IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 FIRST APPEAL NO.705 OF 2004
WITH CA/3538/2019 IN FA/705/2004

1. Vithal S/o. Ambadas Garad
Age: 65 yrs., Occu.: Agri.,
R/o. Khed, Tq. & Dist.Osmanabad.

2. Tarabai W/o. Vithal Garad
Age: 60 yrs., Occu.: Household,
R/o. As above.

3. Sangita w/o. Ranjeet Garad
Age: 26 yrs., Occ.: Household.
R/o. as above. ..Appellants
(Orig. Claimants)

VERSUS

1. Deepak S/o. Kantibhai Parmar
Age: Major, Occu.: Contractor,
R/o. Wadgaon, Tq. Parli Vaijinath,
Dist.Beed.
(Owner of Jeep No.MH-23/B-1117)

2. National Insurance Co. Ltd.,
Nanded, Through the Divisional
Manager, National Insurance
Co. Ltd., Shubhray Towers,
Datta Chowk, Solapur. ..Respondents
(Orig. Respondents)

...

Advocate for Appellants : Shri P.S.Chavan
Advocate for Respondent No.2 : Shri Amol Joshi h/f.
Shri R.S.Deshmukh and Shri V.N.Upadhye

...

CORAM : P.R.BORA, J.
DATE : 8th March, 2019

JUDGMENT:-

1. The appellants have challenged the Judgment and award passed by Motor Accident Claims Tribunal at Osmanabad in Motor

Accident Claim Petition No.7 of 1998 decided by the said Tribunal vide common Judgment delivered by it in Motor Accident Claim Petition No.226 of 1998 with Motor Accident Claim Petition No.215 of 1997 and Motor Accident Claim Petition No.7 of 1998 on 06.09.2003.

2. The appellants, who are hereinafter referred to as the claimants, had filed the aforesaid claim petition seeking compensation on account of death of Ranjeet Garad in a vehicular accident happened on 20.06.1997, having involvement of Motorcycle bearing registration No.MTZ-2765 and Tata Sumo bearing registration No.MH-23/B-1117. As has been averred in the claim petition, on the date of accident, deceased Ranjeet with Ankush Garad and Rajesaheb Nimbalkar when was proceeding on his Motorcycle to Khed via Yedshi to Murud Road, near village Dhoki his Motorcycle, was dashed by Tata Sumo coming from the opposite direction. It was the further contention of the claimants that Tata Sumo was being driven in excessive speed and in rash and negligent manner. The claimants had alleged that in the forceful dash given by Tata Sumo to Motor Cycle, Ranjeet and Rajesaheb received multiple severe injuries, which resulted in causing their death, whereas Ankush was severely injured. According to the claimants, the alleged

accident happened because of rash and negligent driving of Tata Sumo Jeep by its driver. It is further averred in the claim petition that deceased Ranjeet was aged about 26 years on the date of accident. As per the further averments in the claim petition, deceased Ranjeet was the sole earning member of his family and he used to earn around Rs.10,000/- per month from the agriculture and from the business of transportation and hiring of tractor, which deceased Ranjeet had purchased by obtaining loan from Land Development Bank. The claimants had therefore claimed the compensation of Rs.5,00,000/- jointly and severally from the owner and insurer of the Tata Sumo.

3. The claim petition was resisted by the owner and insurer of Tata Sumo by filing their written statements. It was the contention of the respondents that Tata Sumo was falsely involved in the alleged accident. It was further contended that the alleged accident happened because of the absolute negligence on part of deceased Ranjeet. The age and income of deceased Ranjeet as were stated in the petition were disputed by both the respondents. The respondents on the aforesaid grounds had sought dismissal of the petition.

4. In order to substantiate the contention raised in the claim

petition, claimant No.3 namely Sangita Ranjeet Garad testified before the Tribunal. The claimants had also filed on record and relied upon the certified copies of the relevant Police papers pertaining to the criminal case filed in relation to the alleged accident. The 7/12 extract of the land belonging to deceased Ranjeet Garad was also filed on record. The respondents did not adduce any oral or documentary evidence. The learned Tribunal, after having assessed the oral and documentary evidence brought on record, though determined the amount of compensation payable to the claimants to the tune of Rs.2,65,000/-, held the owner and insurer of Tata Sumo liable to pay only 40% amount of the said compensation amounting to Rs.1,06,000/- with interest thereon @ 9% p.a. from the date of filing of the petition till its realization. The Tribunal deprived the claimants from receiving 60% of the amount of compensation as was determined by it, holding deceased Ranjeet negligent to that extent in occurrence of the alleged accident. Aggrieved thereby, the claimants have preferred the present appeal.

