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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1239 OF 2016
WITH
CIVIL APPLICATION NO.3457 OF 2016
IN
FIRST APPEAL NO.1239 OF 2016

IFFCO Tokio General Insurance Co. Ltd., Branch Office Near Naval Petrol Pump, Daffrin Chowk, Solapur ...Appellant/ Original Opponent No.2.

….Versus….

1. Smt.Jyoti Ajay Avatade,
   Age 30 years, Occupation : Household,
2. Aryan Ajay Avatade,
   Age 5 years, Occupation : Nil
3. Anuj Ajay Avatade,
   Age 2 years, Occupation : Nil
4. Pandharinath Gundiba Avatade,
   Age 65 years, Occupation : Nil
5. Mainabai Pandharinath Avatade,
   Age 60 years, Occupation : Household

   All resident of Patil Galli, 58/1, Dongaon North, Dongaon Taluka, North Solapur – 413002.

   Nos.2 and 3 being minor through their mother – Appellant No.1
6. Mr.Bhagvant Shankar Patil,
   Age Adult, Occupation : Business,
   Resident of 30, Brahmachaitanya Nagar, Vijaypur Nagar, Solapur.

…Respondents

Mr.Abhijit P. Kulkarni for the Appellant.

Mr.R.S. Alange with Mr.Ajit V. Alange for the Respondent Nos.1 to 5.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 4TH DECEMBER, 2019
PRONOUNCED ON : 3RD JANUARY, 2020

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JUDGMENT :-

1. By this first appeal filed under section 173 of the Motor Vehicles Act, 1988, the appellant (original opponent no.2) has impugned the judgment and award dated 3rd December, 2015 passed by the Motor Accident Claims Tribunal, Solapur (for short "Tribunal") in MACP No.173 of 2013 allowing the claims filed by the respondent nos.1 to 5 partly. By consent of the appellant and the respondent nos.1 to 5 the first appeal is heard finally at the admission stage. Some of the relevant facts for the purpose of deciding the first appeal are as under :

2. The appellant was the original opponent no.2, whereas the respondent nos.1 to 5 were the original applicants before the Tribunal. The respondent no.6 was the original opponent no.1 before the Tribunal and was the owner of the Maruti Van (hereinafter referred to as "the offending vehicle").

3. The respondent no.1 is widow of the deceased Ajay Avatade. The respondent nos.2 and 3 are the children of the said deceased Ajay Avatade. The respondent nos.4 and 5 are the parents of the said deceased. It was the case of the respondent nos.1 to 5 that the said deceased Ajay Avatade was an agriculturist and milk vendor. On 6th February, 2012, at about 7.00 p.m., the said deceased was proceeding on his motorcycle bearing registration No.MH – 13 AW 5393 towards his village Dongaon. When he reached near Mahadev Swami Wasti, one Maruti Van bearing

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registration No.MH – 13 N-7917 came from the opposite direction in rash and negligent manner and gave dash to the motorcycle of the said deceased. The said deceased fell down and sustained severe injuries and succumbed to the said injuries in the hospital. It was the case of the respondent nos.1 to 5 that the said offending vehicle gave a dash by coming towards its wrong side and was in a high and excessive speed. The said accident was the out come of the rash and negligent driving on the part of the driver of the offending vehicle. The said offending vehicle was insured with the appellant.

4. The respondent nos.1 to 5 filed the claim application and claimed Rs.50.00 lacs from the respondent no.6, who was the owner of the offending vehicle and the appellant. The respondent no.6 failed to file any written statement. The appellant however, filed its written statement and resisted the claim petition contending that the said deceased himself was driving his motorcycle in rash and negligent manner. There was breach of the terms and conditions of the policy availed by the respondent no.6 from the appellant and thus the appellant was not liable to pay any compensation to the respondent nos.1 to 5. The Tribunal framed five issues for determination. The respondent nos.1 to 5 examined the respondent no.1 and also examined three more witnesses who produced various documentary evidence also on record to prove their case. No evidence was led by the appellant and the respondent no.6 before the Tribunal.

