



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

FIRST APPEAL NO.1411 OF 2019

1. Jyoti Wd/o Sandip Pathak
Aged about 40 years,
Occu. Housewife.
2. Sunjyoti d/o Sandip Pathak,
Aged about 14 years,
Occu. Student.
3. Jaynarayan s/o Bhayyaji Pathak,
Aged about 72 years,
Occu. Retired.
4. Sanvi d/o Sandip Pathak,
Aged about 8 years, Occ- Student.

The Appellant Nos.2 and 4 are minor
through natural guardian.

Appellant No.1 R/o Manegaon,
Tq. Saoner, Dist. Nagpur.

..... **APPELLANTS**

...V E R S U S...

1. Paul George Vazhkudiyal
Aged about Major, Occu. Owner
r/o Sarswati Niwas, Flat No.307
Humpyard road, Congress Nagar,
Nagpur.
2. The Branch Manager,
The ICICI Lombard Motor Ins. Co. Ltd.,
5th Floor, Landmark, Plot No.5 & 6 Wardha
Road, Ramdaspath, Nagpur.
3. Jayshree w/o Jaynarayan Pathak,
Aged about 70 years,
Occu. Household, R/o Manegaon,
Ta. Saoner, Dist. Nagpur.

..... **RESPONDENTS**

Mr. K. P. Mirache, Advocate h/f Mr. P. S. Mirache, Advocate
for Appellants/Applicants.

Mr. W. T. Mathew, Advocate for Respondent No.1.

Mr. R. D. Bhuibhar, Advocate for Respondent No.2.

CORAM: **ROHIT W. JOSHI, J.**

DATE: **18th FEBRUARY, 2025.**

ORAL JUDGMENT:

1. The present appeal is filed by the original claim petitioners in Motor Accident Claim Petition No.874/2009. The appellant no.4 is a party to the present appeal although her name is not reflected as claim petitioner in the Motor Accident Claim Petition. This is so because she was appellant no.1 was carrying pregnancy at the time of filing of the claim petition and the appellant no.4 was born after filing of the claim petition. The respondent no.3 is mother of the deceased.

2. One Sandip s/o Jainarayan Pathak died in a motor accident on 31.08.2009 the respondent no.1 is owner of the offending vehicle with which the deceased met with an accident. The respondent no.2 is the Insurance Company with which the offending vehicle was insured with the relevant time.

3. As stated above Sandip met with road accident

on 31.08.2009. He expired on the same day. His widow, daughter and father filed claim petition under Section 166 of the Motor Vehicles Act claiming compensation on account of his death. His mother was arrayed as respondent no.3. It is the case of the petitioners in claim petition that deceased Sandip was working with a company, named Home Solutions Retail (India) Ltd. and was getting salary of Rs.1,58,000/- per annum, in addition he was earning around Rs.1,50,000/- per annum from his business of Modular Kitchen and was also earning Rs.2,00,000/- approximately per annum from the agricultural lands of the family which were being cultivated by him. The appellants claimed compensation to the tune of Rs.55,66,000/-. The respondent no.1 owner though served did not appear in the matter. The respondent no.2 Insurance Company filed written statement opposing the claim.

4. Based on rival submission issues were framed by the learned Tribunal. The appellant no.1 was examined as sole witness by the claim petitioner. The respondent no.1 did not enter the witness box. During the course of her evidence the witness of the appellant proved police papers, income certificate issued by Talathi, 7/12 extract of agricultural land, appointment letter and salary certificate issued by Home Solutions Retail (India) Ltd.

Having examined the appellant no.1 as a witness, the appellants closed their side of evidence. The learned Tribunal proceeded to hear arguments on the matter and was pleased to award compensation to the tune of Rs.50,000/- towards no fault liability under Section 140 of the Motor Vehicles Act and in addition Rs.8,80,000/- under Section 166 of the Motor Vehicles Act.

5. Mr. K. P. Mirache, the learned counsel for the appellants contends that the learned Tribunal has erred in discarding the appointment letter and salary certificate which were duly proved during the course of evidence on the appellant no.1 and were marked as Exhibits 49 and 50 respectively. He contends that the income from salary of the deceased ought to have been taken into account in view of the said evidence. He contends that the learned Tribunal has erred in discarding the said evidence. He further contends that the statement of the witness who is wife of the deceased that he was engaged in business of Modular Kitchen and was earning income to the tune of Rs.1,50,000/- per annum also should have been accepted. He further contends that the deceased was looking after agricultural land of the family. He points out from the 7/12 extract that the agricultural lands owned by the family are extending to 27/28 acres approximately

and therefore, the learned Tribunal should have taken into account income from agricultural land as certified by the Talathi in the income certificate at Exhibit 40. Mr. Mirache also points out that the learned Tribunal has erred in not awarding proper compensation under the head of loss of consortium as also loss of estate and funeral expenses.