5. Shri P.S.Chavan, learned Counsel appearing for the claimants assailed the common Judgment on various grounds. The learned Counsel submitted that the Tribunal has wrongly held deceased Ranjeet to be negligent in plying the Motorcycle.

The learned Counsel submitted that the evidence on record clearly demonstrates that the alleged accident happened only because of the rash and negligent driving of the Tata Sumo by its driver. The learned Counsel submitted that the dash given by Tata Sumo to the Motorcycle was so heavy that deceased Ranjeet and his companion deceased Rajesaheb both died because of the injuries suffered in the alleged accident and third person namely Ankush was severely injured. The learned Counsel submitted that if the situation on the spot of occurrence is considered, no blame can be attributed on part of deceased Ranjeet, who was plying the Motorcycle at the relevant time and the entire blame has to be attributed on part of the driver of the offending Tata Sumo.

6. The learned Counsel further submitted that the Tribunal has also manifestly erred in holding the income of deceased only to the tune of Rs.2,000/- per month. The learned Counsel submitted that the evidence brought on record demonstrates that deceased Ranjeet was ably cultivating his agriculture land and was deriving the income of around Rs.10,000/- per month from the said land. The learned Counsel submitted that evidence was also brought on record to show that deceased Ranjeet had purchased the Tractor by borrowing loan from Land Development

Bank and used to hire the said Tractor on rent for agricultural purpose and was earning handsome income from the said business. The learned Counsel submitted that the Tribunal has wrongly ignored the aforesaid evidence and has patently erred in holding the income of deceased Ranjeet only to the extent of Rs.2,000/- per month. The learned Counsel submitted that the learned Tribunal has also committed an error in not considering the future prospects of deceased Ranjeet. The learned counsel further submitted that the Tribunal has also erred in not awarding the adequate compensation towards the non-pecuniary damages.

7. The claimants have filed Civil Application No.3538 of 2019 alongwith the Appeal seeking leave of this Court to produce and rely upon the extract of loan account pertaining to loan taken by Ranjeet from Land development Bank for purchase of the Tractor.

8. Learned Counsel appearing for the respondent Insurance Company supported the impugned Judgment and award. The learned Counsel submitted that the Tribunal has rightly held the negligence of deceased Ranjeet to the extent of 60% in occurrence of the alleged accident. The learned Counsel further submitted that as has been contended in the claim petition,

agriculture land was the main source of income for the claimants and deceased Ranjeet. The learned Counsel further submitted that the agriculture land still continues to be owned and possessed by the family members of deceased Ranjeet i.e. the present claimants and the income from the said agriculture land is being continuously received by the claimants. The learned Counsel submitted that the Tractor was purchased by deceased Ranjeet for the purpose of carrying out agricultural operations in his own field and though the claimants had contended that deceased Ranjeet used to hire the said Tractor and earn income out of it, no such evidence has been brought on record by the claimants. The learned Counsel submitted that the Tribunal has rightly held the pecuniary loss to the tune of Rs.2,000/- per month and has rightly determined the amount of compensation. The learned Counsel in the circumstances, prayed for dismissal of the appeal.

9. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have also perused the impugned Judgment and award as well as the evidence on record. First, I would like to deal with the aspect of negligence in occurrence of the alleged accident and its proportion. The Tribunal has held deceased Ranjeet to be

negligent to the extent of of 60% and attributed the blame on part of offending Tata Sumo only to the extent of 40%. When the finding recorded as above has been seriously disputed by the appellants, the respondent Insurance Company has supported the same. I have carefully perused the discussion made by the Tribunal on the aspect of negligence. It apparently appears unsustainable. The road on which the alleged accident had happened was 18 feet wide. The spot of occurrence as has been described in the spot panchnama appears to be as good as the center of the road. The spot panchnama further reveals that both the offending vehicles i.e. Motorcycle and Tata Sumo had suffered damages to their right side. The spot panchnama also reveals that at the relevant time, the Motorcycle was being driven at the distance of more than 7 feet from its left side edge of the road. It is thus evident that the Motorcycle was being driven from a very short distance from the center of the road. The tribunal has in fact observed that the Motorcycle was almost at the center of the road. However, from the damages caused to the offending vehicles, it can be reasonably inferred that it was not head on collision. Had it been so, then damages must have been caused to both the offending vehicles to the front portions of their respective vehicles. The material on record shows that the damages were caused to the respective right sides of both the offending vehicles and not to their front portions. From the contents of the spot panchnama, un-disputedly it can be said that drivers of both the offending vehicles were negligent in plying their respective vehicles. Had deceased Ranjeet be driving his Motorcycle by keeping left edge of the road from his side, perhaps the accident would not have occurred. Similar was the position in respect of Tata Sumo Jeep also. There is reason to believe that the drivers of both the offending vehicles were rash and negligent in driving their respective vehicles. As noted herein above, the Tribunal has held the negligence on part of deceased Motorcyclist to the extent of 60%. The Tribunal has however failed in providing any concrete reason for holding the negligence on part of deceased Motorcyclist more than the negligence of driver of Tata Sumo. After having considered the evidence on record, I have no hesitation in holding that the drivers of both the vehicles are responsible in occurrence of the alleged accident in equal proportion i.e. 50-50.

