IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1341 OF 2010

New India Assurance Co. Ltd.
Jalgaon, through its Branch Manager,
Through its authorized signatory
Sr. Divisional Manager, at Aurangabad .. **APPELLANT**
(Orig. Respondent No.2)

Versus

1. Ashabai Wd/o Sunil Patil
Age : 33 years, Occu : Household,

2. Bhushan S/o Sunil Patil
Age : 13 years, Occu : Student,

3. Chaitali Sunil Patil
Age : 15 years, Occu : Student,
Nos.1 to 3 R/o.Jalgaon (Khurd)
Tal. & Dist. Jalgaon

4. Shantabai Pandharinath Patil (Dead)
Through Legal Heirs:
Respondent Nos.1 to 3 ... **RESPONDENTS**
(Orig. Claimants No.1 to 4)

5. Rajendra S/o Chudaman Zambre
Age : Major, Occu : Business,
R/o. Doagar Kathora, Tal. Yawal,
Dist. Jalgaon .. **RESPONDENT**
(Orig. Respondent No.1)

Advocate for Appellants : Shri. V.R. Mundada
Advocate for Respondents No.1 to 4 : Shri. M.M. Bhokarikar
Advocate for Respondent No.5 : Shri C.P. Patil

WITH
FIRST APPEAL NO.3588 OF 2011

1. Smt. Ashabai Sunil Patil
Age : 33 years, Occu : Household,

2. Chi. Bhushan Sunil Patil
Age : 13 years, Occu : Education,

3. Ku. Chaitali Sunil Patil
Age : 15 years, Occu : Education,

4. Shantabai Pandharinath Patil
(since deceased through L.R's)

4A) Ashabai Sunil Patil
Age : 33 years, Occu : Household,

4B) Bhushan Sunil Patil
Age : 13 years, Occu : Education,

4C) Chaitali Sunil Patil
Age : 15 years, Occu : Education,

All R/o. Jalgaon Khurd, Jalgaon, Dist. Jalgaon
(Applicant no.1 is the mother of the applicant
No.2 and 3 hence their natural guardian preferring
this appeal, application for and on behalf of them)
.. APPELLANTS
(Ori. Claimants)

Versus

1. The New India Insurance Company Ltd
Through Divisional Manager
Mandore Market, Dhadiwala Baungalow
Mehrun road, Jillha Peth, Jalgaon

2. Shri Rajendra Chudaman Zambare
Age : Major, Occu : Business,
R/o Dongar Kathora, Tal. Yawal,
Dist. Jalgaon .. RESPONDENTS
(Orig. Respondents)

Advocate for Appellants : Shri. M.M. Bhokarikar
Advocate for Respondent No.2 : Shri. C.P. Patil
Advocate for Respondent No.1 : Shri V.R. Mundada

CORAM : P.R.BORA, J.

Reserved on : 14.06.2017
Pronounced on : 26.07.2017

ORAL JUDGMENT :

1. Since both appeals arise out of the Judgment and order dated 04.11.2009 passed by the Motor Accident Claims Tribunal, at Jalgaon in Motor Accident Claim Petition No.161/2007, I deem it appropriate to decide these appeals by a common reasoning.

2. First Appeal No.1341/2010 has been filed by the Insurance Company disputing the impugned award on quantum of compensation and alleging contributory negligence of the deceased in occurrence of the alleged accident, whereas First Appeal No.3588/2011 has been filed by the original claimants seeking enhancement in the amount of compensation.

3. The aforesaid claim petition was filed by the appellants in First Appeal No.3588/2011, who are for short referred to as claimants, claiming compensation on account of the death of one Sunil Pandharinath Patil in a vehicular accident happened on 07.11.2006 having involvement of a Maruti car bearing registration no.MH-19-Q-1145 owned by respondent no.1 in both aforesaid appeals and insured with The New India Assurance Company Ltd

i.e. the appellant in First Appeal No.1341/2010 (hereinafter referred to as 'the said Insurance Company'). In the accident so happened, deceased Sunil Pandharinath Patil was severely injured and was immediately taken to the hospital namely Surya Critical Centre at Jalgaon and thereafter for further treatment was shifted to Dhoot Hospital at Aurangabad. As averred in the claim petition age of deceased Sunil was 40 years at the time of his death and he was earning around Rs.6,000/- per month from agriculture and milk business.

