Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**CIVIL APPLICATION NO. 2860 OF 2016**
**IN**
**REJECTED CASE NO. 1546 OF 2016**
**WITH**
**FIRST APPEAL (ST) NO. 14784 OF 2014**

Laxmi Ashok Bodhate & Anr …Applicants
*Versus*
United India Insurance Co Ltd & Anr …Respondents

**Mr Yuvraj Narvankar**, *for the Applicant/Appellant.*
**Mr Ketan Joshi**, *for Respondent No.1.*

**CORAM: G.S. PATEL, J**
**DATED: 3rd August 2017**

**PC:-**

**1.** The Appeal is restored. It is admitted. By consent it is taken up forthwith for hearing and final disposal on the basis of the available material on record.

**2.** The Appeal is directed against an order of the Motor Accident Claims Tribunal (**"MACT"**), Satara passed on 5th December 2013 in a claim brought under Section 166 of the Motor Vehicles Act, 1988 for compensation for a fatality in a vehicular accident that occurred on 11th February 2011. The claim was for Rs.19,55,000/- The MACT awarded Rs.10,64,856/- inclusive of the No Fault Liability amount.

**3.** The Application was brought by the widow and two adult sons of the deceased Ashok Sampat Bodhate. Opponent No.1 was the owner of the truck in question that is said to have collided with the deceased Ashok's motorcycle. Opponent No.2 was the insurer. The Appeal is by the original Claimants seeking enhancement.

**4.** On 11th February 2011 at about 12 noon, Applicant No.3 Kiran, Ashok Bobhate's son was on his motorcycle on the Satara-Rahimpur road. Ashok was riding pillion. Kiran says that he was proceeding at a moderate speed duly observing all rules of the road. Along that road, there was a truck ahead of the motorcycle. Believing that the traffic was safe, Kiran overtook the truck. He signalled to the truck that he was passing. As he passed the driver's side of the truck, coming alongside the driver cabin, without any warning or indication, the truck driver swerved to his right — the side on which the motorcycle was attempting to overtake the truck — and caused the truck's right front wheel to hit the motorcycle. At that very movement, another motorcycle was approaching from the opposite direction. Kiran lost control of his motorcycle. Ashok, riding pillion, was thrown off the motorcycle. The rear tyre of the truck passed over his body. He died on the spot.

**5.** At that time, the deceased was employed as a watchman in the Irrigation Department in Satara at a salary of Rs.14,229/- per month. He was the only earning member of the family. His widow was 43 years old.

**6.** The 1st Opponent, the owner of the truck was served, but he did not appear or contest the proceedings. Opponent No.2 the insurer, contested and it took the usual defences in such cases, almost as if they are automated, standard, template responses: first, that Kiran was negligent himself; second. that the driver of the truck did not have a valid or a effective licence; and third, that the age, occupation and income of the deceased as stated were untrue.

**7.** The Applicants led evidence. They relied *inter alia* on the police papers. They examined the witness to prove the income. The insurance company despite its averments in its written statement led no evidence at all.

**8.** I have considered the judgement of the Trial Court. There can be no doubt about the nature or time of the accident. There is also no dispute about the result. The difficulty is with the application of the existing law to the facts as were established.

**9.** There is no error in reckoning the salary of the deceased or in the Tribunal taking a one-third deduction. The Tribunal arrived at a monthly income of Rs.9,487/-, yielding an annual dependency after deduction of Rs.1,13,844/-. This is correctly noted in paragraph 30 of the impugned order.

**10.** The Tribunal has however altogether eliminated all future prospects on the basis that Ashok was over 50 years. This is not a correct or advisable approach in such matters. An addition of 15% as future prospects would be correct. The other structural difficulty is that although the multiplier has been correctly taken at 11, this has been split so that the base monthly income of Rs.9,487/- has been multiplied by 12 to get the annual income, and this is then multiplied by seven and then by four because the Tribunal held that he had remaining in service another seven years and four months.

**11.** This is an entirely unjustified approach in the current state of the law. On a correct computation, taking the income at Rs.1,13,844/- and adding 15% future prospects, would yield a multiplicand of Rs.1,30,920/-. Taken with the correct multiplier of 11, this would yield a total amount of Rs.14,40,120/- as the loss of dependency. The amount taken towards loss of love and affection for Applicant No.2 at Rs.1,00,000/-, for loss of consortium to the widow at Rs.1,00,000/- and funeral expenses at Rs.25,000/- will be retained. There is an amount awarded at Rs.5,000/- for loss of estate, which I will also retain. However I find nothing at all is awarded for Applicant No.3 although he lost his father, possibly on the footing that he the one driving the motorcycle at the time of the accident. There is a finding of contributory negligence against him. But there is no finding that he was solely negligent. In any case, this would not affect the grant of an amount under a general head of damage for loss of love and affection to Applicant No.3. I will therefore add an equivalent amount of Rs.1,00,000/- to the amount awarded. This would thus make a total of Rs.16,70,120/- rounded off to Rs.16,70,000/-. This is the amount that is payable jointly and severally by Opponents Nos.1 and 2. The rate of interest awarded was at 6% which is very much on lower side and lower than is normally awarded in such cases. That rate of interest will be 7.5.%.

**12.** The decree stands modified in the following terms:

**(a)** The decree is jointly and severally in the amount of Rs.16,70,000/- against Opponent Nos.1 and 2 with proportionate costs and interest at the rate of 7.5% per annum from the date of filing of the claim till the realization.

**(b)** The additional amount (excluding the amount already deposited) is to be deposited by the insurer with the MACT, Satara within a period of eight weeks from today inclusive of up to date interest.

**(c)** On deposit, the entire amount will be invested in a fixed deposit with any nationalised bank.

**(d)** The Claimants will be at liberty to withdraw the entire amount with all accrued interest.

**(e)** The MACT will permit the withdrawal on production of an authenticated copy of this order.

**(f)** Of the amount of Rs.16,70,000/-, 60% will be awarded to and be withdrawn by Claimant No.1. The balance amount of 40% will be divided equally between Claimant Nos.2 and 3.

**13.** The First Appeal and Civil Application are disposed of in these terms. No costs.

**(G. S. PATEL, J.)**