IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 894 OF 2017

Bajaj Allianz General Insurance
Co. Ltd. GE Plaza Airport Road,
Yerwada, Pune-411 006,
through its Branch Manager/
Authorized Signatory,
2nd Floor, Rajendra Bhavan,
Adalat Road,
Next to LIC Building, Aurangabad ...Appellant
[Orig. Resp. No.2]

VERSUS

1] Ujvala Vikram Dahatonde,
age 28 years, occ. Household,

2] Nirja Vikram Dahatonde,
age 6 years, occ. Education,

3] Shivraj Vikram Dahatonde,
age 7 years, occ. Education

(Nos. 2 and 3 are minors,
through their Legal Guardian
- Mother, Petitioner no.1)

All R/o Chanda, Taluka Newasa,
District Ahmednagar,

4] Babasaheb Waman Kachare,
age 49 years, occ. Business,
R/o Padali, Taluka Pathardi,
District Ahmednagar ...Respondents
[Nos. 1 to 3 Orig Claimants.
No.4 Orig. Resp.no.1.]

...

Shri S.G.Chapalgaonkar, advocate for Appellant
Shri R.P.Phatke, advocate for Resp. nos. 1 to 3
Shri S.D.Jaybhar h/f Mr. D.R.Jaybhar,
advocate for Respondent no. 4

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING THE JUDGMENT : 22.10.2018
DATE OF PRONOUNCEMENT OF JUDGMENT : 29.10.2018

JUDGMENT :

This appeal by the insurance company is directed, against the judgment and award, passed by the Motor Accident Claims Tribunal, Ahmednagar, in Motor Accident Claim Petition No. 705 of 2012, where compensation of Rs. 13,24,000/- was awarded by the Tribunal, with interest thereon at the rate of 9 per cent per annum, from the date of filing of claim petition, till realization of the compensation amount.

2. Respondent nos.1 to 3 are the original claimants and respondent no.4 is owner of the offending car No. MH-16/AJ-5768.

3. Facts, leading to the institution of this appeal are that on 17.3.2012 at about 9.00 p.m., when deceased Vikram Damodhar Dahatonde was trying

to cross Ahmednagar-Tisgaon road, that time the driver of offending car, due to rash and negligent driving, knocked down the deceased, resulting into his death on the spot. Therefore, the wife and minor children of deceased filed claim petition, for grant of compensation, before the Tribunal. In that proceeding, by filing written statement (Exh.12), original opponent no.2 insurance company specifically denied the involvement of offending car in the above said accident. The insurance of the offending car with opponent no.2 insurance company is not disputed. Opponent no.1, who is registered owner of offending car has admitted the involvement of his car in above said accident by filing written statement (Exh.15).

4. Heard Shri S.G.Chapalgaonkar, learned counsel for the appellant, Shri R.P.Phatke, learned counsel for respondent nos. 1 to 3 (claimants) and Shri S.D.Jaybhar, learned counsel for respondent no.4 (owner of the offending car).

5. Shri Chapalgaonkar, learned counsel assailed the judgment of the Tribunal, on the ground that though no evidence is available regarding involvement of the offending car in the above said accident, the Tribunal, merely on the basis of admission given by registered owner of the offending car, held that the offending car was involved in the accident. He submits that even in the first information report, lodged by Uddhav Markad, it is specifically mentioned that the deceased was found lying dead on the spot and there is no reference of offending car in the said first information report. According to learned counsel for the appellant, it was simple case of hit and run.

Next submission of learned counsel for the appellant is that the certified copy of the statement of driver (Exh.24) recorded by police on 13.7.2012 is not admissible in evidence, as driver is not examined by the claimants. He has pointed out that even the investigating officer, who conducted investigation and filed charge sheet against the driver of the offending car, is not examined by the claimants. He submits that even the panchanama (Exh.26) of the offending car was prepared on 13.7.2012.

Learned counsel for the appellant also submits that the postmortem report shows that the skull of the deceased was fractured and there was loss of brain material, and therefore, such type of serious injury is not possible due to dash given by the offending car from its rear portion, as contended by the driver in his statement before the police.