4. It was the case of the claimants that, they were fully depending upon the income of deceased Sunil. The claimant no.1 is the wife, claimants no.2 and 3 are the children, whereas claimant no.4 is the mother of deceased. Claimants had claimed the compensation of Rs.4,50,000/-. It was their contention that, the alleged accident happened because of negligence on the part of respondent no.2 namely Dr. Rajendra Chudaman Zambre, who was at the relevant time driving the offending maruti car. The claim petition was resisted by the owner of the Maruti car as well as the insurer of the maruti car i.e. The New India Assurance Company Ltd., on various grounds. The Ld. Tribunal after having assessed oral and documentary evidence brought before it partly allowed the claim petition. The tribunal has awarded compensation of Rs.3,38,054/- excluding amount of NFL compensation already paid to the claimants jointly and severally from the owner and insurer of the maruti car together with the interest thereon at the rate of 7% from the date of filing of the petition till its realization.

5. Insurance Company in its appeal has raised objections as regards to the amount of compensation determined by the Tribunal. Shri. Mundada, learned Counsel for the Insurance Company submitted that, without there being any evidence as about the income of deceased, the Tribunal has wrongly held the income of deceased to the tune of Rs.30,000/- per annum. The learned Counsel submitted that, the amount of compensation so awarded by the Tribunal, therefore, needs to be reduced.

6. Shri. Mundada further submitted that, the Tribunal has committed an error in not considering the plea of contributory negligence on part of deceased in occurrence of the alleged accident. The learned Counsel submitted that deceased was plying his cycle in a rash and negligent manner and himself dashed with the Maroti car. According to the learned Counsel deceased was equally responsible for occurrence of the alleged accident.

7. Shri. Bhokarikar, learned Counsel appearing for the claimants resisted the submissions advanced on behalf of the Insurance Company. The learned Counsel submitted that, the objection raised by the Insurance Company as about the negligence on the part of deceased in causing the alleged accident is absolutely untenable and the Tribunal has not committed any error in holding the driver of the maruti car solely responsible for occurrence of the alleged accident. The learned Counsel submitted that, the situation on the spot clearly evinces that, the maruti car entered on wrong side and gave dash to the cyclist.

8. The learned Counsel further submitted that, the claimants have filed the appeal seeking enhancement in the amount of compensation since the Tribunal has failed in awarding just and fair compensation to the claimants. The learned Counsel submitted that, the Tribunal has not appreciated that, deceased was cultivating his agriculture land and simultaneously was also doing the business of selling milk. In the circumstances according to the learned Counsel the Tribunal must have held the income of deceased to the tune of Rs.6,000/- per month as was deposed by PW No.1 before the Tribunal. The learned Counsel further submitted that, the Tribunal has also committed an error in deducting $1/3^{rd}$ amount of total income of deceased while determining the amount of dependency compensation when the number of dependants is more than three. The learned Counsel submitted that, the Tribunal should have deducted only $1/4^{th}$ of total income of deceased towards his personal expenses. The learned Counsel further submitted that, the Tribunal has also not awarded the adequate compensation towards non-pecuniary damages. The learned Counsel therefore prayed for enhancement in the amount of compensation.

9. I have considered the submissions advanced by the learned Counsel appearing for the respective parties. First I will deal with the appeal filed by the Insurance company. Though the quantum of compensation as awarded by the Tribunal has been disputed by the Insurance Company, the said objection was not seriously pressed and even otherwise having regard to the amount of compensation as awarded by the Tribunal there appears no substance in the objection so raised. The objection raised on behalf

of the Insurance Company in regard to contributory negligence on the part of deceased in occurrence of the alleged accident, however needs to be considered.

10. As noted earlier, according to the Insurance Company deceased was equally responsible for occurrence of the alleged accident. The said allegation is of course denied by the claimants. In view of the submissions made on the point when I perused the document of spot panchanama, it is revealed that, the objection raised by the Insurance Company is liable to be rejected at the threshold. It is not in dispute that, Maruti car was proceeding towards Bhusawal from Jalgaon, whereas deceased was coming towards Jalgaon from Bhusaval on his cycle. It has come in the evidence of Dr. Zambre the owner of the Maruti car that deceased came in front of his car from the left side of the car without giving any signal and as such the accident happened because of sole negligence on the part of deceased cyclist. The fact so deposed by Dr. Zambre appears to be totally false in view of the situation on the spot of occurrence. As noted earlier, it is undisputed that, deceased cyclist was coming from side of Bhusawal and was proceeding towards Jalgaon. It was therefore not possible for the cyclist in any case to be on the left side of the maruti car. In the spot panchanama the police had also prepared the map of the spot of occurrence. The said map shows that, the accident had occurred at the end of the eastern side of the road. Since the Maruti car was proceeding towards Bhusawal from Jalgaon, it was supposed to be on the western side of the road and deceased who was proceeding towards Jalgaon was supposed to be the eastern side of the road.