5. The Tribunal rendered a finding that the death of the said

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deceased was caused due to accident dated 6th February, 2012 involving the motorcycle driven by the said deceased and the offending vehicle due to the rash and negligent driving by the driver of the offending vehicle. It is held by the Tribunal that the said deceased had not contributed any negligence while driving his motorcycle. The Tribunal awarded the compensation in the sum of Rs.25,42,000/- with interest at the rate of 9% p.a. from the date of application till realization. The Tribunal also apportioned the amount payable to the respondent nos.1 to 5. Insofar as the respondent nos.2 and 3 are concerned they being minor, the Tribunal directed that an amount of Rs.7,00,000/- each and interest thereon be kept in fixed deposits in any nationalized bank of the choice of the respondent no.1 till they would attain the age of majority. The appellant has impugned the said judgment and award dated 3rd December, 2012 in this First Appeal. The respondent no.6 did not file any appeal against the said judgment and award.

6. Mr.Abhijit Kulkarni, learned counsel appearing for the appellant submits that the driver of the offending vehicle was not responsible for the accident. There was negligence on the part of the said deceased in driving his motorcycle. It is submitted that even after the death of the deceased, the sugar factory had received the sugarcane crop from the land of the deceased. The Tribunal thus could not have held that there was any loss of income to the respondent nos.1 to 5. Learned counsel placed reliance on the judgment of this Court in case of ***Maharashtra State Road***

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Transport Corporation vs. Dilip Popatrao Kate & Ors., 2019(2) Mh.L.J. 315 and in particular paragraphs 6, 7 and 10 to 12. It is submitted by the learned counsel that since the agricultural land of the said deceased remained with the respondent nos.1 to 5, the Tribunal could not have considered the loss of dependency of the respondent nos.1 to 5 upon the death of the said deceased would be Rs.1,12,750/-. He submits that the Tribunal thus could have considered notional income of Rs.6,000/- per month.

7. Learned counsel submits that the Tribunal could have applied multiplier of 15 on the said notional income of Rs.72,000/- per year and could have awarded at the most 40% of the said amount of Rs.10,80,000/- towards future prospects. He submits that out of the said amount of Rs.15,12,000/- 1/3rd amount was liable to be deducted towards personal expenses. The amount of dependency thus would be at the most Rs.10,08,000/-. He submits that on the said amount of Rs.10,08,000/-, the respondent nos.1 to 5 would be eligible to claim Rs.70,000/- towards other heads permitted by the Supreme Court in case of ***National Insurance Company Limited vs. Pranay Sethi & Ors., AIR 2017 SC 5157*** and Rs.80,000/- to the respondent nos.2 and 3 towards love an affection who were the children of the said deceased. He submits that the mother and father of the said deceased were not fully dependent upon him. Only the respondent no.1 who was the wife of the deceased and the respondent nos.2 and 3 who are the children of the said deceased could be considered as dependent for the purpose of considering the

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claim for compensation.

8. It is submitted by the learned counsel that the Tribunal has considered the net yearly profit of Rs.1,50,000/- which ought to have been Rs.72,000/- in accordance with the principles laid down by this Court in case of ***Maharashtra State Road Transport Corporation*** (supra).

9. Mr.Alange, learned counsel appearing for the respondent nos.1 to 5 on the other hand strongly relied upon the findings rendered by the Tribunal and would submit that the respondent nos.1 to 5 had examined various witnesses to prove their case before the Tribunal. The appellant did not examine any witnesse. It is submitted by the learned counsel that the witnesses examined by the respondent nos.1 to 5 had filed 7/12 extract of the property to show the ownership of the said deceased in respect of the land bearing Gat No.177/A/2 admeasuring 3 – H, 32 – R which was standing in the name of the father of the said deceased and the land bearing Gat No.177/A/1 was standing in the name of the legal heirs of the brother of the said deceased. He submits that the Tribunal thus rightly considered the net profit in the hands of the said deceased of Rs.1,50,000/- per year which compensation was on the lower side.

10. It is submitted that the Tribunal rightly deducted 1/4th amount towards personal expenses of the deceased from the said amount of Rs.1,50,000/-. Learned counsel submits that the Tribunal

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rightly considered 40% amount of Rs.1,12,500/- towards future prospects and had rightly applied the multiplier of 15 on the sum of Rs.1,57,500/-. He submits that according to the principles laid down by the Supreme Court in case of ***National Insurance Company Limited vs. Pranay Sethi & Ors.*** (supra), the respondent nos.1 to 5 were also entitled to compensation at Rs.70,000/- under different heads.