Contention of learned counsel for the appellant is that though owner of the offending car has admitted the involvement of car, that admission is given, as a result of collusion in between owner of the car and the claimants, because though owner claims that at the time of accident he was traveling by the said car, he did not inform about the accident to the police or insurance company.

Last submission of the learned counsel for the appellant is that even the evidence regarding income of the deceased is not appropriate as two sources of income are claimed.

He placed reliance on following judgments :

(1) **Oriental Insurance Company Limited**
vs Meena Variyal and others
[(2007) 5 SCC 428]

(2) **Pukh Raj Bumb**
vs Jagannath Achut Naik & ors.
[2014 (4) Mh.L.J.447]

(3) **Faridabegum s/o Shaikh Yousuf and ors.**
vs Daulat Khan s/o Sardar Khan and anr.
[2014 (6) Mh.L.J. 751]

(4) **M/s Shriram General Insurance Co.**
vs Narayan Nivrutti Bembde and others
[First Appeal No. 1535 of 2013]

(5) **Bajaj Allianz General Insurance Co.Ltd.**
vs Manisha w/o Lahu Kale and others
[First Appeal No. 2742 of 2015]

(6) **Anil and Ors.**
vs New India Assurance Co. Ltd.
[(2018) 2 SCC 482]

(7) **Bajaj Allianz General Insurance Co. Ltd.**
v/s Meera w/o Raju Chaudhary and others
[2014 (6) Mh.L.J. 556]

(8) **United India Insurance Co. Ltd.**
Vs Pansheela
[2018 (2) Mh.L.J. 889]

6. Learned counsel for the claimants submits that when owner of the offending car has admitted the involvement of offending car in above said accident, the circumstances pointed out by the learned counsel for the appellant do not carry any

importance. He has pointed out that the spot panchanama was prepared on the very next day of the occurrence of the accident. He submits that except pleading in the written statement, the insurance company did not lead any evidence to prove the allegation of collusion in between the claimants and the owner of the offending car. He submits that while determining fair and reasonable compensation, the quantum of compensation may be enhanced considering the income of deceased by service and from his agricultural land.

He placed reliance on the following judgments :

(1) **Saroj and ors. vs Het Lal and ors.**
[AIR 2011 SC 671]

(2) **Manager, United India Insurance Co. Ltd.**
Vs Baburao Paikan Kamble and ors.
[2016 (4) Mh.L.J. 314]

(3) **The New India Assurance Co. Ltd.**
Vs Anela Sathyamma
[ACJ 2015 0 1352]

(4) **Rammurti wd/o Ramprakash Mishra and ors.**
Vs Rudresh B. Tiwari
[2015 (6) Mh.L.J. 305]

(5) **Bimla Devi and Ors vs Himachal Road**
Transport Corpn. And Ors.
[AIR 2009 SC 2819]

7. Learned counsel for owner of the offending car submits that the driver of the offending car held effective and valid driving license on the date of accident and it is filed on record. Therefore, the insurance company is liable to pay compensation to the claimants by indemnifying the owner. He submits that there was no collusion in between claimants and owner of the offending car.

8. I have carefully gone through the evidence placed on record. Undisputedly, no eye witness was available, except the owner and driver of the offending car. Even claimant Ujvala Dahatonde (PW 1) is not eye witness of the occurrence, as admitted by her in cross-examination. Even, first information report (Exh.22) lodged by Uddhav Markad shows that the said person found the deceased lying dead, on Tisgaon-Ahmednagar road. He has not mentioned registration number of the car. On the other hand, in the first information report (Exh.22), it is mentioned that unknown vehicle knocked down the deceased. Only in supplementary statement (Exh.23), the informant has stated that

subsequently the driver of the offending car admitted his guilt and he was arrested. Even claimants have filed certified copy of the police statement of the driver, wherein he admitted the occurrence of the accident when he was driving the offending car.

9. However, this court has repeatedly held in **Farida Begum vs Daulat Khan and another** (supra); **"Pukh Raj Bumb vs Jagannath Achut Naik and others** (supra); **Bajaj Allianz General Insurance Company Ltd. vs Meera w/o Raju Choudhary and others** (supra); and **M/s Shriram General Insurance Co. Ltd vs Narayan s/o Nivrutti Bembde** (supra) that certified copy of statement recorded under Section 161 of the Criminal Procedure Code cannot be read in evidence without examining the said witness.

