

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2242 OF 2014

1. Ashatai Annasaheb Sahane
Age 32 years, Occ. Household,
2. Shubham Annasaheb Sahane
Age 14 years, Occ. Education
3. Pratiksha Annasaheb Sahane
Age 12 years, Occ. Education

Appellant Nos. 2 and 3 minors
through their legal guardian
i.e appellant No.1

4. Murlidhar Sukhdeo Sahane
Age 61 years, Occ. Agriculture

All R/o. Ranjangaon Deshmukh
Tq. Kopargaon, District Ahmednagar

...Appellants

versus

1. Shri Irfan Jamaluddin Shaikh,
Age 30 years, Occ. Business,
R/o. 612, Patelwada,
At Post. Kuran, Tq. Sangamner
District Ahmednagar

2. United India Insurance Co. Ltd.
Office: Parag Plaza
2nd floor, Bazar Road,
Shrirampur, Tq. Shrirampur
District Ahmednagar

...Respondents

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Mr. N.C. Garud, advocate for the appellants
Mr. A.B. Gatne, advocate for respondent No.2

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CORAM : V. K. JADHAV, J.
DATED : 8th JULY, 2016

PER COURT:-

1. By consent heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 17.6.2014 passed by the Member, Motor Accident Claims Tribunal, Kopergaon in M.A.C.P. No.117 of 2011, the original claimants preferred this appeal to the extent of quantum.
3. Brief facts giving rise to the present appeal are as under:-
 - a) On 16.11.2011 deceased Annasaheb had gone to Sangamner for purchasing spare parts required for repairs of bicycles and started returning to his village Ranjangaon Deshmukh by riding the motor cycle. On way, at about 9.30 p.m. within the limits of village Karule, a tempo bearing registration No. MH-17-K-5935 came from opposite directions by wrong side in high speed and gave dash to the motor cycle being driven by deceased Annasaheb. Deceased Annasaheb died on way to the hospital. Accident alleged to have been occurred due to negligence on the part of tempo and its driver. Deceased Annasaheb was running shop of bicycle repairs and he was also personally

cultivating his agriculture land. From all sources, his monthly income was more than Rs.10,000/-. The claimants are entirely depending upon his income. Thus, the claimants had preferred M.A.C.P. No. 117 of 2011 before the Member M.A.C.T. Kopargaon for grant of compensation under various heads.

- b) Respondent No.1, owner of the tempo, had strongly resisted the claim by filing written statement at Exh.11. It is denied that the driver of tempo was driving the tempo in rash and negligent manner. It is contended that deceased Annasaheb was negligent while driving the motor cycle and he is responsible for the accident. Alternatively, it is contended that the vehicle tempo is insured with respondent No.2 at the relevant time and thus respondent No.2 is liable to satisfy the claim.
- c) Respondent No.2 insurer has also resisted the claim by filing written statement at Exh.14. Respondent No.2 insurer has denied all relevant facts. Further, the income of Annasaheb is also denied. It is contended that Annasaheb was negligent and he himself is responsible for the accident. It is also contended that the driver of tempo was not negligent at the time of accident.

d) The parties to the claim petition led oral as well as documentary evidence in support of their rival pleadings. The learned Member by its judgment and order dated 17.6.2014 partly allowed the claim petition with proportionate costs and thereby directed respondent Nos.1 and 2 jointly and severally to pay the compensation of Rs.3,28,750/- including no fault liability as compensation to the claimants with interest at the rate of 8% p.a. from the date of filing of petition till realization. Being aggrieved by the said judgment and award to the extent of quantum, the claimants preferred this appeal.

4. Learned counsel for the appellants submits that the Tribunal has erroneously held that deceased Annasaheb has contributed the negligence and also contributed the accident. The learned Member of the Tribunal without considering the size of the vehicles involved in the accident, held that both the vehicles are equally responsible. The Tribunal ought to have considered the size of vehicles and accordingly determined the respective contribution of negligence of vehicles involved in the accident. Deceased Annasaheb was running bicycle and puncture repair shop. He was also personally cultivating his agriculture land. Even though the claimants have examined Sarpanch of village to substantiate their contention that deceased

Annasaheb was personally running bicycle and puncture repair shop, the same is not considered by the Tribunal. Even the Tribunal has not considered at all the income of deceased Annasaheb from his agriculture source. Deceased Annasaheb was running the said shop and since that was the only shop in the entire village, he was earning more than Rs.10,000/- p.m. from the said shop. The Tribunal has not considered future prospects of deceased Annasaheb. Learned Member of the Tribunal has awarded meager amount of compensation under non pecuniary heads.

5. Learned counsel for the respondent insurer submits that the Tribunal has awarded just and reasonable compensation. The learned Member of the Tribunal has considered the evidence of Sarpanch on the point that the said shop is not registered with the Gram Panchayat. Furthermore, there is no evidence in the form of account/register to show that deceased Annasaheb was earning Rs.200 to Rs.300/- per day from his bicycle shop. So far as the agriculture income is concerned, even after death of Annasaheb, the corpus of land remained as it is and there cannot be any loss in agriculture income as such. As per the contents of spot panchnama, the width of road is 18 feet on the spot where the accident took place, having 5 feet mud pan on both sides of the road. Further, the accident seems to have occurred at the center of the road.

