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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.751 OF 2024

Branch Manager,
United India Insurance Co. Ltd. …Appellant
V/s.
Smt.Priyanka S. Jadhav & Ors. ...Respondents

Mr.Rahul Mehta i/b KMC Legal for the Appellant.

Mr.Vivek Salunkhe for the Respondents.

CORAM : R.M. JOSHI, J.
DATE : 23RD FEBRUARY, 2026.

P.C. :-

1. By consent of both sides, heard finally at the stage of admission.

2. This appeal filed by the Insurer under Section 173 of the Motor Vehicles Act, 1988 takes exception to the impugned judgment and award dated 20th October, 2022 passed in MACP No.179 of 2015 whereby, the claim filed by the claimants was partly allowed directing payment of compensation of

Rs.50,14,253/- with interest at the rate of 6% p.a. from the date of the Petition till realization of the amount.

3. The present Appeal has been filed by the Insurer on multiple grounds such as the Tribunal having committed error in not considering the contributory negligence on the part of the deceased in occurrence of the accident so also the driving licence of the driver of the offending truck being fake. The Insurer further took exception of the impugned award on the ground that the Tribunal accepted the income of the deceased on higher side and thus ultimately went on to grant excessive compensation.

4. Learned counsel for the Appellant submits that the Insurer by filing the written statement has taken exception to the contentions of the Claimants in the claim Petition. It is his submission that after the decision by the Tribunal, investigation report was received indicating that the driving licence of the offending truck driver to be fake and hence review was sought of the order passed by the Tribunal. It is his submission that the Tribunal has committed error in not considering the fake

evidence absolves the Insurer from the liability of payment of compensation.

5. He further drew the attention of the Court the evidence on record so also the findings recorded by the Tribunal, which according to him are not supported by the evidence led by the Claimants. Insofar as the negligence on the part of the deceased in riding motor cycle is concerned, he tried to place reliance on the evidence of the driver of offending truck who was examined by the Insurer before the Tribunal. Learned counsel for the Insurer submits that in absence of filing of any of any appeal or cross-objection, the claimants are not entitled to claim the enhancement of compensation.

6. Learned counsel for the Claimants supported the impugned judgment and award however, it is his contention that the Tribunal committed error in ignoring the income of the deceased from agriculture. It is his submission that the Tribunal was not justified in rejecting the said claim only on the ground that the said amount - income is not reflected in the income tax returns. In this regard, he drew the attention of the Court to the

evidence on record i.e. 7/12 extract in respect of two different fields i.e. Gat Nos.55/2 and 119/2. It is his submission that the Claimants have proved that the deceased was the owner of the said lands and obviously was earning out of the same. Thus it is his contention that the agricultural income at the rate of Rs.10,000/- per month be accepted for the purpose of computation of compensation for loss of dependency.

7. At the outset, it needs to be recorded that though the arguments are advanced by the learned counsel for the Appellant with regard to evidence in the form of investigation report which indicate about the fake licence of the driver of the offending vehicle, a perusal of the written statement does not show that any such plea was raised before the Tribunal. Needless to say that in absence of the pleadings, any amount of evidence led by the parties deserves to be kept out of the consideration. In view of the same, this Court finds no substance in the submission of the Appellant in that regard.

8. Insofar as the contributory negligence on the part of the deceased in occurrence of the accident is concerned, no

doubt the Insurer examined driver of the offending vehicle, who denied negligence in occurrence of the accident. However, his cross-examination indicates that the deceased was proceeding from his correct side of the road. It is further admitted that the chargesheet came to be filed against the driver. On the basis of said evidence in the form of police papers / chargesheet and evidence of the driver, learned Tribunal has recorded the findings in paragraph 12 of the judgment and award. A perusal of the said findings indicate that they are in consonance with the evidence on record. Hence requires no interference.

9. The Claimants were required to prove the claim with regard to the income of the deceased on preponderance of probabilities in order to prove the income from business, payment place reliance on income tax returns filed by the deceased. Learned Tribunal has rightly accepted the said income tax returns after deducting the tax payable, an amount of Rs.2,66,811/- was considered for the purpose of computation of the loss of income. The Tribunal however, has committed error in ignoring the evidence on record in the form of mutation entry

and 7/12 extract in respect of Gat Nos.55/2 and 119/2. Claimant No.1 in the oral evidence claimed that the deceased was earning Rs.10,000/- per month from agriculture. There is no dispute made by the original opponent to the said evidence. The oral testimony of the Claimants gets support from the documentary evidence on record in the form of mutation entries and 7/12 extract. It is thus proved by the Claimants that the deceased was the owner of the agricultural lands and was earning income from the same. It is further not in dispute that after the death of the deceased, the said lands are transferred in favour of the Claimants. Thus the compensation which they would be entitled is to the extend of the managerial loss on account of the death of the deceased. It is settled position that the managerial loss in respect of the agricultural income would be considered at the rate of 10% to 15%. Having regard to the same, the managerial loss on account of the death of the deceased herein in this case would be considered for determining loss of dependency.

10. It is settled position of law that in view of the

judgment of the Supreme Court in the case of ***Surekha w/o Rajendra Nakhate vs. Santosh s/o Namdeo Jadhav & Ors.,*** reported in ***2021 (16) SCC 467,*** that the Claimants are entitled to seek enhancement of the compensation even without filing an appeal or cross-objection. In view of the above discussions, the Appeal stands dismissed. The claim of the Claimants for enhancement stands partly allowed. The Claimants are entitled to receive the following compensation :-

Sr. No.	Heads	Calculations [Rs.]
i	Income per year [After adding managerial loss @ of 15% on the agricultural income of the deceased to the tune of Rs. 10,000/- per month]	2,68,311/-
ii	Less (-) 1/5 personal expenses	53,663/-
iii	Net Income for Calculation	2,14,648/-
iv	iii] X 16 multiplier	34,34,368/-
v	+ Future prospects 40%	13,73,747/-
vi	Ambulance Charges	5000/-
vii	+ Loss of estate	15,000/-
viii	+ Funeral expenses	15,000/-

ix	*Consortium for Applicant Nos.1 to 4*	1,60,000/-
x	Sub total [vii + viii +ix]	1,90,000/-
xi	10% increase on [x] for every three years i.e. Rs.1,90,000/- *-20% (Since 2015 to 2021)	38,000/-
xii	TOTAL [iv + v + vi + x + xi] Grand Total	Rs. 50,41,115/-+ Rs. 16,859/- (interest as table 2 below) **Rs. 50,57,974**
Less - compensation granted by Tribunal		Rs.50,14,253/-
Enhanced compensation		Rs.26,862/-

11. The original Claimants therefore would be entitled to receive additional compensation of Rs.26,862/- along with interest @ 6% p.a. from date of claim petition till realization of amount.

12. Rest of judgment of Tribunal is to remain unaltered.

13. All pending Applications stand disposed of.

14. The statutory deposit made by the Appellant be transferred to the Tribunal. The said amount, if any, be adjusted towards the compensation.

15. R & P be sent back, if received to the Tribunal.

(R.M. JOSHI, J.)