10. In **Oriental Insurance Company Limited vs Meena Variyal** (supra), the Apex Court held that motor accident claim petitions arising out of accident is a beneficent piece of legislation and

the Tribunal may follow a summary procedure in dealing with the claim. However, that does not mean that the Tribunal, approached with claim for compensation under the Act, should ignore all basic principles of law in determining the claim for compensation. Similar view was also taken by this Court in **Farida Begum vs Daulat Khan and another** (supra); **"Pukh Raj Bumb vs Jagannath Achut Naik and others** (supra); **Bajaj Allianz General Insurance Company Ltd. vs Meera w/o Raju Choudhary and others** (supra); and **M/s Shriram General Insurance Co. Ltd vs Narayan s/o Nivrutti Bembde** (supra).

11. So also, it cannot be ignored that initial burden of proof lies on the claimants to prove their case on the basis of preponderance of probability.

12. However, in the case at hand, the owner of the offending car, who is respondent no.4 in this appeal, has admitted in his written statement the involvement of offending car in above said

accident. Though the insurance company raised objection regarding collusion in between the owner of the offending car and claimants, to substantiate that contention, no evidence has been placed on record by the claimants. Merely, because the insurance company obtained permission under Section 170 of the Motor Vehicles Act from the Tribunal, to raise defences available to the owner of the offending car, it does not mean that collusion in between claimants and the owner of the offending car is proved.

13. Otherwise also, from the pleadings of parties, it becomes clear that the claimants are only young widow and minor children of the deceased, who reside at village Chanda, Taluka Newasa. On the other hand, owner of the offending car is a businessman and he is resident of Padali, Taluka Pathardi. Thus, obviously, the claimants and owner of the offending car are neither resident of one village nor they are related with each other in any manner. Even the insurance company, in its written statement, nowhere pleaded that the

claimants and owner of the offending car are related with each other in any manner. Therefore, only because in the written statement (Exh.15) the owner has admitted that on the date of accident when the deceased was crossing the road, that time he was knocked down by the offending car, inference cannot be drawn regarding collusion in between the owner of the offending car and claimants. On the other hand, in para 7 of the written statement (Exh.15), the owner has contended that the accident occurred due to negligence by the deceased while crossing the road. Thus, by no stretch of imagination, it can be held that there was collusion in between the claimants and owner of the offending car.

14. In the circumstances, the admission given by owner of the offending car, in his written statement (Exh.15) regarding involvement of the offending car, plays important role. In **Saroj and ors. vs Het Lal** (supra), the Apex Court held that admission by owner of the offending vehicle in the pleading itself is sufficient to hold that the

concerned vehicle was involved in the accident.

15. Similar view was also expressed by Kerala High Court in **The New India Assurance Co. Ltd. Vs Anela Sathyamma** (supra). In **Rammurti wd/o Ramprakash Mishra and ors. Vs Rudresh B. Tiwari** (supra), this Court held that one cannot act stubbornly to insist strict evidence in the inquiry of an Claim Petition in respect of motor vehicle accident as if it is a Criminal trial requiring the evidence to be proved beyond all reasonable doubts. The evidence in the form of depositions corroborated by the Police investigation material may be considered as adequate evidence of the motor vehicle accident caused by offending motor vehicle driven rashly and negligently by its driver as per Police report.

16. In **Bimla Devi vs. Himachal Road Transport Corporation** (supra), the Apex Court has made it clear that strict proof of an accident caused by a particular vehicle in a particular manner may not

be possible. The claimants have merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt cannot be applied.

17. In view of this legal position, various niceties pointed out by the learned counsel for the appellant regarding non-examination of investigating officer, driver of the offending vehicle, skull fracture of the deceased, inaction on the part of the owner of the offending car, do not carry any importance, as strict proof is not necessary in motor vehicle claim petition. When owner of the offending car has admitted the involvement of the offending car in above said accident, certainly in absence of any evidence regarding collusion in between claimants and owner of the offending car, this material admission is sufficient to hold that the offending car was involved in the above said accident. The case "**Anil and Ors.vs New India Assurance Co. Ltd. [(2018) 2 SCC 482]** (supra) is distinguishable on facts that in that case there was no medical record

to prove cause of death of deceased. There was possibility of fabrication of false case. However, in the case at hand, postmortem report (Exh.29) of the deceased is placed on record to prove cause of death of deceased.

