Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1612 OF 2025

1. Smt. Vimala Manoharlal Choudhary
   Age – 26 years, Occu: Housewife
2. Miss Vanshika Manoharlal Choudhary
   Age – 3 years, Occu: Nil,
   Through its natural Guardian-Appellant No.1.
3. Mohanlal Gangaram Choudhary
   Age 57 years, Occu: NIL
4. Mrs. Shantidevi Mohanlal Choudhary
   All r/at Uprali Gawadi, Parsala Kalan
   Bomadara, Pali, Rajasthan – 306 401

…Appellants

Versus

1. Dashrath Bhivaji Lavhale
   Age : 36 years, Occ: Driver
   R/at At Post Satala,
   Tal. Ahmemadpur, District Latur.
2. New India Assurance Company Ltd.
   District Pune 412 207.

…Respondents

Mr. Angad Singh Gill (through V.C.) with Krishna A. Tarde, for the Appellants.

Mrs. Karishma Jhaveri i/b M/s. Navdeep Vora & Associates, for the Respondent No.2-Insurance Company.

CORAM : R. M. JOSHI, J.

RESERVED ON : 27th JANUARY, 2026
PRONOUNCED ON : 11th FEBRUARY, 2026

JUDGMENT:

REKHA PRAKASH PATIL

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1. This Appeal filed for enhancement takes exception to the Judgment and Award dated 25th July, 2022 passed by Motor Accident Claim Petition No. 626 of 2019, whereby death claim filed by the claimants came to be allowed by directing original opponent Nos. 1 and 2 to pay compensation of Rs.46,71,500/- with interest at the rate of 7% per annum.

2. The original claimants in present appeal seek enhancement of the compensation on the ground that the Tribunal has committed error in not considering the entire income earned by the deceased for the purpose of computation of loss of dependency and that the Tribunal ought not to have considered the income of the deceased to the extent of the managerial loss. It is further case of the appellants/claimants that the Tribunal has committed error in not considering the income of the deceased as reflected in the Income Tax Returns.

3. Learned Counsel for the appellants/claimants submits that the Tribunal has committed error in not considering the income of the deceased as reflected in the Income Tax Return. It is his submission that the view taken by the Tribunal is contrary to the law settled by the Hon'ble Supreme Court in case of **S.Vishnu Ganga and Ors. vs. Oriental Insurance Co. Ltd.**[1] He also took this Court to the judgment in case of **K. Ramya and Ors. vs. National Insurance Co. Ltd. And Ors.**[2]**,** to argue that even in case the deceased's share of ownership in the business was transferred to

1 Civil Appeal Nos. 1162-1163 of 2025
2 2022 LiveLaw (SC) 816)

the deceased's minor children just before his death or to the defendant after his death is not sufficient justification to conclude that the benefits of this business continue to approve to his dependents. It is his submission that irrespective of the fact as to whether, the business is run by the heirs of the deceased or not, the income earned by the deceased at the time of his death is required to be considered for the purpose of computation of loss of income/dependency. It is submission that the the appellants/ claimants would be entitled to receive just and fair compensation and hence, the appeal deserves to be allowed.

4. Learned Counsel for the respondent/insurer opposed the said contention by submitting that herein this case there is evidence on record to indicate that the business of the deceased is continued and there is no evidence to show that for want of any experience/ expertise acquired by the deceased, the heirs would not be in a position to conduct the business at all or atleast profitably. It is submitted that in the facts of the case, it cannot be said that the Tribunal committed error in accepting the notional income at the rate of Rs.2,50,000/- per annum, which according to him,, itself is on the higher side.

5. There cannot be any dispute made with regard to the position of law sought to be canvassed by the learned Counsel for the claimants that the claimants have a right to receive just and fair compensation. However, at the same time the compensation cannot become a bonanza. A careful perusal of the judgments cited supra indicate that Hon'ble Supreme Court as well as this

Court, while deciding the said cases, dealt with the facts of each case and then arrived at a conclusion that a mere transfer or continuation of the business of the deceased could not be sufficient to deny the compensation to the legal representatives only to the extent of managerial loss. In case of **Halimabai and Ors. vs. Rakesh Kumar Kukhasia and Ors.**[3] this Court has taken into consideration the fact that after the death of the husband, a widow was left behind with 11 children and in such circumstances, it was held that she cannot be denied claim of fair compensation for herself and children.

6. In case of **S. Vishnu Ganga (supra),** the Hon'ble Supreme Court held that relevant consideration is, whether due to lack of experience and maturity of the legal representatives of the deceased, there is real /expected downfall in the profitability of firm or business would ensue. In the case of **K. Ramya (supra)** it was held that the mere fact of the deceased's share of ownership in the businesse was transferred to the deceased's minor children just before his death or to the dependents after his death is not sufficient justification to conclude that the benefits of these businesse continued to accrue to his dependents.

7. In the instant case, the deceased, aged 28 years, was running a stationary and gift articles shop. The income of the deceased out of the said business is proved by filing Income Tax Returns (Exh. 34, Exh. 35 and Exh. 36) for the assessment years 2014-2015, 2015-2016 and 2016-2017. The learned Tribunal has

3 2004 ACJ 374

recorded a categoric finding to the effect that there is no evidence or even contention of the claimants that the deceased was earning income out of his personal skills and because of his death the entire earning is lost. Consequently, it was held that the business of shop is being continued even after the demise of the deceased and the annual loss of income was accepted to the accident of Rs.2,50,000/- per annum.

8. In the facts of the case, it cannot be said that the deceased possessing any special skills for conducting the said business which were lacking in his legal representatives. Even the claimants don't claim that for want of special skill, business is not yeilding same income. This court is of the considered view that unless a case is made out by the claimants that the business conducted by the deceased required special skills and claimants lack the same or that the sustainment and profitability of business is affected by the inexperienced claimants despite succeeding to the business of the deceased. If no such case is made out, unlike in the case of a salaried deceased, the income from his business would not automatically cease to exist. Any business would not only require management but also capital/ investment and the returns from capital and investment and combined effect thereof would result in yielding income therefrom. Needless to say that actual loss to the business on account of death of the deceased would have to be considered for determination of loss of dependency which is crucial for computation of compensation. Without making out any case to what extent the loss has been caused, determination of actual earnings of the deceased would lead to creation of double income from one business, i.e., actual income earned by the claimants and income created by the order of Tribunal and hence, would be bonanza and not just and fair compensation.

9. This Court, therefore, in the facts of present case, finds substance in the contention of the respondent/insurer that unless a specific case is made out by the claimants with regard to the loss of income/earning capacity from the business inherited by them from the deceased for requirement of special knowledge or lack of experience, there cannot be an order of direction to pay compensation accepting the entire income arising out of the same. The reason, therefore is that it will become an additional income by virtue of order of Court on one hand, and the business will continue to fetch the income on the other.

10. Consequently, this Court finds no substance in the Appeal seeking enhancement of the compensation. Learned Tribunal has rightly taken into consideration the evidence on record to determine the compensation, which is fair and just in the facts of the case.

11. The Appeal stands dismissed accordingly.

(R. M. JOSHI, J.)