

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

**FIRST APPEAL NO.1135 OF 2015
with
CIVIL APPLICATION NO.3348 OF 2013
WITH
CIVIL APPLICATION NO.3000 OF 2015**

The National Insurance Co. Ltd. ... Appellant
Vs.
Ms.Vasumati Mangaldas Shah & Ors. ... Respondents

**with
FIRST APPEAL NO.474 OF 2015
with
CIVIL APPLICATION NO.4537 OF 2013**

The National Insurance Co. Ltd. ... Appellant
Vs.
Ms.Vasumati Mangaldas Shah & anr. ... Respondents

Ms.Poonam Mittal for the Appellant
Mr.T.J. Mendon for Respondent Nos.1 to 4 in FA/1135/2015 and
for Resp. No.1 in FA/474/2015

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

P.C. :

1. These appeals are taken up together and decided by this common judgment and order.
2. The appeals challenge the judgement and award dated 18.10.2012 passed by the learned member, Motor Accident Claims

Tribunal, Mumbai in MACP No.2305 of 2005 and the judgement and award dated 20.10.2012 passed by the learned member, Motor Accident Claims Tribunal, Mumbai in MACP No.2304 of 2005, thereby granting compensation of Rs.19,37,000/- to the applicants. The Respondent No.1 is a widow and respondent Nos.2 to 4 are the married daughters of the deceased Mangaldas Jivanlal Shah, who met with an accident on 3.6.2005 and died. The deceased and respondent No.1 i.e., his wife, were travelling in a car No.MH-04-BM-5944 owned by the opponent No.1 Apar Industries Ltd. The said car was insured with the present appellant. When they were driving on Pune-Mumbai express highway at village Theku, the driver lost control over the vehicle and it dashed against the railings. Mangaldas Shah died in the accident and his wife Vasumati sustained many fractures and injuries. She therefore, filed separately her injury claim under section 166 of the Motor Vehicles Act, which was allowed partly vide judgment and award dated 20.10.2012 by the learned Member, Motor Accident Claims Tribunal, Mumbai in MACP No.2304 of 2005.

3. In both the applications, the opposite party i.e., the owner though served, failed to appear and the matters proceeded ex-parte against the owner. However, the appellant/insurance company appeared and after obtaining necessary permission under section 170 of the Motor Vehicles Act, filed written statement. The insurance of the car with the appellant was admitted. However, it was contended that the opposite party paid additional premium of Rs.200/- to cover personal accident for covering the unnamed passenger's liability i.e., Rs.1 lakh per person and, therefore, the appellant accepted the liability limited to Rs.1 lakh per person as they were travelling as gratuitous passengers in the car, in both the matters.

4. The Tribunal framed issues. The applicant No.2 in the death claim application, namely, Ms.Jigna Mukesh Shah, the daughter, entered the box. Another witness Govind Singh Bora gave evidence on the point of employment and the salary of the deceased, who was working with Apar Industries. No evidence was led by the insurance company. The learned member, Motor Accident Claims Tribunal, after considering oral as well as documentary evidence, tendered by the applicants, allowed both

the applications partly i.e., for death and injury claim applications. Hence, these appeals.

5. The point of determination is that whether the amount of compensation granted is excessive and is to be reduced?

6. The learned Counsel for the appellant has submitted that the insurance company has challenged both the orders mainly on the point of quantum. She submitted that the income of the deceased was shown on a higher side. His salary certificate was not produced and therefore, the learned Tribunal has erred in holding the annual income of the deceased from the salary would be Rs.8,17,189/-. She further submitted that it was pleaded that he was Vice-President of the opponent company. He was in fact working as a Senior General Manager. In the appeal pertaining to injury claim, the learned Counsel for the appellant/insurance company has argued that considering the injuries sustained by the respondent/original claimant Vasumati, the learned Member of the Tribunal has committed error in granting excessive amount towards compensation. The learned Counsel has pointed out the chart in para 36 in judgment in Application No.2304 of 2005 wherein bifurcation under various heads are mentioned. She

submitted that less amount should have been given towards the attendance and cook expenses, diaper and other related expenses so also under the loss of amenities. She submitted that these amounts are to be reduced.