18. The postmortem report (Exh.29) shows that the skull of the deceased was almost open and the brain material was visible. Such type of injury indicates that the offending car was in high speed. For the reason of high speed, the dash given by car resulted into fracture of skull exposing brain material. When as per pleading of owner of the vehicle, at the time of accident the deceased was crossing road, the driving of the offending car at high speed, even after noticing that some pedestrian was crossing road, itself amounts to rash and negligent driving by the driver of the offending vehicle. I hold that the admission given by the owner of the offending car together with postmortem report, seizure panchanama of the car and other police documents are sufficient to prove that on the date of occurrence the deceased died in

motor vehicle accident, only due to rash and negligent driving of the driver of the offending car.

19. Regarding quantum of compensation, learned counsel for the appellant has raised objection that in absence of cross-objection, this court cannot enhance the compensation. He submits that even the Tribunal has awarded exorbitant compensation.

20. However, the postmortem report shows that at the time of death, the deceased was 28 years young able bodied person. Therefore, in view of **"Smt. Sarla Verma and Ors. Vs Delhi Transport Corporation and Anr."[2009 (5) Mh.L.J. 775]**, in the case at hand, multiplier of 17 will be applicable.

21. Regarding income of the deceased, by examining Shaikh Mohsin (PW 2), Clerk from Agricultural College, Sonai, the claimants have proved that from 27.7.2007 to 31.10.2010 the deceased served in the said college as agricultural assistant and he had drawn salary of Rs.9615/- per

month. The oral version of the Clerk Shaikh Mohsin (PW 2) is also corroborated by correspondence of the Principal of College with Union Bank, Branch Sonai (Exh.35) and salary sheet of the staff members of the said college (Exh.36). However, this evidence can be considered only to determine the earning capacity of the deceased, because, as per above discussed evidence, the deceased served in the said agricultural college only till 31.10.2010 and not on the date of accident.

22. About the income of the deceased on the date of accident, the testimony of Sandeep Jawale (PW 3), who is the proprietor of Shri Sawata Krupa Krishi Seva Kendra at village Chanda, plays important role. This witness has duly proved that from 2010 till the date of accident, the deceased served in the said Krishi Seva Kendra as agricultural assistant and he used to draw salary of Rs.11,000/- per month. This oral testimony is also corroborated by certificate (Exh.38) placed on record.

23. In the case of **Royal Sundaram Alliance Insurance Company Limited vs Smt. Varsha Rajendra Pache and others [2017 (6) Mh.L.J. 308]** and in **Sushila Wd/o Subhash Mendhe and another vs National Insurance Company Limited and Others [2018 (3) Mh.L.J. 311],** this Court has consistently held that on the basis of testimony of employer of the deceased, the monthly income of the deceased can be duly established without any other supporting documentary evidence. Therefore, I have no hesitation to hold that at the time of occurrence, the monthly income of the deceased was 11,000/-.

24. As rules of pleading are not strictly applicable in the summary inquiry under the Motor Vehicles Act in motor accident claim petition, the reference in the pleading only regarding service in the agricultural college does not carry any importance. It is the duty of the Tribunal to inquire regarding income of the deceased at the time of death even in absence of detailed pleading to that effect.

25. In addition to this salary income of the deceased of Rs.11,000/- per month, the record of right (Exh.45) shows that the deceased had 1/3rd share in 80 Are agricultural land, situated at village Chanda and crop statement shows that from this land the deceased used to take sugar cane crop. Even the claimants have filed receipts issued by Mula Cooperative Sugar Factory, which show that in 2010 final bill of Rs.28280/- was received by the claimants. Thus, from the agricultural land, the claimants used to earn approximately Rs.30,000/- in one season from the sugar cane crop. As deceased used to work in the same village, certainly he would be also supervising the agricultural operations in the field property. Thus, certainly the claimants have sustained loss of supervision on agricultural land, by the deceased. Therefore, additional compensation of Rs.200/- per month needs to be awarded for loss of supervision to the claimants. Thus, monthly income of the deceased is assessed as Rs.11,200/-.