From the situation on the spot, it is quite evident that, the Maruti car entered on the wrong side and gave dash to the cyclist. The cyclist was proceeding by his correct side and no blame can be attributed on the part of deceased cyclist. The evidence on record clearly suggests that the alleged accident occurred because of the sole negligence on the part of Dr. Zambre, who was driving maruti car at the relevant time. The objection raised by the Insurance Company is, therefore, liable to be turned down.

11. As I noted earlier, the objection raised by the Insurance Company as against the quantum of compensation is not pressed by it. Thus, the Insurance Company has failed to make out any case in the appeal filed by it and the same therefore deserves to be dismissed and is accordingly dismissed.

12. Now about the appeal filed by the claimants seeking enhancement in the amount of compensation. First objection as has been raised by the claimants is that, the Tribunal has erred in holding the income of deceased only to the tune of Rs.30,000/- per annum. I have carefully gone through the evidence in this regard and also the discussion made by the Tribunal while analyzing the said evidence. Though it was the contention of the claimants that, the income of deceased was around of Rs.6,000/- per month, the evidence on record appears insufficient to uphold the said contention of the claimants. The claimants did not adduce any evidence so as to prove the income of deceased from his business of milk selling. In so far as the agriculture income is concerned, as has been rightly discussed by the Tribunal and as was rightly argued by

the learned Counsel appearing for the Insurance Company, the agriculture land and the income from the said land had continued even after the death of deceased since there are other persons from the family of deceased to look after the agriculture land. In the circumstances, the tribunal has rightly held the income of deceased to the tune of Rs.30,000/- per annum for the purpose of assessing the amount of compensation payable to the claimants.

13. In so far as the objection regarding deduction from the income of deceased towards personal expenses while determining the amont of dependency commission is concerned, the Tribunal has certainly committed an error. In view of the fact that, the number of the dependents on the income of deceased Sunil is more than three, the tribunal should have deducted only 1/4th of his total income towards his personal expenses instead of 1/3rd. To that extent, the amount of compensation needs to be enhanced. Holding the income of deceased to the tune of Rs.30000/- per annum as has been held by the tribunal and deducting 1/4th of the said amount, the compensation will have to be redetermined on the balance amount of Rs.22,500/-. Having regard to the age of deceased the appropriate multiplier would be of 16. The tribunal has rightly applied the said multiplier. By applying the said multiplier, the amount of compensation payable to the claimants comes to Rs.3,60,000/-. The amount of compensation under this head therefore needs to be enhanced to this extent.

14. There is also substance in another objection raised on behalf of the claimants that, the tribunal has awarded unjust and

inadequate compensation towards the non - pecuniary damages. The tribunal has awarded the total compensation of Rs.24,500/- towards the non -pecuniary damages. The amount as awarded by the tribunal is admittedly inadequate. Having regard to the guidelines laid down by the Hon'ble Apex Court in the series of Judgments, I deem it appropriate to enhance the said amount to the tune of Rs.2,00,000/- from Rs.24,500/-. The tribunal has awarded Rs.43,554/- to the claimants towards the medical expenses. There is no dispute about the amount so awarded, the appellants are thus found entitled to the total compensation of Rs.6,03,554/- (Rs.3,60,000/- + Rs.43,554/- + Rs.2,00,000/-). In the facts and circumstances of the case, it appears to me that, this would be just and fair compensation payable to the claimants. The amount of compensation as awarded by the tribunal thus needs to be enhanced by the aforesaid extent and consequently the Award needs to be modified to that extent. Hence, the following order is passed.

ORDER

1. First Appeal No.3588 of 2011 is partly allowed with proportionate costs.

2. The amount of compensation as has been awarded by the Tribunal to the tune of Rs.3,88,054/- (Rs.Three Lakhs Eighty Eight Thousand Fifty Four Only) is enhanced to Rs.6,03,554/- (Rs.Six Lakhs Three Thousand Five Hundred Fifty Four Only) with interest on the enhanced amount of compensation at the rate as has

been awarded by the Tribunal from the date of filing of the appeal till its realization.

3. The enhanced amount of compensation be apportioned equally amongst these serviving claimants.

4. Award be modified accordingly.

5. First Appeal No.1341 of 2010 stands dismissed without any order as to the costs.

(P.R. BORA, J.)

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