

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD**

FIRST APPEAL NO. 363 OF 2003

Kalawati w/o Rajendrasingh Tiwari & Ors.

... Appellants

VERSUS

Kirtikumar s/o Vishnudasji Bhutada

... Respondent

.....

Mrs Anjali Dube-Bajpai, Advocate for the appellants
Mr S. G. Chapalgaonkar, Advocate for respondent No. 3

.....

CORAM : **S. V. GANGAPURWALA, J.**
DATE : **3RD SEPTEMBER, 2015.**

PER COURT:

1. The present applicants had filed the claim petition u/s 166 of the Motor Vehicles Act, seeking compensation on account of the death of Rajendrasingh.

2. The Tribunal partly allowed the claim petition. Aggrieved thereby, the present appeal.

3. Mrs Dube-Bajpai, the learned Counsel for appellants strenuously contends that, the Court has held the deceased Rajendrasingh to be negligent to the extent of 25%. The deceased was driving a scooter. The car coming from back side gave a dash to the said scooter. As such, when the other vehicle has given dash to the scooter driven by deceased, it cannot be said that the deceased had also contributed to the accident. The aspect of the contributory negligence has been improperly considered. The Court has only presumed certain

things without any evidence on record. The Court has not properly appreciated the spot panchanama in its correct perspective.

4. The learned counsel further submits that the deceased was a businessman. Even the accounts filed for the year 1999-2000 would show that, the turnover was much more i.e. almost Rs. 10,000/- per day. The learned Counsel submits that, the Court ought to have considered the income as per the documents filed on record. The learned Counsel further submits that, towards the non-pecuniary damages also, very paltry sum has been awarded i.e. Rs. 60,000/-. The learned Counsel relied upon the judgment of the Hon'ble Apex Court in the case of **Asha Verman Vs. Maharaj Singh** reported in (2015) 42 SCD 537 and submits that, each claimants No. 1 to 4 would be entitled for Rs. 1,00,000/- on account of loss of love and affection and claimants 5 and 6 Rs. 50,000/- each. In addition, the applicants also would be entitled for compensation under the head of loss of estate so also loss of consortium.

5. Mr Chapalgaonkar, learned Counsel for the respondent No. 3 submits that, the accident is of the year 1997. The price index as in the year 1997 would be required to be considered while computing the income. In 1997, Rs. 1,500/- could be considered as notional income. In fact, the Tribunal has considered the income on the higher side. According to the learned Counsel, considering the accident of the year 1997, the principles laid down by the Apex Court in the year 2015 would not be made applicable. There is no straitjacket formula to award the non-pecuniary damages. According to him, the negligence part has been properly considered by the court. The claimants did not examine the pillion rider, who would have been the best witness.

6. With the assistance of the learned Counsel, I have gone through the judgment and the record and proceedings.

7. The claimants ought to have examined the pillion rider of the scooter, who could have been the best witness to depose about the rash and negligent act of the driver of the car. The said witness has not been examined. In absence of any eye-witness, the Court is required to place reliance on the principle of *Res ipsa loquitur*. The Tribunal has exactly relied upon the said principle by considering the position of the vehicles and the damages caused to the vehicles in a particular direction. I do not think the same requires any interference by this Court.

8. As far as income is concerned, the evidence is on record to show that the deceased was running a grocery shop as his business. No doubt, the accounts of the year 1999-2000, which are submitted by the brother of the deceased cannot be considered for computing the income. However, considering that the deceased was a businessman, notional income of Rs. 3,000/- per month is required to be considered as is held by Hon'ble apex Court in catena of judgments. As such, I hold the monthly income as Rs. 3,000/- per month. The age of the deceased was 45 years, the multiplier applicable is of 13. As such, the total loss of income would be Rs. 4,68,000/-. There are six claimants. I would deduct 1/10th towards the personal expenses. Towards loss of dependency after deducting the amount of personal expenses, the same would be Rs. 4,00,000/-, 25% amount will have to be deducted towards negligence. The same would come to Rs. 3,00,000/-. Towards non-pecuniary damages also, a very paltry sum has been awarded. Of

course, the amount as has been awarded by the Apex Court in the case of Asha Verman referred to above, cannot be awarded considering the time lag and the fact that the accident is of the year 1997.

9. I award Rs. 2,00,000/- towards non-pecuniary damages i.e. Rs. 50,000/- each on account of loss of love and affection to claimants No. 1 to 4. As such, the claimants would be entitled for total compensation of Rs. 5,00,000/-.

10. In the result, the order passed by the Tribunal is modified. The respondents shall jointly and severally pay the amount of compensation of Rs. 5,00,000/- to the claimants along with interest @9% from the date of petition till realization. The amount already paid shall be adjusted as on the date the said amount is paid.

11. First Appeal stands disposed of in above terms with no order as to costs.

[S. V. GANGAPURWALA, J.]

sgp