10. Now, the next question, which falls for consideration is quantum of compensation. The Tribunal has held the income of deceased to the tune of Rs.2,000/- per month. According to the claimants, agriculture was the main source of income for deceased Ranjeet. In addition to the agriculture income, as

contended in the petition, deceased Ranjeet was also letting the Tractor owned by him on hire and was earning a good income from the said business.

11. It is not in dispute that deceased Ranjeet was holding the agriculture land and it was the main source of his income. The claimants have claimed that because of death of Ranjeet, there is substantial loss in the income from the agriculture land. Per contra it has been submitted by the learned Counsel appearing for the Insurance Company that since the agriculture land still continues to be owned by the claimants that is legal heirs of deceased Ranjeet and is under cultivation, no loss can be said to have been caused in the income from the agriculture land. The learned Tribunal has computed the said loss to the tune of Rs.2,000 per month observing that after the death of Ranjeet, somebody must have been employeed or appointed for looking after the agriculture operations. The Tribunal has further held that the payment required to be made to that person, which the Tribunal quantified to the tune of Rs.2,000/- per month, is the actual loss to the claimants because of death of Ranjeet. The Tribunal has declined to take into account the income from hiring of the Tractor as was claimed by the claimants observing that the claimants have not brought on record any evidence to

substantiate the said contention. In the Appeal, the claimants have preferred the Civil Application seeking leave for submitting on record additional documentary evidence in the form of extract of loan pertaining to the said Tractor. Referring to the repayment of loan as reflected in the said extract, it has been argued on behalf of the claimants that the said evidence is sufficient to prove that deceased Ranjeet was earning a good income from letting the Tractor on hire for agriculture operations. I have gone through the said extract of the loan account. It may not be of much help for the claimants, however, it is difficult to outrightly reject the contention raised on behalf of the claimants that deceased Ranjeet used to hire the Tractor and used to earn some income out of that. From the extract of the said loan account, atleast it is revealed that interest was regularly paid till he was alive. Both the aforesaid aspects need to be appropriately considered while assessing the pecuniary loss caused to the family members of deceased Ranjeet because of his accidental death. Though, the agriculture land still continues to be in possession of the legal heirs of deceased Ranjeet, there cannot be a doubt that there would be substantial loss in the agriculture income because deceased Ranjeet, who was looking after the agriculture operations, is no more now. It cannot be expected that a person appointed to look after the agriculture operations on the remuneration of Rs.2,000/- per month will be able to earn same income from agriculture land as was earned by deceased Ranjeet. Secondly the contention of the claimants that from the Tractor purchased by the deceased by obtaining loan from Land Development Bank was giving good income also cannot be outrightly rejected. As noted by me herein above, though there may not be any concrete evidence, from the repayment schedule of the loan, it can be reasonably inferred that there was some income from hiring of the said Tractor. On both the aforesaid counts and from the evidence which has come on record, the pecuniary loss caused to the claimants because of accidental death of Ranjeet can be reasonably quantified to the tune of Rs.5,000/- per month as on the date of accident.

12. As has been laid down by the Hon'ble Apex Court first in the case of ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another [(2009) 6 SCC 121]*** and then in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others [(2017) 16 SCC 680]***, while assessing the amount of dependency compensation, the Tribunals are bound to consider the future prospects of the deceased. As per the guidelines laid down in the case of ***Pranay Sethi and others*** (supra), if the deceased is below the age of 40 years and is self employed or in the private employment, 40% of his income has to be added in his existing

annual income towards his future prospects. In the present case, as I have held that the income of the deceased as on the date of accident was Rs.5,000/- per month, adding 40% of the said income, his annual prospective income can be held to the tune of Rs.84,000/- per annum (Rs.5,000 x 12 = Rs.60,000 + 40% of it = Rs.60,000 + Rs.24,000 = Rs.84,000). Having regard to the number of dependents on the income of deceased, 1/3rd of his total income would be liable to be deducted towards his personal and living expenses. Deducting the said amount, the dependency of the claimants on the income of deceased Ranjeet comes to the tune of Rs.56,000/- per annum. