IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 5003 OF 2017

National Insurance Company Ltd.,
A subsidiary of the General Insurance
Co. Ltd of India having one of its
Divisional Office at Station Road,
Hazari Chambers, Aurangabad
Through its authorized signatory. .. Appellant

VERSUS

1. Jyoti Appasaheb Bhadgale,
Age : 28 Years, Occ. Household,
R/o. Usthaldumala, Taluka Newasa,
Dist. Ahmedngar

2. Tejas Appasaheb Bhadgale,
Age : 10 Years, U/g R. No.1

3. Manasi Appasaheb Bhadgale,
Age : 8 Years, U/g R. No.1

4. Gayabai Eknath Bhadgale,
Age : 50 Years, Occ. Nil
R/o. As above.

5. Branch Manager,
Ms. HP Enterprises, B-318,
Steel Chambers, MTNL
Kalamboli, Tl. Panvel
Dist Raigad. .. Respondents

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Shri. Ajit B. Kadethankar Advocate for the Appellant
Shri. Sachin S. Kotkar, Advocate for Respondent Nos. 1 to 4.

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 27th FEBRUARY, 2025

PRONOUNCED ON : 23rd APRIL, 2025

<u>JUDGMENT</u> :-

1. The appellant/Insurance Company i.e. original respondent No.3 has challenged the judgment and award dated 09.06.2017 passed by the learned Member, Motor Accident Claims Tribunal, Newasa, District Ahmednagar (hereinafter, "learned Tribunal") only on the ground of quantum. Under the impugned judgment and award, the learned Tribunal has granted compensation of Rs. 24,69,000/- to the present respondent Nos. 1 to 4/claimants, along with interest at the rate of 9% per annum from 21.11.2014 till its realization which is inclusive of award under section 140 of the Motor Vehicles Act, 1988.

2. Though the learned counsel for respondents/claimants supported the impugned award, but as per the learned counsel for the appellant/Insurance Company, the learned Tribunal wrongly assessed the income of deceased to the tune of Rs. 9,000/- per month by including in it, an additional supervisory income in respect of income from the agriculture. He also pointed out that under the conventional heads, the learned Tribunal has granted excess amount for loss of love and affection, funeral expenses and loss of estate. Thus, he submitted that, the compensation is to be assessed in view of the observations of the Hon'ble Apex Court in the cases of **National Insurance Company Limited Vs. Pranay Sethi and**

Others (2017) 16 Supreme Court Cases 680, **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram And Others (2018) 18 Supreme Court Cases 130** and **Sarla Verma (Smt) And Others Vs. Delhi Transport Corporation And Another (2009) 6 Supreme Court Cases 121**.

3. Heard rival submission and also perused the documents on record along with the impugned judgment.

4. There is no dispute in the manner of accident and entitlement of respondents/claimants of getting compensation in respect of death of Appasaheb Eknath Bhadgale. According to the respondents/claimants, deceased Appasaheb was engaged in milk business as well as agricultural business and earning Rs. 5,00,000/- to Rs. 6,00,000/- per year as an agricultural income and Rs. 50,000/- per month from the milk business. There are no documents on record in respect of the milk business allegedly being done by the deceased. As such, there is no need to consider the same. The learned trial Court has assessed the income of deceased @ Rs. 9,000/- per month, which is bifurcated as Rs. 6,000/- per month from the actual labour and Rs. 3,000/- per month for supervision of the agricultural work. However, it is settled that in case of income

from the agricultural business, the same is only in the form of supervising capacity. Earlier, the supervisory income was treated as Rs. 1500/- per month, which was subsequently raised Rs. 3,000/- and at the relevant time i.e. in the year of accident, it was to the tune of Rs. 6,000/- per month. Thus, the learned Tribunal has definitely erred in adding additional income of Rs. 3,000/- per month under the supervisory head, despite considering monthly income of Rs. 6,000/- per month. As such, the income of deceased has to be taken to Rs. 6,000/- per month and not Rs. 9,000/- per month. For this income, the concept of future prospect is also applicable as per the judgment of Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Others*** (supra).

5. So far as compensation on the basis of conventional heads is concerned, the learned Tribunal has granted an amount of Rs. 4,00,000/- on account of loss of love and affection i.e. Rs. 1,00,000/- each for the respondents/claimants and also granted consortium to respondent No.1, being the wife of the deceased, to the tune of Rs. 1,00,000/-. Further, the learned Tribunal has granted funeral expenses of Rs. 25,000/-, but did not grant anything under the head of loss of estate. However, in view of the

judgment in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Others*** (supra) compensation on the ground of loss of love and affection is not permissible, if the consortium is granted. Further, in the case of ***Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and Others*** (supra) the concepts of "Spousal consortium", "parental consortium" and "filial consortium" have been introduced and under the same, the claimants, who fall in those categories, are entitled for the amount of consortium, to the tune of Rs. 40,000/- each. In addition to that, compensation of Rs. 15,000/- under the head of loss of estate and Rs. 50,000/- for funeral expenses is also added. It is observed by the Hon'ble Apex Court that the compensation under the heads of loss of estate, consortium and funeral expenses is to be revised for every span of three years, by increase of 10%. Therefore, in the light of these observations, the compensation granted by the learned Tribunal appears excessive in nature, and therefore, it has to be re-assessed again.

6. The income of deceased is taken as Rs. 6,000/- per month, and if the future prospects as per the judgment in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Others*** (supra) is considered, then it will come to

40% as the deceased was self employed and below the age of 40 years. Therefore, the total monthly income of deceased comes to Rs. 8400/- per month. From the said income, 1/5th income has to be deducted on account of personal expenses of the deceased, and on such deduction it comes to Rs. 6720/- per month. There is no dispute in respect of applicability of multiplicand of '15', and therefore, the loss of dependency is calculated to the tune of Rs. 12,09,600/-. Further, the loss of consortium amount @ 40,000/- each with 10% increase comes to Rs. 1,93,600/-. The respondents/claimants also entitled for compensation on account of loss of estate and funeral expenses with 10% increase, which is Rs. 18,150/- each. Thus, the respondents/claimants now entitled for total compensation under the necessary heads is as under :-

Sr. No.	Heads	Amount
1.	Loss of dependency	Rs. 12,09,600/-
2.	Consortium	Rs. 1,93,600/-
3.	Loss of estate	Rs. 18, 150/-
4.	Funeral expenses	Rs. 18,150
	Total	Rs. 14,39,500/-

7. The rate of interest granted by the learned Tribunal, which is 9% per annum, appears reasonable, and therefore, there is no reason to interfere with the same. Therefore, the impugned award is modified as per following order

O R D E R

(I) The appeal is partly allowed.

(II) The appellant/Insurance Company is directed to pay total compensation of Rs. 14,39,500/- (Rs. Fourteen Lakhs, Thirty Nine Thousand & Five Hundred) to Respondent Nos.1 to 4 claimants along with the interest @ 9% per annum from the date of petition till its entire realization, which is inclusive of the award under Section 140 of the Motor Vehicle Act.

(III) It appears that the appellant/Insurance Company has already deposited the amount of compensation as directed by the learned Tribunal along with the interest at the relevant time before this Court and out of the same, the claimants had also withdrawn 50% of the said amount. However, considering the earlier withdrawal by the respondents/claimants the remaining amount as calculated by this Court be paid to them along with the accrued interest thereon and the remaining amount of compensation be refunded to the appellant/Insurance Company along with the interest thereon till date.

(IV) Award be drawn up accordingly.

(SANDIPKUMAR C. MORE, J.)

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