

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL (ST) NO. 33025 OF 2015
WITH
CIVIL APPLICATION NO. 4321 OF 2015

The New India Assurance Co Ltd	...Appellant
<i>Versus</i>	
Sandhya Ranjit Kamble & Ors	...Respondents

Mr DS Joshi, *for the Appellant.*
Mr Yuvraj P Narvankar, *for Respondents Nos.1 to 4.*
Mr Pavan S Patil, *for Respondent No.5.*

CORAM: G.S. PATEL, J
DATED: 25th July 2017

PC:-

1. Admit.

2. By consent the First Appeal is taken up for hearing and final disposal on the basis of the documents available in the compilation. R&P dispensed with. Respondents waive service.

3. The deceased Ranjit Kamble and one Omkar Shinde, pillion rider, were on a motorcycle. As they reached village Shirole, on the Pune-Satara highway, a Maruti Swift No.MH-14/CC-4455 crashed

into the motorcycle from the rear. Ranjit Kamble died on the way to the hospital. An FIR was filed against the driver of the Maruti Swift car.

4. Ranjit Kamble was 30 years old, a diploma holder in Mechanical Engineering and was in permanent service in ThyssenKrupp Industries India Private Limited as a production associate since January 2008.

5. There is no evidence to show any negligence by the deceased. This is dealt with paragraphs 13 and 14 of the impugned order. I have seen the evidence as well. The Trial Court correctly noted that the error was on the part of the Maruti Swift car's driver, who did not correctly assess the width of the road and the speed of the two vehicles.

6. The other ground urged in the Appeal is that the Maruti Swift had a latent defect because both its tyres burst. There is no evidence of any such defect; that dual tyre burst could be due to any number of reasons, including the nature of the accident, the speed of vehicles and other factors; for instance, if the Maruti Swift was forced abruptly on to the road berm, which is a rough surface. Indeed, given that the two tyres that burst were on the same side of the vehicle, this last possibility is eminently probable.

7. The third ground is the question of quantum to be awarded. I notice the insurer's advocate filed a signed note of written submissions before the MACT contending that, in the aggregate, an

amount of Rs.80,39,416/- should be awarded, and in reckoning this, took the deceased's income at Rs.4,90,248/-, and future prospects of 50%. I will, however, leave that aside entirely. I find that the Tribunal correctly computed the income, and there is no material to hold otherwise. In fact, it has been admirably moderate in its approach, excluding additional perks, allowances and benefits to arrive at a monthly income of Rs.34,682/-. The correct multiplier and deductions have been reckoned. A substantial amount has been given for loss of consortium and loss of love and affection.

8. I see no reason to interfere with the impugned judgment.

9. In consequence, the Claimants will be at liberty to withdraw the entire amount deposited with accrued interest from the Motor Accident Claims Tribunal ("MACT"), Satara. In addition, the statutory deposit of Rs.25,000/- deposited in this Court will be transferred to MACT, Satara. The MACT will permit withdrawal on the basis of an authenticated copy of this order.

10. The Appeal is disposed of in these terms. No costs.

11. In view of the disposal of the Appeal, the Civil Application does not survive and is disposed of accordingly.

(G. S. PATEL, J.)