IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPEAL NO. 2926 OF 2018

WITH

CIVIL APPLICATION NO. 3665 OF 2018

WITH

CIVIL APPLICATION NO. 8755 OF 2018

United India Insurance Co. Ltd.,
Through its Administrative Officer,
Divisional Office, H. No. 5/5/76,
New Osmanapura, V.P. Chouk,
Aurangabad. ...**APPELLANT**
(Orig. Respdt. No.3)

VERSUS

1. Vaishali Deepak Pardeshi,
Age; 43 yerars, Occ; Housewife,
Resident of 75, Jagtap Wadi,
Taluka and Dist. Nandurbar.

2. Pushpa Ranjit Pardeshi,
Age; 72 years, Occ; Nil,
Resident of as above.

3. Ravindra Bhagavan Ghodase,
Age; 42 years, Occ; Driver of
Scorpio No. MH-39-J-4397,
Resident of Vill. 68, June Mohide,
Taluka and District; Nandurbar.

4. Ketan Dilipsingh Pardeshi,
Age; 47 years, Occ; Owner of
Scorpio No. MH-39-J-4397,
Resident of Pardeshipura,
Taluka and District; Nandurbar. ..**RESPONDENTS**
(Respdt. Nos. 1 & 2 are Orig.

Claimants and Respdt. Nos. 3 &
4 is Orig. Respdt. Nos. 1 & 2)

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Shri. S.R. Bagal, Advocate for Appellant
Shri. L.V. Sangit, Advocate for Respondent
Nos. 1 & 2.
Shri. A.S. Kulkarni, Advocate for Respondent Nos.
3 & 4.
…...

CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 14/03/2019

Date of Pronouncing Judgment : 22/03/2019

JUDGMENT :

This appeal is directed against the judgment and award passed by the Motor Accident Claims Tribunal, Nandurbar (hereinafter referred to as the 'Tribunal') in Motor Accident Claim Petition No. 59 of 2016, (hereinafter referred to as the 'MACP'), where as compensation of Rs. 51,24,212/- was awarded as joint and several liability was fastened against respondent Nos. 1 to 3. Appellant is the original respondent No. 3 i.e. the United India Insurance Company Ltd. Respondent Nos. 1 and 2 are the original claimants and respondent No. 3 is the driver and respondent No. 4 is the owner of Scorpio Jeep bearing No. MH-

39-J-4397 (offending vehicle). (For the sake of clarity hereinafter parties are referred in accordance with their status in the original proceeding as claimants and respondents).

2. Facts leading to the institution of this appeal in brief are that on 2.5.2016, at the evening hours the deceased was riding his motorcycle bearing No. MH-39-L-6548 on Khodai Mata road. That time, offending vehicle came from opposite direction and due to rash and negligent driving by the driver of the offending vehicle, dash was given to the motorcycle of the deceased resulting into the grievous internal head injuries to the deceased. The deceased rushed to various hospitals for treatment but he succumbed to those accidental injuries on 11.5.2016. Therefore, claimants who are the widow and mother of the deceased, have filed this claim petition for compensation.

3. Respondent Nos. 1 and 2 appeared before the Tribunal and filed written statement at Exh. 15 and admitted the involvement of the offending

vehicle in the above said motor vehicular accident. However, they contend that the accident did not occur due to rash and negligent driving of the driver of the offending vehicle.

4. Even respondent No. 3 insurance company filed written statement (Exh. 38) and raised defence that the deceased was riding on motorcycle without wearing the helmet. Next contention of the insurance company is that the petition is bad for non joinder of the Insurance Company of the motorcycle of the deceased. Respondent No. 3 disputed involvement of offending vehicle in accident.

5. Heard Shri Shri. S.R. Bagal, learned counsel for appellant, Shri. L.V. Sangit, learned counsel for Respondent Nos. 1 & 2 and Shri. A.S. Kulkarni, learned counsel for Respondent Nos. 3 and 4.

6. Learned counsel for insurance company submits that there was inordinate delay in lodging FIR (Exh. 22), as the the date of accident is of

2.5.2016 and the FIR was lodged on 11.5.2016. He submits that in the background of unexplained delay in lodging the FIR, involvement of the offending vehicle is not duly proved by the claimants.

