

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.838 OF 2005

The New India Assurance co. Ltd. ... Appellant
Vs.
Smt.Archana Anil Bhoir & ors. ... Respondents

**WITH
CIVIL APPLICATION NO.1547 OF 2017
WITH
CIVIL APPLICATION NO.4117 OF 2017
IN
FIRST APPEAL NO.838 OF 2005**

Smt.Archana Anil Bhoir & ors. ... Applicants

IN THE MATTER OF:

The New India Assurance co. Ltd. ... Appellant
Vs.
Smt.Archana Anil Bhoir & ors. ... Respondents

Ms.Poonam Mittal for the Appellant
Mr.A.M. Gokhale, for Respondent Nos.1 to 5

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JANUARY 31, 2018**

P.C. :

1. This appeal filed by the appellant / insurance company challenges the judgment and award 30.11.2004 passed by the learned Additional District Judge & Member, Motor Accident Claims Tribunal, Thane in MACP No.624 of 2001 thereby granting a compensation of Rs.13,41,000/- alongwith interest @ 9% p.a.

2. The claim under section 166 of the Motor Vehicles Act was filed by the widow, two minor children and parents of the deceased Anil Shivaji Bhoir. The accident took place on 17.12.2000 when the deceased was going from Wada to Manor on his scooter bearing No.MH-04-AD-2835. On the road, near village Sapne, he came across a tree fallen on the middle of the road. The offending vehicle i.e., Maruti car bearing No.MH-04-N-2249 coming from Wada side was in excessive and high speed. The driver could not control the car and dashed the deceased while overtaking him. The deceased was thrown and fell down. He sustained head injuries and other injuries. He died on the spot. Thereafter, the widow and the minor children and the parents filed the claim application for compensation.

3. In the claim, opponent No.1, the owner of the offending vehicle, though was served, did not appear before the Court and the matter proceeded ex parte against him. The opponent No.2 i.e., the appellant / insurance company appeared through counsel and with permission, resisted the claim by filing written statement. It was pleaded that the deceased was responsible for contributory negligence to a great extent and also challenged his income and

dependency. The trial Court faced issues. The applicant No.1 widow examined herself. One Shri Lakde was PW2 who was a clerk, working in the school of the deceased. One Mr.S.G. Damse, the Investigating Officer was examined, who produced the police papers including the spot panchanama and postmortem notes. The insurance company did not lead any evidence.

4. After considering the evidence – both oral as well as documentary – the Tribunal accepted that the deceased was working as a teacher in the high school and fixed the salary of the deceased at Rs.10,000/- per month and rejected the claim of contributory negligence and granted a compensation against which this appeal is filed.

5. The points of determination in this appeal are as follows:

- i) Whether the Tribunal committed any error in not considering the defence of contributory negligence?;
- ii) Whether the amount of compensation is excessive and needs to be reduced?

6. The learned Counsel for the appellant insurance company

submitted that the learned Member, Tribunal ought to have considered the manner in which the accident has occurred. The deceased was ahead of the offending vehicle and he suddenly stopped and, therefore, the accident has taken place and so he was negligence to a large extent and therefore, the amount of compensation ought to have been reduced to that extent. The learned Counsel has further challenged the finding of the Tribunal on the point of quantum.

7. The learned Counsel for the respondents/original claimants relied on the police papers while meeting the point of contributory negligence. He submitted that the deceased was holding the degrees of B.Sc. and B.Ed. and was teaching in the school. He was qualified and the claimants have adduced the evidence of Shri Lakde on the point of his service and salary. He has submitted that the amount of compensation is not excessive and it cannot be reduced.

8. The learned Counsel also submitted that though he has not filed a separate appeal for enhancement, his submissions on the point of excess deduction in the monthly salary is to be taken into account. There were in all, 5 dependents and, therefore, 1/3rd

portion of the total income towards deduction cannot be justified but it should have been 1/4th.

9. Perused the record and proceedings and the evidence of the parties. On the point of actual occurrence of the accident, the spot panchanama dated 18.12.2012 is to be relied. It shows that one teak tree fell down on that day and the deceased was ahead of the offending vehicle i.e., Maruti car, which dashed the scooter and therefore, the deceased fell down and sustained injuries. If the incident on the basis of the spot panchanama is reconstructed, then, it cannot be said that the deceased was negligent. The deceased did not himself dash on the fallen tree but he was thrown due to the impact caused by the offending vehicle. Thus, there is no substance in the submission of the learned Counsel on the point of negligence.

10. On the point of income, the claimants have tendered sufficient evidence. Mr.Lakde was working as a clerk in the school and he produced the record of service of the deceased. At the time of the incident, it is disclosed that he was 32 years old and therefore, the multiplier of 16 was applied. The salary certificate at exhibit 42 was produced which showed the gross income of the

month of November, 2000 was Rs.9,428/-. The incident has taken place in 2000 and his evidence was recorded in 2003. At that time, a person having same post was drawing Rs.11,115/- and therefore, the learned Tribunal has fixed the salary of Rs.10,000/- per month. Thus, the view taken by the Tribunal cannot be faulted with. So also as regards the application of multiplier and grant of other benefits, is considered correct.

11. It is true that the claimants have not filed a separate application for enhancement. However, considering the number of dependents, 1/3rd deduction in the income is erroneous on the basis of the ratio laid down by the Supreme Court in **National Insurance Co. Ltd. vs. Pranay Sethi**¹ and in **Sarla Verma & Ors. Delhi Transport Corporation & anr.**².

12. In the circumstances, by deducting 1/4th income towards personal expenses from the monthly income of Rs.10,000/-, it would be Rs.7,500/-. Thus, taking into account the multiplier at 16, it would be Rs.14,40,000/-. (7500 X 12 X 16). The remaining order passed by the Tribunal is not disturbed.

13. The Appeal is accordingly dismissed.

1 2017 SCC Online SC 1270

2 (2009) 6 SCC 121

14. In view of the dismissal of the appeal, nothing remains in the Civil Applications and the same are disposed of as such.

(MRIDULA BHATKAR, J.)