

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 3082 OF 2016

Reliance General Insurance Company,
Through its Manager,
R/o. Reliance General Insurance Company,
Adalat Road, Aurangabad.

... APPELLANT

VERSUS

1] Shalanbai W/o Suresh Salgar
Age 33 years, Occ:- Household,

2] Priyanka d/o Suresh Salgar
Age 14 years, Occ:- Education,

3] Arti d/o Suresh Salgar,
Age 10 years, Occ:- Nil,

4] Pravin Suresh Salgar,
Age 6 years, Occ:- Nil,

Respondent Nos.2 to 4 minors U/G of
natural mother Respondent No.1

5] Amrut Madhav Salgar,
Age 63 years, Occ:- Labour,

6] Sow. Shevanta w/o Amrut Salgar,
Age 58 years, Occ:- Household

(Org. Claimants)

Respondent Nos.1 to 6 all R/o Ter,
Tq and District Osmanabad.

7] Shaikh Gaffar Sattar Bagwan,
Age major, Occ:- Business,
R/o Ravinear Peth, Kumbharwada Road,
Beed, Tq. and Dist. Beed.

(Org. Respondent No.1)

... RESPONDENTS

...

Mr. S. S. Patil, Advocate for Appellant.

Mr. P. S. Chavan, Advocate for Respondent Nos.1, 5 & 6.

Mr. Manoj Shinde, Advocate for Respondent No.7.

(Respondent Nos.2 to 4 served.)

...

CORAM : **V. K. JADHAV, J.**

DATE : 04th January, 2017.

ORAL JUDGMENT:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award dated 3rd September, 2015 passed by the learned Member of the Motor Accident Claims Tribunal, Osmanabad in MACP No.269 of 2012, the Respondent / Insurer, preferred this first appeal.

3 Brief facts giving rise to the present first appeal are as follows:

On 14th February, 2012, deceased Suresh had been to Tuljapur for attending religious function at his sister's house and after the said function was over, started to return to his village by riding the motorcycle. On way, at about 07:00 pm, one Mahindra Pick-up Van bearing registration No.MH-15/BJ-8755 came from the opposite direction and gave a dash to his motorcycle. In consequence of which he fell down and sustained grievous injuries.

He was shifted to one hospital at Solapur. However, on 10th March, 2012, he succumbed to the injuries in the hospital. The legal representatives of deceased Suresh preferred MACP No.269 of 2012 for grant of compensation.

4 The Appellant / Insurer has strongly resisted the claim on various grounds. It has contended that deceased himself was rash and negligent in riding the motorcycle and the driver of the said Mahindra Pick-up Van was not holding valid driving licence at the time of accident.

5 The learned Member of the Motor Accident Claims Tribunal vide its judgment and award dated 3rd September, 2015, allowed the claim petition and thereby directed the original Respondents to pay Rs.16,32,307/- as a compensation including no fault liability with interest at the rate of 9% per annum. Being aggrieved by the same, the original Respondent / Insurer has preferred this appeal.

6 The learned counsel for Appellant / Insurer submits that deceased Suresh had driven the motorcycle in rash and negligent manner and he himself was responsible for the accident. The learned

Member of the Motor Accident Claims Tribunal has not considered even that deceased Suresh had contributed the negligence. The learned counsel submits that even though the dependent family members of deceased Suresh are less than six, the learned Member of the Motor Accident Claims Tribunal has deducted 1/5th of the amount towards personal expenses instead of 1/4th of amount. The learned counsel submits that there is no satisfactory evidence about the income of deceased Suresh and the Tribunal ought to have considered his notional income by treating deceased Suresh as skilled labour.

7 The learned counsel for Respondents / original Claimants submits that the offending vehicle went in a wrong direction and gave a dash to the motorcycle of deceased Suresh. Further, after due investigation, the concerned P.S. has registered the crime against the driver of the said Mahindra Pick-up Van. The learned Member of the Motor Accident Claims Tribunal has therefore, rightly considered the evidence collected during the course of investigation and held that Respondent No.1, who is the owner of said Mahindra Pick-up Van, is liable to pay the compensation alongwith the Appellant / Insurer. The learned counsel submits that there are in all six claimants depending

on the earnings of deceased Suresh at the time of accident and out of them, two are aged persons and three are minors. The learned Member of the Motor Accident Claims Tribunal has therefore, rightly deducted 1/5th of the amount from the earnings of deceased on account of his personal expenses. The learned counsel submits that the Respondents / original Claimants have examined the employer of deceased Suresh to prove the contents of salary certificate. Even though salary certificate is proved, the Tribunal has considered monthly income of deceased Suresh at Rs.6,000/- instead of Rs.8,000/- as deposed by the employer. The learned counsel submits that the Tribunal has not awarded any compensation under the head of loss of estate and the same may be considered in this appeal though the Respondents / Claimants have not preferred any appeal or cross-objection.