7. Learned counsel for the Insurance Company has also drawn my attention to the discharge card (Exh. 30), wherein the history of the accident is mentioned as 'due to skidding of the motorcycle'. Relying on the entry in discharge card, he submits that accident occurred due to skidding of the motorcycle of the deceased due to his own negligence and therefore, the liability to pay compensation cannot be fastened on insurance company or the owner or the driver of the offending vehicle. He submits that application submitted by the insurance company for issuance of summons to the Medical Officer who issued the discharge card (Exh. 30) was rejected by the tribunal (Exh. 63). Therefore, for want of proper opportunity to the Insurance Company, this matter needs to be remanded to the Tribunal for reconsideration after giving opportunity to the

insurance company to examine the concerned Medical Officer. So that the insurance company can prove the history of the accident due to skidding of the motorcycle.

8. The next contention of the learned counsel for the insurance company is that the quantum of the compensation awarded by the Tribunal is exorbitant. His income tax is not deducted from the gross monthly income of the deceased, but under the head of non pecuniary heads, exorbitant compensation is awarded by the Tribunal.

9. Learned counsel for claimants submits that as relatives of the deceased were busy in attending victim in the hospital till his death, they could not lodge FIR. Therefore, delay in lodging the FIR cannot be a reasonable ground to doubt the contention of the claimants.

10. Regarding the entry in discharge card (Exh. 30) about the skidding of the motorcycle, the contention of the learned counsel for the

claimants is that probably the said history of the accident was given by the person who was not the eye witness of the accident. Otherwise also such admission given by the third person is not binding on the claimants. He submits that more than sufficient opportunities have been given to the insurance company to examine the concerned Medical Officer to prove the discharge card. However, despite such opportunities the insurance company could not secure the presence of the concerned Medical Officer before the Tribunal. Therefore, the matter need not be remanded for reconsideration. He submits that instead of the concerned Medical Officer, the insurance company ought to have examined the person who gave the history of the accident in the hospital. He placed reliance on **"Ravi v. Badrinarayan and Others" [decided by the Supreme Court on 18th February, 2011 in Civil Appeal No. 1926 of 2011]**, wherein the Apex Court ruled that,

> "delay in lodging the FIR cannot be a ground to deny the justice to the victim"

11. After hearing learned counsels of both parties, following points arise for my consideration, I have recorded my findings against each point for the reasons stated thereunder :

SR. No.	POINTS FOR DETERMINATION	FINDINGS
1)	Do claimants prove that the accident dated 2.5.2016 occurred due to rash and negligent driving by the driver of the offending vehicle ?	Yes.
2)	Whether the claimants are entitled for compensation, if yes, at what quantum and from whom ?	Claimants are entitled to the compensation of Rs.50,66,960. Respondent Nos. 1 to 3 are jointly and severally liable to pay this compensation to the claimants.

R E A S O N S

AS TO POINT NO. 1 :-

12. In the case at hand, undisputedly, the offending vehicle was insured with respondent No. 3 insurance company. Therefore, if claimants can prove that accident occurred due to rash and negligent driving by the driver of the offending

vehicle, respondent Nos. 1 to 3 would be jointly and severally liable to pay compensation to the claimants.

13. Though, respondent No. 3 insurance company has disputed the involvement of offending vehicle in the above said motor vehicular accident, it cannot be ignored that respondent Nos. 1 and 2, who are the driver and owner of the offending vehicle have categorically admitted in para No. 6 of their written statement (Exh. 15) the involvement of the offending vehicle in the accident dated 2.5.2016. The only contention of the respondent Nos. 1 and 2 is that the accident occurred due to negligence on the part of the deceased. In view of this, clear admission given by the driver and owner of the offending vehicle, now insurance company cannot dispute the involvement of the offending vehicle in the above said accident.