26. At the time of death, the deceased was only

28 years old and he used to work on fixed salary. Therefore, in view of "**National Insurance Company Ltd. Vs Pranay Sethi and others" [2018 (3) Mh.L.J. 70]**, 40 per cent amount is to be added in the monthly income of the deceased towards loss of future prospects. Thus, monthly income of the deceased is assessed as Rs.11200+4480=15680. It follows that his annual income is Rs.15680x12=188160/-.

As in the family of the deceased, number of dependents is 3, in view of guidelines issued in the case of **"Smt. Sarla Verma and Ors. Vs Delhi Transport Corporation and Anr."** (supra), 1/3rd income is to be deducted from the annual income of the deceased towards personal expenses of the deceased. Thus, annual contribution by the deceased to his family is assessed as Rs.188160-62720=125440/-.

Applying the multiplier of 17 to the multiplicand of Rs.125440/-, the loss of dependency is assessed as Rs.125440x17=2132480/-.

27. In addition to this, as per the guidelines issued by the Apex Court in “**National Insurance Company Ltd. Vs Pranay Sethi and others**” (supra), under conventional head, compensation of Rs.40,000/- is to be awarded for loss of consortium, compensation of Rs.15,000/- is to be awarded for loss of estate and Rs.15,000/- is to be awarded for funeral expenses. Thus, the claimants are entitled to total following compensation under different heads.

Loss of Dependency	:	Rs. 2132480/-
Loss of Consortium	:	Rs. 40000/-
Loss of Estate	:	Rs. 15000/-
Funeral Expenses	:	Rs. 15000/-
Total	:	Rs.2202480/-

[Rs.Twenty Two Lakh Two Thousand Four Hundred Eighty only]

28. Appellants are also entitled to interest on this compensation amount of Rs.2202480/- at the rate of nine per cent per annum, from the date of filing of claim petition till realization of the compensation amount. This compensation shall be inclusive of compensation received by the claimants

under no fault liability.

29. Before parting with the judgment, I must make it clear that in view of verdict of the Apex Court in the case of **Jitendra Khimshankar Trivedi and others vs Kasam Daud Kumbhar and others [2015 (4) SCC 237]**, even in absence of Cross-objection, the court can enhance the compensation as just and fair.

30. In view of the above discussion, the appeal deserves to be allowed and the award passed by the Tribunal deserves to be modified. Accordingly, First Appeal No. 894 of 2017 is partly allowed. The judgment and award passed by the Motor Accident Claims Tribunal, Ahmednagar, in Motor Accident Claim Petition No. 705 of 2012 is modified as under :

> " (i) Claim petition is allowed with costs.
>
> (ii) Opponent Nos. 1 and 2 do jointly and severally pay total compensation

of Rs.2202480/- [Rs. [Rs.Twenty Two Lakh Two Thousand Four Hundred Eighty only] to claimant nos. 1 to 3 with interest at the rate of nine per cent per annum, from the date of filing of claim petition till realization of the compensation amount. It shall be inclusive of compensation under no fault liability.

(iii) The compensation amount shall be equally apportioned in between claimant nos. 1 to 3.

(iv) Compensation of the share of minor claimant nos. 2 and 3 be invested in any Nationalized Bank through their mother claimant no.1 Ujwala Dahatonde, till they attain majority.

(v) Claimant No.1 is permitted to receive quarterly accrued interest on fixed deposit amount of claimant nos. 2 and 3.

(vi) Prematue withdrawal of the fixed deposit amount is not permissible. The concerned Bank be informed accordingly.

(vii) Compensation amount of the share of claimant no.1 be paid to her through the Tribunal by account payee cheque.

(viii) Award be drawn accordingly."

31. Parties to bear their respective costs of the appeal.

32. Amount deposited in this court, along with accrued interest, be transmitted to the Motor Accident Claims Tribunal, Ahmednagar, for its payment to claimant no.1 and for investment of the share of claimant nos. 2 and 3, in accordance with the award.

33. Deficit court fee, if any, be recovered from the appellants as per rules.

34. Appeal is disposed of in above terms.

[**SUNIL K.KOTWAL, J.**]

dbm