,000/- from the

respondents owner, driver and insurance company.

4. Respondent Nos.1 and 2 i.e. driver and owner of the truck, remained absent in spite of service of notice. Respondent No.3 Insurance Company opposed the claim, however, impliedly accepted that vehicle involved in accident was insured with it. It is claimed that, there was breach of policy and contributory negligence on the part of deceased. Income source of the deceased was also denied. Tribunal partly allowed the claim and awarded compensation of Rs.28,77,400/- along with interest @ 7.5% per annum, to be paid by respondent Nos.1 to 3 jointly and severally. Claimants have filed this appeal for enhancement of the compensation.

5. Heard learned advocate for appellants, learned advocate for respondent No.3. Though served none appears for respondent Nos.1 and 2. Perused the record.

6. Learned advocate for appellants/claimants submitted that Tribunal has erred in assessing notional income of deceased at Rs.9,000/- from agricultural land and Rs.5,000/- from milk business i.e. total Rs.14,000/- per month. Though medical bills were produced on record, amount spent for medical treatment is not awarded. No compensation is awarded towards non-pecuniary damages like loss of consortium, loss of love and affection, loss of estate, etc. By relying on ***Rajwati @ Rajjo and Others Vs. United India Insurance Company Ltd. and Others, [2022 LiveLaw (SC)***

***1016]*** and ***Magma General Insurance Co.Ltd. Vs. Nanu Ram @ Chuhru Ram and Others [2018 ALL SCR 2001]***, he submits that claimants are entitled for enhancement of compensation.

7. Learned advocate for respondent No.3 Insurance Company, on the other hand, supported the impugned judgment and order passed by the Tribunal. He submits that claimants have produced only medical certificates, however, no discharge card is placed on record to corroborate the same. He submits that income from agricultural land and milk business is being received by the claimants. Tribunal has awarded adequate compensation.

8. Death of deceased in the accident is not in dispute. To prove the earning of deceased, claimants have placed on record certificate Exhibit-31 issued by Mukati Milk Producing Association, Dhule, which shows that deceased was supplying 18 to 20 Liters milk to the said society. Claimants have also examined President of Mukati Milk Producing Association to prove the certificate Exhibit-31. Some of the receipts showing sell of crop like cotton are also placed on record. Taking into consideration these documents, the Tribunal has rightly held that earning of the deceased from agricultural land was Rs.9,000/- and from milk business was Rs.5,000/- per month.

9. Though the medical bills vide Exhibit-32 are placed on record, Tribunal has not considered them by observing that none of the witness is examined to prove the said bills. In this view of the matter, Tribunal has committed error in recording finding that

claimants have failed to prove medical bills and they are not entitled to recover that amount from respondents.

10. It is well settled that the Tribunal is not a Court and hence is not bound by strict rules of pleadings and evidence. Claimant has to prove his case on the basis of preponderance of probabilities. In ***Dattatraya Laxman Shinde Vs. Nana Raghunath Hire and others, [2011(6) ABR (NOC) 564 (Bom)]***, claimant had produced voluminous original documents such as medical bills, vouchers and documents evidencing expenditure of medicines, medical treatment, special diet, traveling expenses and residence of relatives and friends. Insurance company did not admit these documents. In the examination-in-chief claimant made reference to all the bills and vouchers. The Tribunal did not take those bills and vouchers into consideration, on the ground that they were not proved in accordance with law. In these facts, learned Single Judge of this Court held:

> "*the Tribunal constituted under the said Act is not bound by strict rules of evidence. Therefore, the said bills and vouchers ought to have taken into consideration by the Tribunal in absence of the specific case made out that the documents were fabricated*."

11. In ***Rekha Jain Vs. National Insurance Co. Ltd***., ***[AIR 2013 SC 3429]***, Tribunal had taken into consideration the medical bills and vouchers produced on record by claimant, which were also referred to in the evidence of claimant. Tribunal marked these

documents, in spite of objections from the insurance company and considered them while awarding compensation. The High Court interfered in the said finding and reduced the compensation of Rs.17,51,726/- to Rs.7,77,000/-. In these facts, Apex Court held:

> *"This has been very lightly interfered with by the learned Judge of the High Court without application of mind and consideration of legal evidence on record particularly in the absence of rebuttal evidence and further, the Insurance Company was unable to show that the documents referred to supra produced by the appellant in her evidence are fabricated documents, which have been produced with deliberate intention to prefer a false claim in this regard as contended by the learned counsel on behalf of the Insurance Company."*

12. Both the above rulings support the case of claimants. The Tribunal has erred in ignoring medical bills of Rs.32,867/-, as claimants failed to examine any witness to prove the same. Tribunal has drawn unwarranted inference and has based this finding on surmises and conjectures. This finding is, therefore, erroneous and the same is unsustainable.

13. Without assigning any reason Tribunal has failed to award compensation towards loss of estate. As per the ratio in ***National Insurance Co. Ltd. v. Pranay Sethi and Others, [2017 (16) SCC 680]***, Rs.15,000/- is payable to claimants towards loss of estate and Rs.40,000/- is payable towards loss of consortium to each claimant. Therefore, though Tribunal has awarded Rs.40,000/- towards loss of consortium, the same needs to be awarded to each claimant. Since there are five claimants, 5 x

Rs.40,000/- = Rs.2,00,000/- is payable towards loss of consortium. Claimants are, therefore, entitled for compensation as follows:

| Sr. No. | Heads | Amount (Rs.) |
|---|---|---|
| 1 | Monthly income computed by Tribunal Rs.14,000/- + 40% future prospectus i.e. Rs.5,600/- | Rs.19,600/- |
| 2 | Less 1/4 amount as personal expenses of deceased (Rs.19,600 – Rs.4,900/-) | Rs.14,700/- |
| 3 | Annual dependency Compensation (Rs.14,700 x 12) | Rs.1,76,400/- |
| 4 | Annual dependency multiplied by multiplier (Rs.1,76,400 x 16) | **Rs.28,22,400/-** |
| 5 | Non-pecuniary Losses:-<br>Loss of Consortium Rs.40,000/- to each claimants (Rs.40,000 x 5) = Rs.2,00,000/-<br>Loss of Estate = Rs.15,000/-<br>Funeral Expenses = Rs.15,000/- | **Rs.2,30,000/-** |
| 6 | Medical Expenses | **Rs.32,867/-** |
| 6 | Total compensation needs to be awarded | **Rs.30,85,267/-** |
| 7 | Compensation awarded by the Tribunal | **Rs.28,77,400/-** |
| **Total Enhanced Compensation (Rs.30,85,267 – Rs.28,77,400)** | | **Rs.2,07,867/-** |

14. In the result, following order,

**ORDER**

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

(II) Claimants are held entitled for enhanced compensation of Rs.2,07,867/- along with interest @ 6% per annum from the date of filing of claim petition till it's realisation. Rest of the judgment and award is confirmed.

**(NITIN B. SURYAWANSHI, J.)**