11. Learned counsel for the respondent nos.1 to 5 placed reliance on the judgment of the Supreme Court in case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors., AIR 2018 SC 892*** in support of the submission that the respondent nos.2 and 3 being the children of the said deceased would be entitled to compensation at the rate of Rs.40,000/- each towards love an affection. Though learned counsel initially pressed the claim for filial consortium in the sum of Rs.80,000/- to the respondent nos.4 and 5 who were parents of the said deceased by relying upon the judgment of the Supreme Court in case of ***Magma General Insurance Co. Ltd.*** (supra), learned counsel did not press the said claim in view of the learned counsel for the appellant pointing out paragraph 8.7 of the said judgment stating that only in case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

12. Insofar as the submission of the learned counsel for the

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appellant that the Tribunal could not have considered the deduction at 1/4th from the net yearly income and ought to have deducted 1/3rd of the net yearly income is concerned, learned counsel for the respondent nos.1 to 5 placed reliance on the judgment of the Supreme Court in case of ***Sarla Varma vs. DTC (2009) 6 SCC 121.*** He also relied upon the judgment of the Supreme Court in case of ***Munnalal Jain & Anr. vs. Vipin Kumar Sharma & Ors. (2015) 6 SCC 347*** and in particular paragraph 2 in support of the submission that in absence of any statutory and a strait-jacket formula, there are bound to be grey areas despite several attempts made by the Supreme Court to lay down the guidelines. Compensation would basically depend on the evidence available in a case and the formulas shown by the Courts are only guidelines for the computation of the compensation.

13. Learned counsel for the respondent nos.1 to 5 placed reliance on the judgment of the Division Bench of this Court in case of ***National Insurance Co. Ltd. vs. Vaishali Harish Devare & Ors., 2023(1) Mh.L.J. 411*** and in particular paragraph 16 in support of the submission that though the respondent nos.1 to 5 have not filed any cross appeal or cross objection, since it is the duty of the Court to grant just compensation to the victims, this Court has ample power to allow additional claims or enhance the claims not fully awarded by the Tribunal.

14. Learned counsel placed reliance on the judgment of this

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Court in case of ***Reliance General Insurance Co. Ltd. vs. Sujata Sadanand Mule & Ors. 2018 SCC OnLine Bom.1109*** and in particular paragraphs 3 and 15 and 17 and would submit that though there is no concrete evidence regarding earning of the said deceased, the Court has to make a reasonable estimate of earnings having regard to the age, nature of occupation etc. He submits that in this case the said deceased was self-employed and thus the net yearly income considered by the Tribunal though on lower side and not impugned by the respondent nos.1 to 5 cannot be interfered with by this Court. He also placed reliance on the judgment delivered by this Court on 23rd October, 2015 in case of ***National Insurance Company Limited vs. Meenakshi Rajendra Sathe & Ors.*** in First Appeal No.193 of 2014 and in particular paragraphs 5 to 7 in support of the submission that the income of agriculturist who was the owner of the agricultural land with similar facts was considered as of Rs.9,000/- per month. Learned counsel submits that the respondent nos.1 to 5 thus would be entitled to recover a sum of Rs.25,12,500/- and would be entitled to interest thereon at the rate of 9% p.a. from the date of application till realization.

15. Learned counsel for the appellant in rejoinder submits that if this Court comes to the conclusion that the driver of the offending vehicle was driving the offending vehicle in rash and negligent manner and he was solely responsible, the respondent nos.1 to 5 would be entitled to recover the compensation only in the sum of Rs.11,58,000/- plus interest thereon and not Rs.25,42,000/-

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as awarded by the Tribunal. He submits that no additional claim can be awarded by this Court in view of the respondent nos.1 to 5 to not having filed any cross appeal or cross objection.

REASONS AND CONCLUSION

16. The Tribunal framed five issues. The respondent nos.1 to 5 had examined 4 witnesses before the Tribunal to prove their case and produced several documents including medical record. The evidence produced by the respondent nos. 1 to 5 including the spot panchanama indicates that there was head on collusion as could be seen from the fact that both the vehicles were substantially damaged. The witnesses examined by the respondent nos. 1 to 5 proved that towards left side of the road there was a ditch. It was thus not possible for the said deceased to use the kaccha road. Though various suggestions were put to the witnesses examined by the respondent nos. 1 to 5 by the appellant, the appellant admittedly did not examine the driver of the offending vehicle to prove the contributory negligence of the said deceased.

17. In my view, the finding thus rendered by the Tribunal that the death of the said deceased was caused on account of accident dated 6th February, 2012 by the offending vehicle due to rash and negligent driving of the driver of the offending vehicle does not warrant any interference. It is also rightly held that the said deceased had not contributed to the said accident, in any manner whatsoever. I

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do not find any infirmity with the said finding rendered by the Tribunal.