14. Otherwise also, on behalf of claimants Smt. Vaishali Deepak Pardeshi (PW 1) stepped in witness box and deposed that on 2.5.2016, her

husband died in motor vehicular accident due to rash and negligent driving by the driver of the offending jeep. It was suggested on behalf of respondents that at the time of accident the deceased did not wear helmet. However, that suggestion was specifically denied by this witness. On the other hand, the testimony of Vaishali (PW 1) is fully corroborated by the FIR (Exh. 22) and the spot panchanama (Exh. 23). The FIR (Exh. 22) lodged on 12.5.2016 by brother in law of the deceased, recites that on 2.5.2016 the deceased met with an accident due to dash given by the offending jeep bearing No. MH-39-J-4397. Even the name of the driver of the offending jeep is specifically mentioned in the FIR. The involvement of the offending jeep in the accident is also mentioned in the spot panchanama (Exh. 23). No doubt, certainly there is ten days delay in lodging the FIR. However, it cannot be ignored that as the deceased was rushed to the hospital in injured condition, naturally the relatives of the deceased would be busy in attending him in the hospital. Therefore, circumstances of the case itself explain the delay in lodging the FIR.

Thus, as ruled by the Apex Court in "**Ravi v. Badrinarayan and Others**" [supra] the delay in lodging the FIR cannot be a ground to deny the justice to the victim.

15. On the basis of the testimony of Vaishali (PW 1), which is corroborated by the recitals of FIR (Exh. 22) and the spot panchanama (Exh. 23), the claimants have proved that the above said accident occurred only due to rash and negligent driving by the driver of the offending jeep. On the basis of Postmortem notes (Exh. 24), the claimants have proved the accidental death of the deceased due to head injury. Thus, the findings of the Tribunal is absolutely correct that on 2.5.2016, due to rash and negligent driving by the driver of the offending jeep the deceased sustained injuries and succumbed to those injuries on12.5.2016. I answer point No. 1 in the affirmative.

AS TO POINT NO. 2 :-

16. In view of my findings against point No.

1, respondent Nos. 1 and 2 being the driver and owner of the offending jeep and respondent No. 3 being the insurer of the offending jeep are jointly and severally liable to pay compensation to the claimants.

17. No doubt, learned counsel for the insurance company placed reliance on the discharge card (Exh. 30) which shows that the history of the accident was given by one relative as due to skidding of the motorcycle. However, as rightly pointed out by the learned counsel for the appellants, as this discharge card is relied by the claimants, the examination of the Medical Officer who issued this discharge card need not be examined. However, the history of the accident given by one Ravindra Raghuwanshi is due to skidding of the motorcycle is not binding on the claimants as the said admission was neither given by the deceased, nor by the claimants. Such information given by third person to the Medical Officer is not sufficient to hold that accident occurred due to the skidding of the motorcycle when this history of accident is not corroborated

by the FIR and the spot panchanama of the accident. In the circumstances, remand of the case for giving opportunity to the insurance company to examine the Medical Officer, who issued the discharge card (Exh. 30), is absolutely not necessary. Otherwise also, it cannot be ignored that though the person who had given the history of the accident to the doctor was available to the insurance company, it has not taken pain to examine that person to prove the occurance of the accident due to skidding of the motorcycle.

18. In the circumstances, I am fully satisfied that the the learned Tribunal is certainly justified while fastening the jointly and severally liability to pay the compensation on respondent Nos. 1 to 3.

19. Now turning to the quantum of compensation, after going through the judgment passed by the Tribunal, it emerges that by examining Mahendra Wagh (PW 2), Accountant in Asha Hospital, the claimants have proved the medical expenses of Rs. 2,00,000/- towards the treatment

of the deceased till his death. At the time of death, the deceased was 43 years old and he was drawing monthly salary of Rs. 33,196/- p.m. Which is proved by Prasanjit Pardhi (PW 3), who works as Senior Clerk in Narmada Vikas Department. From the testimony of this witness, it emerges that the deceased was in the employment of Narmada Vikas Department as driver. This witness has proved the salary certificate of the deceased (Exh. 53). The salary certificate (Exh. 53) shows that gross monthly salary of the deceased was Rs. 33,196/-. No income tax was deducted as the deceased was not the income tax payee. However, the professional tax of Rs. 200/- was deducted. Thus, from the monthly salary of the deceased, the professional tax of Rs. 200/- and washing allowance of Rs. 50/- which is the personal allowance, needs to be deducted. Thus, monthly income of the deceased comes to Rs. (33,196-250) = 32946/-.