7. Mr.Mendon, the learned Counsel appearing for respondent Nos.1 to 4, has supported the judgment of the Tribunal and amount of compensation granted by the learned Member, Motor Accident Claims Tribunal, Mumbai. He submitted that one is a death claim wherein monthly salary of the deceased is brought on record by examining the witness from opponent Apar Industries. The second one is an injury claim wherein the claimants have suffered many fractures of bones of the limbs and in order to prove the claim, has examined witnesses like cook and servants. He also pointed out that Dr.Ravi Vinod Shah is examined on the point of injuries and disabilities, who has stated that the applicant has suffered permanent partial disability of 60%. In order to prove the medical expenses, AW7 Esakimuthu Murugan is examined and therefore, it cannot be reduced.

8. Perused the judgments in both the claim applications so also notes of evidence of witnesses of both the cases. In the death

claim, the applicant / original claimant No.2, the daughter of the deceased has stepped into box and she has deposed about the accident and also about her father's income. Her evidence is corroborated by the evidence of Mr.Govind Singh Bora, who was working in Apar Industries. Mr.Bora produced salary certificate exhibits 27 and 28 and also exhibits 16, 17 and 18, the income tax returns of the deceased relating to A.Y. 2002-2003, 2003-2004, 2004-2005 respectively and the last income of tax returns as Rs.8,17,289/- is rightly considered as an annual income of the deceased. The learned Tribunal considering the age of the deceased as 65, has adopted the multiplier of 5 and rightly rejected the claim of future prospects in view of the age of the deceased. In para 19 of the impugned judgment, in Claim Application No.2305 of 2005, the Tribunal has deducted 1/3rd amount towards personal and living expenses of the deceased i.e., Rs.190,667/- and so also income-tax deduction which comes to Rs.245,156/- and thus, rightly held that after all deductions, the amount of Rs.381,356/- was the amount contributed by the deceased towards maintainance of the family. The said amount is multiplied by 5 and thus, the loss of dependency was considered as Rs.19,06,780/-. In para 21, funeral expenses, loss of

consortium, love and affection is considered and the amount of compensation of Rs.19,37,000/- is found just and adequate compensation. Hence, no need to interfere with such order.

9. In injury claim, application No.2304 of 2005, the claimant has examined many witnesses. AW2 Laxmilal G. Pitaul, the cook; AW3 Shubhangi S. Khadas; and AW4 Kamal Chandrakant Kadam have deposed that they are attendants working for the applicant from July 2005 till date. AW5 Manish Narendra Zaveri is examined on the point of proving medical bills from Hurkissondas hospital. The medical papers and bills are marked exhibit 43 collectively. On the point of treatment given to her in Hurkissondas hospital, Dr.Ravi Vinod Shah, Orthopaedic Surgeon was examined. He gave disability certificate (exhibit 45) that the applicant sustained permanent partial disability of 60%. AW7 Esakimuthu Murugan gave evidence on the point of billing and the expenses incurred in the Breach Candy hospital by the claimants and AW8 Dr.Nayan Sanghavi deposed about the treatment given by him to the claimant for Neurogenic bladder. Alongwith this, other documentary evidence like FIR (exhibit 21); spot panchanama (exhibit 22) and the other documents which are produced are

perused. The learned Judge on the basis of this evidence has in para 36 of his judgment in Claim Application No.2304 of 2005 gave breakup under different heads. The proof of medical bills, vouchers, special diet, conveyance is fixed on the basis of the documents. For permanent disability, Rs.60,000/- is granted.

10. An objection was raised in respect of the amount of compensation granted of Rs.5 lakhs towards attendant expenses and cook. So also, Rs.2 lakhs for diaper and other related expenses and Rs.2 lakhs for loss of amenities. In order to ascertain the substance in this objection, the facts are to be revisited. The accident took place on 3.6.2005. The judgment and award was pronounced on 20.10.2012 i.e., 7 years after the incident. I am informed that the appellant today, is alive and she is looked after by an attendant, cook and other servants. She is completely bed ridden even if its assumed that she has to pay a reasonable amount of Rs.15,000/- to the attendant and Rs.5,000/- to a cook, it means her annual expenditure towards attendant and cook would be Rs.240,000/- and so even at the time of judgment, she spent the said amount for 7 years. Now, 12 years have passed and, therefore, the amount estimated towards expenses of

the attendant, cook, diapers and other things and loss of amenities are not at all excessive but are adequate and correct and hence, I am of the view that no interference is required.

11. In the circumstances, the appeals are dismissed.

(MRIDULA BHATKAR, J.)