IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO. 163 OF 2024

1. The New India Assurance Co. Limited,
Through its Divisional Manager,
Gorkashan Road, Akola,
District – Nagpur
Through its Regional Manager,
Regional Office, Dr. Ambedkar Bhavan,
M.E.C.L. Premises, 4th Floor,
High Land Drive, Seminary Hills, Nagpur
(Original Respondent No.3) ... **Appellant**

Versus

1. Smt. Manda w/o Dattatraya Palaskar
Aged about 50 years, Occ. Nil,
(Original Petitioner No.1)

2. Sau. Kalpana w/o Bhikanrao Bhutekar
Aged about 36 years, Occ. Household,
(Original Petitioner No.2)

3. Sau. Anita w/o Ganesh Bhanuse
Aged about 34 years, Occ. Education,
(Original Petitioner No.3)

4. Harshal s/o Dattatraya Palaskar
Aged about 31 years, Occ. Education,
(Original Petitioner No.4)

5. Sagar s/o Dattatraya Palaskar
Aged about 27 years, Occ. Education,
(Original Petitioner No.5)
Respondents Nos.1,4 and 5 -
R/o. Shendurjan, Tq. Shindkhed (Raja)
District – Buldana
Presently R/o. Chankya Apartment,
Shastri Nagar, Akola, District – Akola,
Respondent No.2 – R/o. Isrul,
Tahsil Chikhali, Dist. Buldana

Respondent No.3 – R/o. Vizora,
Tahsil Sindkhed (Raja), Dist. Buldana

6. Sayed Sameer Sayed Amanullah
Aged – Adult, Occ. Owner,
R/o. 510, Husain Colony, Cristian
Mohalla, Badnapur, Tah. Badnapur, **...Respondents**
Dist. Jalna
(Original Respondent No.7)

Mr. M.B. Joshi, Advocate for appellant.
Mr. K.J. Topale, Advocate for respondent Nos.1 to 5.
None for respondent No.6.

CORAM : ROHIT W. JOSHI, J.
DATE : 17.02.2025.

ORAL JUDGMENT:

Heard finally with consent of learned counsel for appellant and learned counsel for respondent Nos.1 to 5. The respondent No.6/the owner of the vehicle is absent. However, the matter is heard finally in his absence since, his rights are not adversely affected by the outcome of the present appeal.

(2) The respondent Nos.1 to 5 had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, being M.A.C.P. No.46/2015 seeking compensation on account of sad demise of late Dattatraya Palaskar, husband of the respondent No.1 and father of respondent Nos.2 to 5. The said claim petition was partly allowed vide judgment and award dated 24.10.2019, passed by the learned Member, Motor Accident Claims Tribunal, Akola. The learned Tribunal has awarded compensation of Rs.43,79,468/- including amount of 'No Fault Liability' payable with interest @ 7% per annum from the date of institution of petition till realization of the entire amount.

(3) The appellant is the original respondent No.3 – the Insurance Company of the offending vehicle. The only contention raised in the present appeal is in respect of quantum of the compensation awarded.

(4) Mr. Joshi, learned counsel for the appellant contends that although the deceased was survived by five Class-I legal heirs namely his widow, two married daughters and two sons, the married daughters cannot be said to be dependent on the deceased and therefore while making deductions for personal expenses, the learned Tribunal should have made 1/3rd deduction considering the total number of dependents as three. The learned counsel contends that the learned Tribunal has erred in making ¼th deduction, considering that the deceased was survived by five dependents. The other objection is that although the deceased was a bank employee, Rs.5,000/- per month is added to his notional income for supervision of agricultural land. He contends that the learned Tribunal has erred in placing reliance on the judgment of this Court in the matter of ***Maharashtra State Road Transport Corporation Vs. Dilip s/o Popatrao Kate and Ors.,*** reported in ***2019(2) Mh.L.J 315.*** His contention is that the deceased in the reported judgment was an agriculturist by profession whereas the deceased in the present matter was a bank employee and therefore, notional income ought not to have been considered for supervision of agricultural land.

(5) Mr. Topale, learned counsel for respondent Nos.1 to 5 supports the impugned judgment and award, he contends that married daughters are equally entitled to the amount of compensation and they have to be treated as dependents of their deceased father. He, therefore, contends that ¼ deduction is rightly made relying upon the judgment in the matter of ***Sarla Verma and Ors. Vs. Delhi Transport Corporation and anr***. reported in ***2009 (5) Mh.L.J. 775.*** With respect to notional income, his contention is that the deceased was looking after agricultural lands. The family had vast stretches of agricultural

land admeasuring around 25 acres. He has drawn my attention to the deposition of respondent No.1 and the 7/12 extracts to demonstrate that the deceased was looking after the agricultural lands and that the lands were under cultivation.

(6) In view of the rival submissions, following points arise for my consideration in the present appeal :

(i) What should be the appropriate deduction for computation of financial dependence ?

(ii) Should notional income of Rs.5,000/- per month be taken into consideration for determining loss of financial dependence ?

(7) **As to point No.1** – Mr. Joshi, learned counsel for the appellant has drawn my attention in the matter of *Sarla Verma (supra)*. He has particularly referred to the said portion in paragraph 15 of the judgment :

> *"15. ….. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father..."*

(8) The observations upon which emphasized are created by the learned counsel for the appellant are pertaining to brothers and sisters for the deceased and not to married daughters. Since the respondent Nos.2 and 3 are not sisters but married daughters of the deceased, the contention of the learned counsel for the appellant is liable to be rejected. It will also be pertinent to refer the judgment of the Hon'ble Supreme Court in the matter of ***Manjuri Bera Vs. Oriental Insurance Company Ltd.,*** reported in ***2007 (10) SCC 643,*** were the married daughters are considered to be dependents of the deceased for the purpose of Section 166 of the Motor Vehicles Act. The said judgment is followed in ***National Insurance Company Limited Vs. Birender and Ors. reported in 2020 (11) SCC 356.***

(9) As to point No.2 – The contention that the learned counsel for the appellant is that since the deceased was employed, an additional amount of Rs.5,000/- per month, ought not to have been taken into consideration towards expenses for supervision of his agricultural land. Normally the income of the deceased from all sources is taken into consideration for computing compensation to be paid on account of loss of financial dependence. However, with

respect to the agricultural income, the consistent view of the Courts is that some amount should be added on account of supervision charges only and entire income earned from agriculture should not be counted for computation of compensation under the head of loss of financial dependence.

(10) In the present case, the deceased and his family, has agricultural land extending around 25 acres. The 7/12 extract produced on record and proved during the course of evidence show that the land is under cultivation. The respondent No.1, who has entered the witness box has stated on aoth that deceased was looking after the agricultural land and that he had profound knowledge with respect to agriculture. Having regard to the age of the two sons, it is highly probable and most likely that the deceased was infact looking after the agricultural land. In my considered opinion, the learned Tribunal was right in considering a sum of Rs.5,000/- per month towards supervision of agricultural land. The loss of financial dependence cannot be restricted to salary of the deceased. The contention on behalf of the appellant is, therefore, rejected.

(11) In view of the above, in my considered opinion, the learned Tribunal has computed the compensation correctly. The impugned judgment and award do not call for any interference. The appeal is, therefore, dismissed without any order as to costs.

(12) Pending application(s), if any, stands disposed of.

[ROHIT W. JOSHI, J.]

Prity