20. In view of the verdict of the Larger Bench of the Apex Court in "**National Insurance Company Ltd. vs Pranay Sethi and others**" **[2018 (3)**

Mh.L.J. 70], as the deceased was the above 40 years and in permanent service, 30% income is to be added towards the loss of future prospect. Thus, monthly income of the deceased comes to Rs. 42,830/-. It follows that his annual income is Rs. 5,13,960. As per guidelines issued by the Apex Court in "**Smt. Sarla Varma and Ors Vs Delhi Transport Corporation and Anr" [AIR 2009 Supreme Court 3104]** 1/3rd income is to be deducted towards personal expenses of the deceased. Thus, the annual loss of income comes to Rs. 1,71,320/-.

21. As the deceased was 43 years old, as directed by the Apex Court in "**Smt. Sarla Varma and Ors Vs Delhi Transport Corporation and Anr"** [supra] the multiplier of '14' is applicable. Thus, the loss of dependency comes to Rs. 47,96,960/-.

22. In addition to this, in accordance with the law settled by the Apex Court in "**National Insurance Company Ltd. vs Pranay Sethi and others"** [supra], the claimants are entitled to following

compensation under conventional heads :

a)	Loss of consortium	=	Rs. 40,000/-
b)	Loss of estate	=	Rs. 15,000/-
d)	Funeral expenses	=	Rs. 15,000/-
	Total =		Rs. 70,000/-

23. Thus, the claimants are entitled to total following compensation under different heads :

a)	Loss of dependency	=	Rs. 47,96,960 /-
b)	Medical Expenses	=	Rs. 2,00,000/-
b)	Loss of consortium	=	Rs. 40,000/-
c)	Loss of estate	=	Rs. 15,000/-
d)	Funeral expenses	=	Rs. 15,000/-
	Total =		Rs.50,66,960/-

(Rs. Fifty Lac Sixty Six Thousand Nine Hundred and Sixty Only)

24. This compensation shall be inclusive of compensation received under the No Fault Liability.

25. The claimants are also entitled to interest on this compensation amount @ 9 % p.a. from the date of filing of the petition till realization of this amount.

26. This rate of interest is enhanced by invoking powers of this Court under Order 41 Rule 33 of the Code of Civil Procedure, 1908.

27. Out of this compensation, amount of Rs. 10,00,000/- with proportionate interest shall be paid to the Claimant No. 2 (mother) and the remaining compensation and interest shall be paid to the claimant No. 1 (Widow). Hence, I answer point No. 2 accordingly.

28. In the circumstances this appeal deserves to be partly allowed to reduce the quantum of compensation to the tune of Rs. 50,66,960/-. Hence following order :

ORDER

1) First Appeal No. 2926 of 2018 is partly allowed.

2) The Judgment and award passed by the MACT, Nandurbar in MACP No. 59 of 2016 is modified as under :

> “a) Petition is partly allowed with proportionate costs.
>
> b) Respondent Nos. 1 to 3 do jointly and severally pay

compensation of Rs. 50,66,960/- (Rs. Fifty Lac Sixty Six Thousand Nine Hundred and Sixty Only) to the claimants with interest thereon @ 9 % p.a. from the date of filing of the petition till realization.

c) This compensation shall be inclusive of No Fault Liability.

d) On deposit of this compensation, the amount of Rs. 10,00,000/- with proportionate interest be paid to Claimant No. 2 (mother) and the remaining compensation with proportionate interest shall be paid to claimant No. 1 (Widow), through the Tribunal by separate account payee cheques.

e) Out of the compensation payable to the claimants 50% amount shall be invested in Fix Deposit in the respective names of the claimants separately in any Nationalized Bank of their choice for the period of three years.

f) Premature withdrawal is not permissible.

g) Award be drawn up accordingly."

3) Parties to bear their respective costs of the appeal.

4) Appeal is disposed of in above said terms.

5) If compensation amount is deposited in the Court, the claimants are at liberty to

withdraw it, in accordance with modified award. Surplus compensation amount be refunded to insurance company. The compensation amount be remitted to Motor Accident Claims Tribunal, Nandurbar, for disbursement.

6) Pending Civil Applications bearing Nos. 2926 of 2018 and 8755 of 2018 are disposed of.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/