IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 484 OF 2020

Liberty Videocon Insurance Co. Ltd
Through its authorized representative
Shraddha Kinare. Having its office at
Office No. 601ABC & 602AB, 6th
Floor, City Tower, Boat Club Road,
Pune- 411001.

And also having address at:
10th Floor, Tower A, Peninsula Business
Park, Ganpatrao Kadam Marg,
Mumbai – 400 013.

....Appellant

V/s.

1. Shila Chandrakant Patil
age: 40 years, Occ. Household,

2. Rushikesh Chandrakant Patil,
age: 19 years, Occ. Education,

3. Rajshree Chandrakant Patil,
age: 22 years, Occ. Education.

4. Amar Chandrakant Patil,
age: 16 years, Occ. Education,
All R/o.-Khairav, Tal-Madha, Dist.
Solapur.

....Respondents
(Respondent
Nos. 1 to 4
being Org.
Applicants and
present

5. Annasaheb Dhondiram Patil
age: 50 years, Occ. Business

R/o. Narkhed, Tal- Mohol, Dist-Solapur.	Respondent No.5 Org. Opp. Party No.1.)

Mr. Rajesh Kanojia, i/b. Res Juris, for the Appellant.
Ms. Shraddha S. Pawar, for Respondent Nos. 1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th FEBRUARY, 2024

<u>ORAL JUDGMENT</u>:-

1. The issues involved in this Appeal are income of deceased is considered on higher side and place of accident was not public place.

2. It is contention of learned counsel for the Appellant-Insurance Company that accident occurred in the field of deceased. So, it cannot be considered as public place. Learned counsel further submitted that deceased was agriculturalist and the Tribunal has considered his agricultural income at Rs.2,00,000/- per annum. After the death of deceased, the agricultural income is continued to his family members. The Tribunal has not taken managerial

loss. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent-Claimants that deceased had called driver of the offending tractor for ploughing in his field and he was sleeping in the agricultural land. When he was sleeping, due to negligence of the driver of the tractor, it run over the deceased and deceased died in the said accident. Learned counsel further submitted that the deceased was the only earning member of his family. After the death of the deceased, there is no one to look after the agricultural land. The Claimants are unable to cultivate the said land, so there is no income from the agricultural land. The income considered by the Tribunal is proper. The Tribunal has considered all the aspects. No interference is required in it.

4. I have heard both learned counsels. Perused judgment and order passed by the Motor Accident Claims Tribunal, Solapur [“**The Tribunal**” for short].

5. It is Claimants’ case that on 29th January 2016, the deceased alongwith his relative Bharat Patil were sleeping in

his field bearing Gat No. 68/1, 2,3 situated at Village Khairava, Taluka-Madha, District-Solapur. One Bhairavnath Ramdas Kolse was ploughing the agricultural land of deceased by tractor bearing No. MH13 BR 5362. At about 12.55 a.m. when deceased and his relative were sleeping at that time the driver of the tractor drove his vehicle in rash and negligent manner, as a result of which the tractor passed over the body of deceased and Bharat Patil. Bharat Patil sustained grievous injury. Whereas, deceased died on the spot.

6. It is contention of learned counsel for the Appellant-Insurance Company that accident took place in the field owned by the deceased. As the alleged accident has not occurred in public place, hence, Insurance Company is not liable to pay compensation.

7. While dealing with the issue of public place or private place, the Tribunal has observed the view of this Court in ***Pandurang vs. New India Life Insurance Co. Ltd & ors. (AIR 1988 Bom 248)*** and has held that even a private

place to which members of public have a right of access shall be held to be a 'public place' and the said question has to be determined taking into consideration the facts and circumstances of the case.

8. The Tribunal further observed that in the present case, the place of accident was accessible to the members of the public. There is absolutely no rebuttal evidence on behalf of the Respondent to show that the entry of public into the fields of the deceased was restricted or obstructed at the relevant time or at any time prior to the incident. The Tribunal further observed that the definition of 'public place' is very wide. A perusal of the same reveals that the public at large has a right to access though that right is regulated or restricted. I do not find infirmity in it. In my view, the public place is defined under Section 2(34) of Motor Vehicles Act 1988, which reads thus:

> *2(34)."public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;*

9. As per definition of public place, public place means whether the public have right to access. In the present case, accident is occurred in the field of the deceased. Admittedly, the offending tractor was called in the field of deceased for ploughing of land. It shows if access is given in the private place with permission it can be termed as a public place. Moreover, agricultural field cannot be termed as restricted area or prohibited area. In agricultural filed, the workers or labourers can be called for doing agricultural work so, it can be termed as public place. Hence, I do not see merit in the contention that the accident spot was not the public place.

10. To prove the income of deceased, the Claimant No.2-Rushikesh Patil, Son of deceased is examined. He has stated that his father was doing agricultural work and he was having irrigated land and his father used to earn Rs.2,00,000/- per annum from the agricultural income. In support of the evidence of PW-1, the Claimants have examined PW-3-Prakash Patil, an Accountant, Vithalrao

Shinde Co-operative Sugar Factory. He has stated that deceased used to send sugarcane crop to their factory. PW-4-Shabir Rampure, Vegetable Commission Agent has stated that deceased used to sell vegetables from his agricultural field to him. Considering the evidence on record, the Tribunal has considered an Annual Income of the deceased at Rs.2,00,000/-.

11. It is contention of learned counsel for the Appellant-Insurance Company that the Tribunal should have considered managerial loss. But Tribunal has considered the whole Annual Income, which is erroneous. I agree with the contention of learned counsel for the Appellant-Insurance Company. It has come on record that deceased was doing agricultural work and he was earning Rs.2,00,000/- per annum. Now, question remains how much managerial loss be considered. It has come on record that the deceased was only earning member of his family and he was doing agricultural work. There are four Claimants. It has come on in the evidence of PW-1 Rushikesh Patil that after death of

deceased, they have suffered an economic loss. It appears from record that there is no other male member in the family of deceased to do the agricultural work, they have to engage other person for doing agricultural work. Considering these facts, I am considering Rs.13,000/- per month as managerial loss due to death of the deceased. It comes to Rs.1,56,000/- per year. The Tribunal has awarded consortium amount on lower side. As per view of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram***[1], each Claimant is entitled for Rs.48,000/- as consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

12. Considering the above calculations the Claimants' are entitled for following compensation.

Particulars	**Amount**
Monthly Income Rs.13,000/- x 12	Rs.1,56,000.00
Income deducted for 1/4th of Income Rs.1,17,000/- x 13	Rs.15,21,000.00
Future prospectus	Rs.3,80,250.00

1 **2018 ACJ 2782 (SC)**

Consortium Rs.48,000/- each (Total 4 Claimants)	Rs.1,92,000.00
Funeral Expenses	Rs.18,000.00
Loss of Love and Affection	Rs.18,000.00
Medical Expenses	Rs.17,000.00
Total compensation	**Rs.21,46,250.00**

13. The Tribunal has awarded Rs.25,24,500/-. If the amount of Rs.21,46,250/- considered by this Court is deducted from Rs.25,24,500/-, it comes to Rs.3,78,250/-. This is an excess amount. The Appellant-Insurance company is entitled for this amount.

ORDER

i. The Appeal is partly allowed;

ii. The Appellant-Insurance company is permitted to withdraw Rs.3,78,250/- alongwith proportionate interest;

iii. The Claimants are entitled for compensation of Rs.21,46,250/- along with accrued interest fixed by the Tribunal from the date of the filing of Claim Petition till realization of the amount.

iv. The statutory amount be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rules.

v. All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)