18. In so far as the quantum of the claim awarded by the Tribunal is concerned, a perusal of evidence produced by the respondent nos. 1 to 5, which is summarized by the Tribunal in paragraph 21 of the impugned judgment and award indicates that the respondent nos. 1 to 5 had filed 7/12 extracts of various lands on record. In so far as the Gat No.171/A/3 admeasuring 3H 22R is concerned, the same was standing in the name of the respondent nos. 1 to 3. The land bearing Gat No. 177/A/2 admeasuring 3H 21R was standing in the name of the brother of the said deceased. The land bearing Gat No.236/1 admeasuring 3H 32R was standing in the name of the father of the said deceased. The land bearing Gat No.177/A/1 was standing in the name of the legal heirs of the brother of the said deceased. The respondent no.4 had three sons, Ajay, Dhananjay and Deepak. There was separation of land between them.

19. The Tribunal considered the cross-examination of the witness examined by the respondent nos. 1 to 5 and held that the brother-in-law and father-in-law of the respondent no.1 were residing separately from each other. The said witness also admitted in his cross-examination that income of Rs.10,00,000/- was the income of the entire joint family. The Tribunal, in my view, thus rightly divided the income of the entire joint family of Rs.10,00,000/- in four parts and held that the income of the separate family of the said deceased

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would be Rs.2,50,000/-. The Tribunal thereafter deducted the amount of expenses of cultivation, fertilizers, etc. and considering the size of the land and income put-forth by the respondent nos. 1 to 5, deducted Rs.50,000/- towards expenses. The Tribunal also considered that it was necessary to make supervision to exert personally that work could be done either by the owner himself or had to be get done from someone and derived the net profit at Rs.1,50,000. Out of the said amount of Rs.1,50,000/-, the Tribunal deducted 1/4th thereof towards personal expenses of the said deceased and derived the amount at Rs.1,12,750/- towards loss of dependency.

20. The Tribunal adverted to the judgment of Supreme Court in case of ***State of Haryana and Anr. v/s. Jasbir Kaur and Others, (2003) 7 SCC 484*** in which it was held that the dependency in case of agricultural income cannot be calculated by regular modes of income like salary of employee or of self employment. In case of death of an agriculturist, his heirs succeeds the agricultural land and can get the yield from it. The only loss of the heirs is that instead of the deceased someone else is required to get the work of cultivation done or to cultivate the land personally. In case of death of agriculturist, the loss of heirs is that they are required to engage another person for cultivating the land. Thus charges or remuneration of other person is infact the loss or can be said to be dependency. After applying the principles laid down by the Supreme Court in case of ***State of Haryana and Anr.*** (supra), the Tribunal derived the loss

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of dependency at Rs.1,12,750/- per year.

21. Learned counsel for the appellant could not demonstrate as to how the findings rendered by the Tribunal in respect of the ownership of the land set out in paragraph 21 of the impugned judgment and award and the share of the respondent nos. 1 to 5 in those lands were incorrect. In so far as the judgment of this Court in case of ***Maharashtra State Road Transport Corporation vs. Dilip Popatrao Kate & Ors.*** (supra) relied upon Mr. Kulkarni, learned counsel for the appellant is concerned, a perusal of the said judgment indicates that in that matter no documents were produced on record by the applicants to show that the deceased was having any agricultural land in his name and he was getting income from yield like sugarcane, wheat, groundnut, etc. The learned counsel for the applicants in that matter had conceded that there should be just and reasonable compensation payable to the claimants towards the loss caused following untimely death of their family member. The applicants in that matter did not dispute that the they had not produced any documents on record to show that the said deceased was having agricultural land in his name. The said judgment of this Court, in my view, is clearly distinguishable in the facts of this case and would not assist the case of the appellant.

22. There is no substance in the submission of the learned counsel for the appellant that the Tribunal thus could have considered only the notional income of Rs.5,000/- p.m. in the facts of

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this case. In my view, the computation of loss of dependency derived by the Tribunal was after considering the oral and documentary evidence led by the respondent nos. 1 to 5 and does not disclose any infirmity.

23. As far as the quantum of claim for compensation based on various judgments and based on the evidence led by the respondent nos. 1 to 5 is concerned, both the parties tendered their respective calculation before this Court. There is no dispute raised by the appellant that the respondent nos. 1 to 5 would be entitled to claim 40% of the yearly income after applying multiplier of 15 towards future prospect. There is also no dispute that two of the respondents who are children of the said deceased would be entitled to claim Rs.40,000/- each towards parental consortium and all the respondents would be entitled to claim Rs.70,000/- towards conventional heads.