8 On careful perusal of the record and proceedings, it appears that the spot Panchanama is produced on record and the same is marked as Exhibit – 29. The road at spot of the accident, is south-north in direction and deceased was riding this vehicle from the western side of the road. It is thus, clear from the contents of the spot Panchanama that the western side of the road was the correct side for

the deceased who was riding the motorcycle. However, the western side of the road was the wrong side for the vehicle coming from the opposite direction. Thus, the said vehicle Mahindra Pick-up Van, went in wrong direction and gave a dash to the motorcycle of deceased Suresh. The learned Member of the Motor Accident Claims Tribunal has therefore, correctly arrived at a conclusion that the driver of said Mahindra Pick-up Van alone was responsible for the accident and deceased Suresh was not at fault. There is nothing in the evidence to point out that deceased Suresh, in any manner, had contributed the negligence.

9 Respondents / original Claimants have examined CW-2 Mahadeo, who happened to be an owner of the tractor. He has deposed that he was paying Rs.8,000/- per month salary to deceased Suresh and salary certificate to that effect is also produced on record. In absence of any other supporting document about the salary of Rs.8,000/- per month being paid to deceased Suresh, to my mind, the learned Member of the Motor Accident Claims Tribunal has rightly considered that deceased Suresh was getting the salary of Rs.6,000/- per month and not more than that. Deceased Suresh was having a driving licence to drive the tractor and the same is produced on record

and marked Exhibit – 22. There is no question to consider the income of deceased Suresh as an income similar to a skilled labour. Deceased Suresh was the employee on monthly salary. CW-2 Mahadeo might have exaggerated the amount of salary being paid to deceased Suresh. However, the learned Member of the Motor Accident Claims Tribunal has rightly considered the salary of deceased Suresh at Rs.6,000/- per month and the same is also appropriate since the deceased was driving a tractor in rural area.

10 It appears that the learned Member of the Motor Accident Claims Tribunal has deducted 1/5th of the amount from the earnings of deceased on account of his personal expenses. In a case of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another**, reported in, **(2009) 6 Supreme Court Cases 121**, in paragraph No.30 of the judgment, the Supreme Court has observed that where the number of dependent family members is four to six, 1/4th deduction would be appropriate and 1/5th deduction would be appropriate where number of dependent family members exceeds six. In the instant case, there are six dependent family members. The learned Member of the Motor Accident Claims Tribunal has therefore, committed mistake in deducting the earning of deceased to the extent

of 1/5th on account of his personal expenses.

11 The learned Member of the Motor Accident Claims Tribunal has awarded the compensation under the non-pecuniary heads such as consortium, loss of love and affection and funeral expenses. Further the Tribunal has also awarded substantial amount by way of medical expenses and hospital charges.

12 The learned counsel for Respondents / original Claimants submits that the Tribunal has directed to keep 50% of amount out of the share of Claimant No.1 in FDR for five years and 50% amount out of the share of Claimant Nos.5 and 6 in FDR for three years. The learned counsel submits that Claimant No.1 alongwith Claimant Nos.5 and 6 incurred huge expenses towards the treatment of deceased Suresh when he was admitted in various hospitals including the hospital at Solapur and therefore, this condition may be deleted.

13 In view of the above discussion, the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Osmanabad is required to be modified to the extent of quantum of compensation by considering 1/4th deduction instead of 1/5th on account of the personal expenses of deceased Suresh. Hence, the

following order:

ORDER

- I. The appeal is hereby partly allowed.
- II. The judgment and award dated 3rd September, 2015 passed by the learned Member of the Motor Accident Claims Tribunal, Osmanabad, is hereby modified in the following manner:
 - a) Respondent Nos.1 and 2 jointly and severally to pay an amount of Rs.15,74,707/- (Rupees Fifteen Lacs Seventy Four Thousand Seven Hundred and Seven only) including no fault liability amount to the Claimants alongwith interest at the rate of 9% per annum from the date of filing of claim till its full realization.
 - b) Clause (6) of the operative part of the order is hereby set aside and Claimant Nos.1, 5 and 6 are entitled to withdraw the

amount falling to their respective share.

- III. Rest of the judgment and award stands confirmed.
- IV. Excess amount, if any, deposited by the Appellant / Insurer shall be refunded to the Appellant / Insurer.
- V. Award be drawn as per the modification as above.
- VI. The appeal is accordingly disposed of.
- VII. The Appellant / Insurer has deposited the entire amount before this Court and the same shall be transferred in the account of the Member of the Motor Accident Claims Tribunal, Osmanabad.

[V. K. JADHAV, J.]