Considering the same, the Tribunal has rightly come to the conclusion that both the vehicles are equally responsible for the accident and the respective drivers have contributed the negligence. Learned counsel submits that the Tribunal has awarded just and reasonable compensation under non pecuniary heads. There is no substance in the appeal and thus appeal is liable to be dismissed with costs.

6. It appears that none of the parties examined any eye witness to the accident. Consequently, learned Member of the Tribunal has placed reliance on the contents of spot panchnama Exh.24. However, considering the size of the vehicles involved in the accident, the Tribunal should have considered the negligence on the part of rider of motor cycle comparatively less to the driver of tempo, even though from the contents of spot panchnama it appears that the accident occurred at the center of the road. It is unlikely on the part of rider of motor cycle to invite the accident by riding the motor cycle at the center of road. It cannot be ignored that the tempo was being driven from the center of the road and considering the size of the tempo, obviously it occupies more space than the motor cycle. In view of above, in my opinion, the driver of tempo has contributed negligence to the extent of 60% whereas deceased Annasaheb contributed negligence to the extent of 40%.

7. It further appears that the Tribunal has considered that deceased Annasaheb was running bicycle shop. Even though the claimants have examined Sarpanch of the village as witness to substantiate their contention that deceased Annasaheb was running a bicycle shop, on the point of income from the said shop, the evidence of said witness is not helpful to them. The claimants have not brought on record any document in the form of accounts or at least a register maintained by deceased Annasaheb in the said shop to show his monthly income. In absence of that the Tribunal has rightly considered the income of deceased Annasaheb as Rs.4500/- p.m. from his bicycle shop. The claimants have produced on record 7x12 extract of agriculture land owned and possessed by deceased Annasaheb, the same is marked at Exhibit 30 and 31. On perusal of the same, it appears that deceased Annasaheb was personally cultivating the said land. It is true that corpus of land remained as it is even after death of Annasaheb. However, claimant No.1 being widow, claimant Nos. 2 and 3 are minor children and claimant No.4 old aged father of deceased Annasaheb, have certainly lost supervision and skill of cultivation of land by deceased Annasaheb. In view of above, the Tribunal should have considered the loss to some extent from agriculture land. Thus, considering the total land owned and possessed by deceased Annasaheb, in my opinion, the

claimants have lost income of Rs.500/- p.m. on account of lack of supervision and personal skill of deceased Annasaheb while cultivating the agricultural land. Furthermore, it appears that the Tribunal has awarded Rs.5000/- for loss of consortium only, Rs.2000/- towards funeral expenses, Rs.2500/- as loss of estate. It also appears that the Tribunal has not awarded any amount for loss of love and affection for minor claimant Nos. 2 and 3. Thus, recalculation of compensation amount is required to be done.

8. In view of above discussion, the income of deceased Annasaheb from all sources is Rs.5000/- p.m. If $\frac{1}{4}$ th of the amount is deducted towards his personal expenses, the monthly income comes to Rs.3750/-, corresponding to Rs.45,000/- per annum. There is no dispute that deceased Annasaheb was aged 31 years at the time of his accidental death. Learned Member of Tribunal has correctly applied multiplier as 16. Thus, applying multiplier 16, the annual loss of income of deceased Annasaheb comes to Rs.7,20,000/- (Rs. 45,000 x 16= 7,20,000/-). The claimant No.1 was 29 years old at the time of accidental death of her husband Annasaheb. In view of the same, claimant No.1 is entitled to Rs.25,000/- for loss of consortium. In addition to this, the claimants are entitled for an amount of Rs.10,000/- towards funeral expenses and Rs.5000/- for loss of estate. The minor claimants i.e. claimants Nos. 2 and 3 are entitled

to Rs.20,000/- (Rs.10,000/- each) for loss of love and affection. Thus, the total amount of compensation comes to Rs.7,80,000/-. Deceased Annasaheb had contributed the negligence to the extent of 40%. Thus, the claimants are entitled for total compensation of Rs.4,68,000/-.

9. In view of above discussion, the break of compensation which can be broadly categorized as under:-

i)	Loss of future income/dependency	Rs. 7,20,000.00
ii)	Loss of consortium	Rs. 25,000.00
iii)	Towards funeral expenses	Rs. 10,000.00
iv)	Loss of estate	Rs. 5,000.00
v)	Towards love and affection (for minor claimant Nos. 1 and 2 Rs.10,000/- each)	Rs. 20,000.00

		Total Rs. 7,80,000.00
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As stated above, deceased Annasaheb has contributed the negligence to the extent of 40%. Thus, the claimants are entitled for total compensation of Rs.4,68,000/-.

10. So far as addition of income towards future prospects is concerned, there is no pleading and evidence to that effect. The

claimants consequently are not entitled for any addition by considering the future prospects.

11. In view of above discussion, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed.
- II. The judgment and award dated 17.6.2014 passed by the learned Member, M.A.C.T. Kopargaon in M.A.C.P. No. 117 of 2011 is hereby modified in the following manner:
“The respondent Nos. 1 and 2 jointly and severally do pay Rs.4,68,000/- (Rupees Four lacs sixty eight thousand only) including no fault liability, as a compensation to the claimants with interest at the rate of 9% p.a. from the date of filing of petition till realization of amount.”
- III. Rest of the judgment and award passed by the Tribunal stands confirmed.
- IV. Award be drawn up in tune with the modification, as aforesaid.

- V. First appeal is disposed of.
- VI. Needless to state that the amount already paid to the claimants be adjusted.

(V. K. JADHAV, J.)

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