

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Amk

FIRST APPEAL NO. 986 OF 2014

United India Insurance Co. Ltd.	]	
Motor third party Hub	]	
Union Co-operative Insurance Building,	]	
Fort, Mumbai - 400 001.	]	.. Appellant

Vs.

- | | | | |
|----|-------------------------------------|---|----------------|
| 1. | Smt. Naseembee Sayyed Kattimiya |] | |
| | Aged about 28 years, |] | |
| 2. | Miss Mumtaz Sayyed Kattumiya |] | |
| | Aged about 15 years, |] | |
| 3. | Kumar Irfan Sayyed Kattumiya |] | |
| | Aged about 13 years, |] | |
| 4. | Kumari Afrin Sayyed Kattumiya |] | |
| | Aged about 3 years, |] | |
| 5. | Kumari Fareen Sayyed Kattumiya |] | |
| | Aged about 3 years, |] | |
| | All r/at Kranti Nagar, Galli No.13, |] | |
| | Akash Ganga Road, Raboli, |] | |
| | Thane - W - 400 601. |] | |
| 6. | Shri Bhagwan Trimbakrao Shinde |] | |
| | R/at Post - Bharumba, Tal.- Kannad, |] | |
| | Dist.- Aurangabad. |] | .. Respondents |

Mr. Mehta i/b KMC Legal Venture for the Appellant.
Mrs. Rina Kundu for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
DATE : 6th OCTOBER, 2016.

ORAL JUDGMENT

1. Admit.

2. Heard learned counsel for the parties finally at the stage of admission itself as the issue involved in this appeal is very short one.

3. This appeal is preferred by the original respondent No.2- United India Insurance Co. Ltd. challenging the Judgment and Award dated 01.09.2010 passed by the M.A.C.T., Thane in M.A.C.P. No. 526 of 2006.

4. The respondents herein are the legal heirs of deceased Sayyed Kasam Kattumiya. Respondent No.1 Smt. Naseembee is the widow of deceased, whereas, respondent Nos.2 to 5 are the minor daughters of the deceased. It was alleged by them that at the time of accident on 29.04.2006, the deceased Sayyed Kasam Kattumiya was running the age of 35 years and he was working as a contractor with Sky Lark Construction Pvt. Ltd., earning Rs.3,00,000/- per annum. On the date of incident while he was proceeding on his motor cycle along Mumbai-Agra Highway within the limit of village Kasane, Taluka and District Thane, the Motor Car bearing No. MH-21 C-0215 proceeding from opposite direction in a high speed and in a rash and negligent manner gave dash to the motor cycle of the deceased. As a result, the deceased died on the spot. The claimants, therefore, preferred the petition seeking compensation amount of Rs.35,00,000/- under different heads and on various scores.

5. This claim petition came to be resisted by the appellant-

Insurance Company alone vide written statement at Exhibit 21, as the respondent No.6, the owner of the offending vehicle, the motor car remained absent despite due service of notice and hence the petition proceeded ex parte against him.

6. It was contended by the appellant before the Trial Court that the accident has occurred due to sole negligence on the part of the deceased as he was driving the motor cycle on the wrong side of the road and hence on this ground itself the claim-petition was liable to be dismissed. It was further contended therein that the claim made by the legal heirs was excessive and on higher side.

7. In support of their claim-petition, first claimant examined herself and also relied upon the various documents like, the FIR and the spot panchnama. Relying thereon, the Trial Court held that the accident has occurred due to negligence of the car driver and the deceased was not responsible therefor. As to the quantum of compensation, the claimants had examined one witness, by name, Smt. Amisha Anil Kubal, who was working with Sky Lark Construction Pvt. Ltd. and she has deposed that from the income of the deceased, TDS of Rs.10,082/- was deducted for the year 2005-06, whereas the TDS of Rs.11,694/- was deducted for the year 2003-04. In the light of this evidence, the Trial Court awarded the compensation to the tune of Rs.9,07,000/- with interest @ 7% per annum.

8. While challenging this impugned Judgment and Award of the Trial Court, the submission of learned counsel for the appellant is that there is no evidence to prove that the deceased was not responsible or negligent. Conversely, according to him, the sole cause of the accident is the sheer negligence on the part of the deceased. However, in my considered opinion, the evidence produced by the claimants, especially, the FIR and the spot panchnama, on which the Trial Court has rightly relied upon, clearly goes to show that the cause of accident was negligent driving of the offending vehicle, namely, the car. The Trial Court also found that the best evidence to decide as to who was responsible for the accident was the evidence of car driver. However, the appellant-Insurance Company has not examined the car driver. In such situation, in my considered opinion, the Trial Court has, rightly relying upon the documents, namely, the FIR and spot panchnama, held that the cause of the accident was the rash and negligent driving of the offending vehicle, the car and hence the applicant-claimants were entitled to get the compensation.

9. The fact that the offending vehicle, the car was insured with the appellant is not disputed. The only dispute is hence pertaining to the quantum of compensation. To prove that the deceased was working as a contractor with Sky Lark Construction Pvt. Ltd. and earning Rs. 3,00,000/- per annum, applicant No.1, widow of the deceased, has examined herself and also adduced evidence of one witness Smt. Amisha Anil Kubal, who was an employee of Sky Lark Construction Pvt. Ltd. She has deposed that

the deceased was working as sub-contractor with Sky Lark Construction Pvt. Ltd. and in the year 2003 he had earned Rs.11,69,193/- and the TDS of Rs.11,694/- was deducted from his salary. She has further deposed that in the year 2005-06, the deceased had earned income of Rs.12,04,194/- and the TDS of Rs.10,082/- was deducted from his salary. No doubt, in her cross-examination she has admitted that during the relevant period, she was not working with Sky Lark Construction Pvt. Ltd. and she has produced photocopies and not original challans. The Trial Court has, in the light thereof, held that the evidence on record proved that the deceased was working with Sky Lark Construction Pvt. Ltd. as contractor. The Trial Court has, having regard to the lifestyle of the deceased as he was having motor cycle and maintaining the family of five members, considered his income to be Rs.6,000/- per month and accordingly assessed the compensation amount.

10. Even as regards the age of the deceased, though learned counsel for the appellant submits that no documentary evidence was produced on record, the Trial Court has considered the evidence which was produced, namely, the driving license of the deceased, at Exhibit 41 in which his birth date was mentioned as 15.08.1967. Hence, considering his age as 39 years at the time of accident, the Trial Court has adopted the multiplier of 16.

11. In my considered opinion, therefore, the quantum of

compensation as calculated, assessed and awarded by the Trial Court on the basis of the evidence before it, cannot in any way be called as excessive, exorbitant or higher side, so as to warrant an interference therein.

12. Hence, the appeal holds no merits and, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]