6. Per contra Mr. R. D. Bhuibhar, the learned counsel appearing for the respondent no.2 Insurance Company contends that the author of the alleged appointment letter and salary certificate is not examined. He has pointed out from the cross examination that authenticity of the said document was challenged in the cross examination. He also points out that the appellant had not filed any document on record to demonstrate that salary was in fact being received by the deceased. He further argues that it is inconceivable that a corporate entity such as Home Solutions Retail (India) Ltd. which is a part of the Future Group that runs establishment like Big Bazar, Furniture Bazar etc. would pay salary to the employees in cash. As regards the alleged income from business of Modular Kitchen the submission of Mr. Bhuibhar is that there is no evidence in support of the said contention and the said contention is rightly rejected by the learned Tribunal.

As regards the agricultural income his contention is that the deceased has not taken the agricultural land with him and despite his sad demise the family will continue to get yield as income from the agricultural land. He has justified computation of income on the basis of supervision charges as has been done by the learned Tribunal.

7. Mr. Mathew, the learned counsel for the respondent no.1 owner of the vehicle has also advanced submissions on similar lines and has further pointed out that there is no allegation of breach of policy condition and therefore, the owner of the vehicle ought to have been exonerated and the liability should have been fastened upon the respondent no.2 Insurance Company alone.

8. Having heard the rival submissions following points arise for my consideration.

(i) Has the learned Tribunal correctly computed loss of financial dependence the compensation payable under the head of loss of financial dependence.

(ii) Has the learned Tribunal correctly computed compensation payable under the conventional heads of loss of consortium, loss of

estate and funeral expenses.

9. Point No.(i): The appellants have filed on record appointment letter and salary certificate in order to demonstrate that the deceased was in employment of Home Solutions Retail (India) Ltd. However, as rightly pointed out by Mr. Bhuibhar the author of the said document is not examined. Normally the objection would not have been entertained since the respondent no.2 did not object to the document being marked as exhibit at the time of evidence. However, the matter, does not stop year. Even if the document is held to be admissible in evidence, the truth of the document is also required to be proved. It is surprising that salary is shown to be paid in cash in the salary certificate at Exhibit 50. It is inconceivable that a well known corporate entity which is a part of Future Group of Companies would pay salary to an employee in cash has been reflected in the salary certificate. In this regard when cross examination of the appellant no.1 is perused it is found that a suggestion was given that the deceased was not serving or earning any salary. Likewise another question was put with respect to filing of document in order to demonstrate income of the deceased. The salary certificate is doubted by the Insurance Company and questions in that regard put to the witness in the

cross examination. During the course of hearing today also an option was given to the learned counsel for appellants to produce bank statement of the deceased to demonstrate that he was in fact getting salary as is mentioned in the alleged salary certificate. However, the learned counsel for the appellant urged that the appeal be decided on the basis of evidence available on record. Having regard to the totality of circumstances as emerging from record I am in agreement with the finding recorded by the learned Tribunal that the salary certificate cannot be relied upon. Although I may not be in agreement with the learned Tribunal that it was necessary for the appellant to examine author of the documents, since the documents were exhibited without any objection. I am discarding the documents because they do not inspire confidence.

10. As regards the income from the alleged business of Modular Kitchen, the appellants have failed to produce any documentary evidence on record to establish the relevant facts. The evidence in this regard is also completely wanting and therefore, the learned Tribunal is right in discarding the said claim of annual income of deceased Rs.1,50,000/- per annum from the alleged business.

11. As regards the agricultural income the legal position in this regard is well settled by a catena of judgments of Hon'ble Supreme Court and different High Court including this Court, that the entire agricultural income cannot be taken into consideration for computation of compensation payable under the head of loss of financial dependence. It is however, well settled that certain amount is taken into consideration towards loss of supervision etc. The appellants have brought documentary evidence on record indicating ownership of approximately 27 acres of agricultural land. The 7/12 extract demonstrates that the lands were under cultivation. The appellant no.1 has stated in her examination in chief that her husband alone was looking after and taking care of the agricultural land. The learned Tribunal has also accepted this and has taken into consideration the notional income of Rs.6000/- per month towards supervision of agricultural land. Mr. Mirache, the learned counsel for the appellants has placed reliance upon judgment of the Hon'ble Supreme Court in the matter of ***Harpreet Kaur and others v. Mohinder Yadav and others*** reported in **2023 A.C. 262 (SC)** and another judgment of this Court in the matter of ***Kalpna and others v. Salim Fattubhai Shaikh and another*** reported in **IV (2023) ACC 419 (DB) (Bom.)**, to contend that income from agriculture should be considered while determining