24. In so far as the filial consortium claimed by the respondent nos. 1 to 5 is concerned, in my view, since the said deceased was not a bachelor at the time of his death, the parents would not be entitled to claim any filial consortium. The Supreme Court in case of ***Magma General Insurance Co. Ltd.*** (supra) has held that in case where the parents have lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. In my view, the said part of the said judgment would clearly apply to the facts of this case. Thus,

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claim towards filial consortium demanded by the respondent nos. 4 and 5 cannot be considered.

25. In view of the principles laid down by the Supreme Court in case of ***National Insurance Company Limited vs. Pranay Sethi & Ors.*** (supra), the respondent nos. 1 to 5 would be entitled to recover Rs.15,000, Rs.40,000/- and Rs.15,000/- towards loss of estate, loss of consortium and funeral expenses respectively under conventional heads. There is no merit in the submission of the learned counsel for the appellant that the Tribunal ought to have deducted 1/3rd of the yearly income towards personal expenses. In my view, the Tribunal has rightly deducted 1/4th from the yearly income towards personal expenses considering the age and the number of dependents. The judgment of Supreme Court in case of ***Sarla Varma*** (supra) would apply to the facts of this case.

26. In so far as the submission of the learned counsel for the appellant that the respondent nos. 1 to 5 not having filed any cross-objection or separate appeal for enhancement of compensation is concerned, this Court has already decided this issue in case of ***United India Insurance Company Limited v/s. Smt. Kunti Binod Pande*** in First Appeal No. 5735 of 2016 delivered on 17th December, 2019 and has held that the appeal proceedings being in continuation of the proceedings before the Tribunal and since it is duty not only of the Tribunal but also of the Appellate Court to see that 'just compensation' is awarded to the victims under the provisions of

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Motor Vehicles Act, 1988 filing of separate appeal or cross-objection by the claimants for enhancement of claim is not required. The principles laid down by this Court in the said judgment would apply to the facts of this case. I am respectfully bound by the said judgment.

27. I do not find any infirmity in the impugned judgment and award passed by the Tribunal except to the extent of amount of compensation awarded by the Tribunal towards loss of love and affection towards children in the sum of Rs.2,00,000/-, loss of love and affection to the Respondent nos. 4 and 5 in the sum of Rs.2,00,000/-, Rs.1,00,000/- towards loss of estate, Rs.1,00,000/- towards loss of consortium. Applying the principles laid down by the Supreme Court in case of ***Magma General Insurance Co. Ltd.*** (supra) and ***National Insurance Company Limited vs. Pranay Sethi & Ors.*** (supra), the compensation awarded to the respondent nos. 1 to 5 is reduced accordingly.

28. I therefore pass the following order:-

(i) The appellant is liable to pay the amount of compensation of Rs.25,12,500/- with interest @ 9% p.a. from the date of application till realization of the total amount.

(ii) In so far as the share of the respondent nos. 2 and 3 who are minor is concerned, their 2/5th share shall be invested in the Fixed Deposit of any Nationalized Bank till the

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period they attain the age of majority. The respondent no.1 being the Mother of the respondent nos. 2 and 3 would be however entitled to withdraw the interest earned on the said Fixed Deposit for the purpose of maintenance of the respondent nos. 2 and 3, till they attain the age of majority. Upon attaining the age of majority, the respondent nos. 2 and 3 would be entitled to withdraw the entire principle amount that is directed to be deposited in the Fixed Deposit.

(iii) The respondent nos. 1 to 5 would be entitled to recover the decreetal amount awarded by the Tribunal as modified by this judgment from the amount deposited by the appellant before the Tribunal.

(iv) If there is any shortfall in recovery of the decreetal amount, the appellant shall deposit the balance amount upon computation of such shortfall by M.A.C.T. within two weeks from the date of computation. If there is any surplus amount left after payment of decreetal amount to the respondent nos. 1 to 5 in the manner referred to aforesaid, the same shall be refunded to the appellant.

(v) The impugned judgment and award dated 3rd December, 2015 is substituted by this judgment.

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(vi) First Appeal is disposed off on aforesaid terms. There shall be no order as to costs.

(vii) The parties as well as M.A.C.T. to act on the authenticated copy of this judgment.

(R.D. DHANUKA, J.)

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