

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1015 OF 2015
WITH
CIVIL APPLICATION NO.3009 OF 2015

The New India Assurance Company Limited ... Appellants

vs.

Sushila Haushila Sinha and Others ... Respondents/
Ori. Applicants

Mr. H.B. Takke i/b. Mr. Milind More, for the Appellants.

Mr. S.D. Chavan, for Respondent Nos. 1 and 2.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **19th NOVEMBER, 2015**

P.C.:

. Admit. Heard finally at the stage of admission, by consent of both the parties.

2. Perused the notes of evidence and the documents which are filed by both the parties. This Appeal is preferred against the judgment and order dated 22nd April, 2015 passed by the Chairman, Motor Accident Claims Tribunal, Thane in M.A.C.P. No. 66 of 2008.

3. The Applicants i.e. Respondent Nos. 1 and 2 are the parents of the deceased Ajitkumar who was 24 years old at the time of the accident. On 27th April, 2007 Ajitkumar has attended his duty and started returning to home at about 23.30 hours on the motor-cycle bearing No. MH-05-X-6976. However, his motor-cycle was dashed against the motor trailer bearing No. MH-06-K-1524 and Ajitkumar died on the spot.

4. The application was made for compensation under Section 166 of Motor Vehicles Act, 1988. The learned Chairman of the M.A.C.T., Pune allowed the said application partly and granted the compensation of Rs. 11,80,000/- exclusive no fault liability amount with interest at the rate of 7.5% p.a. jointly severally against the opponents. The insurance company being aggrieved by the said judgment and award, filed this Appeal.

5. The learned counsel for the Appellants has submitted that the learned Tribunal has committed an error in appreciating evidence especially the fact of negligence on the part of the deceased and the evidence on the point of monthly remuneration of the deceased. The

learned counsel submitted that as per the spot panchanama, the motor-cycle was entangled with the rear side tyre of the trailer. It shows that the driver of the trailer was not at fault. The deceased came from behind and dashed the trailer as he was driving the vehicle in rash and negligent manner. The learned Tribunal ought to have considered 100% negligence on the part of the deceased and rejected the claim of the Applicants. He further submitted that no evidence is adduced by the original claimants in respect of salary of the deceased and trial Court has committed error in explaining the salary of the deceased as Rs. 5,000/- p.m. He submitted that the Tribunal should have consider the salary of the deceased as Rs. 3,000/- p.m. notionally. He further submitted that the Tribunal committed an error in holding that 1/3 amount to be deducted towards the personal expenditure. He submitted that the deceased was a bachelor and therefore 50% amount ought to have been deducted towards the personal expenditure.

6. The learned counsel for the Respondents opposed this Appeal and submitted that the Respondents have stepped in box and gave evidence. They stated that the income of the deceased was Rs.

5,000/- p.m. The learned counsel supported the appreciation of the evidence of the learned Tribunal.

7. After going through the judgment, the documents especially the spot panchanama and the evidence, I am not inclined to accept the submissions of the learned counsel for the Appellant/ Insurance Company on the point of negligence of the deceased. It is to be noted that the vehicle insured was a trailer and the accident has taken place at around 23.30 hours when it was dark. The vehicle may be without rear side lamps and the manner in which the accident has taken place, it appears that the trailer was not visible. It was necessary for the owner of the trailer to enter the box and give evidence in the present case but, no evidence is tendered by the Insurance Company. Therefore, the trailer may not be visible in absence of the tail lamps or the reflectors.

8. The original complainant has stepped in the box and he has stated the age of the deceased 24 years old. The Tribunal has rightly stated that the parents are the best person to tell the age of the child and no documents are required for it. In para 13 of the

judgment, it is mentioned that the deceased was drawing a salary of Rs. 5,000/- p.m. and no documentary proof is produced. However, the nature of work of the deceased is to be considered. He was working as a Supervisor in Prashant Freight Forwarders Private Limited company since 2007 and such salary can be drawn by a Supervisor working in a Freight company. The amount of Rs. 5,000/- is not an excess amount which is considered as a monthly salary of the deceased Ajitkumar.

9. The only point which appeals to me that the deceased was a bachelor and therefore the Tribunal should have consider one-half amount to be deducted towards the personal expenditure. It is made clear that there is no hard and fast rule in respect of deduction. However, it is pointed that the father of the deceased was 50 years old at the time of filing of the application.

10. Hence, the Appeal is partly allowed.

11. One-half amount is to be deducted towards the personal expenditure and the compensation awarded under other heads is not

disturbed. The calculation of the compensation is as follows:

Sr.	Particulars	Amount
1.	Funeral Exp.	10,000/-
2.	Loss of Estate	50,000/-
3.	Loss of affection	1,00,000/-
4.	Loss of income	7,65,000/-
	Total	9,25,000/-

12. The applicants are allowed to withdraw the entire amount by producing their proof of identity.

13. In view of the above, First Appeal and the Civil Application stands disposed of.

(MRS.MRIDULA BHATKAR, J.)