compensation under the head of loss of financial dependence. In the matter before the Hon'ble Supreme Court the deceased was a farmer cultivating around 56.95 acres of agricultural land which was owned by his family. He had an arrangement with the family members where under he was cultivating the entire land and was also taking 1/3rd crop share from the portion of agricultural owned by his family members. The said accident has occurred on 23.02.2005. In these circumstances the Hon'ble Supreme Court has taken his agricultural income at Rs.1,50,000/- per annum. In the judgment of this Court relied upon by Mr. Mirache the deceased was having agricultural land of around 30 acres. The accident has occurred on 15.10.2013. The land was irrigated land yielding cash crops. The evidence in the said case also indicated that fruit bearing trees were standing in the agricultural land. In such circumstances Rs.1,50,000/- has considered as annual income from agriculture. Based on above two judgments Mr. Mirache contends that in the present case also the income from agriculture ought to have been taken into consideration at Rs.1,50,000/- per annum as against Rs.72,000/- per annum which is determined by the learned Tribunal.

12. In the judgment of the Hon'ble Supreme Court the

deceased was owner of agricultural land of around 22 acres and for remaining 44 acres he had an arrangement with his family members under which he was getting 1/3rd produced from the agricultural lands owned by his family members. It is obvious that after his demise his dependants would not get 1/3rd produce of 44 acres of land which was being cultivated by the deceased although it was not owned by him. Therefore, there is direct evidence of loss of income in the said case. As regards the judgment of this Court, the judgment indicates that the agricultural lands were irrigated lands and were yielding cash crops and horticultural purchase. In the present case 7/12 extract indicates that the deceased was taking only one crop in kharif season every year. The 7/12 extract indicates that the deceased was taking paddy, *tur*, *dal*. However, it is also undisputed that the deceased and his family has 27 acres of agricultural land. It is also proved that agricultural lands were being looked after by the deceased. Having regard to the extent of agricultural land, in my considered opinion the notional income of the deceased towards supervision of agricultural land and agricultural operation should have been fixed at Rs.9000/- per month instead of Rs.6000/- per month.

13. In view of the aforesaid the annual income of the

deceased comes to Rs.1,08,000/- per annum. Since the deceased is survived by five dependants $\frac{1}{4}^{\text{th}}$ deduction will have to be made towards the personal expenses. The component of future prospects will have to be added at 40%. Thus, the loss of financial dependency per year comes to Rs.1,13,400/-. Since the deceased was 38 years old at the time of sad demise multiplier of 15 will have to be applied. Thus, compensation payable under the head of loss financial dependence works out to Rs.17,01,000/-.

14. Point No.(ii): The learned Tribunal has awarded compensation under the head of loss of consortium and love and affection at Rs.20,000/- each to the appellant no.1/widow, appellant nos.2 and 4/daughters and respondent no.3/mother. However, no amount is awarded to the appellant no.1 father under this head. The appellant nos.1 to 4 and respondent no.3 are individually entitled to sum of Rs.40,000/- each towards loss of consortium. The learned Tribunal has also erred in awarding compensation at the rate of Rs.10,000/- each towards funeral expenses and loss of estate as against Rs.15,000/- each to be awarded against the said head. Thus, the total compensation payable against conventional head works out to Rs.2,30,000/-.

15. In view of the above discussion the total

compensation payable to the appellant and respondent no.3 is arrived at Rs.19,31,000/-. The learned Tribunal has awarded compensation of Rs.9,30,000/-. In view of the aforesaid, I am inclined to enhance the amount of compensation awarded by the learned Tribunal by a further amount of Rs.10,01,000/- including Rs.50,000/- awarded under Section 140 of the Act towards no fault liability. In the result, the appeal is partly allowed as under:

ORDER

- (i) The respondent nos.1 and 2 are jointly and severally liable to pay additional amount of Rs.10,01,000/- to the appellants and respondent no.3 over and above the compensation of Rs.9,30,000/- awarded by the learned Tribunal.
- (ii) This additional amount of compensation of Rs.10,01,000/- shall carry simple interest at the rate of 7.5% per annum from 30.09.2009 i.e. date of filing claim petition till date of realization.
- (iii) The amount of compensation be apportioned between the appellants and respondent no.3 as

under:

- [i] Appellant no.3 – father 10% of the total compensation along with accrued interest.
- [ii] Respondent no.2 – mother 10% of the total amount along with accrued interest.
- [iii] Appellant nos.2 and 4 – daughters 20%, each with accrued interest.
- [iv] Appellant no.1 – widow 40% with accrued interest.
- [v] Amount awarded to the daughters be kept in a fixed deposit in a nationalized bank till they attain majority.
- [vi] Parties to bear their own costs.

(ROHIT W. JOSHI, J.)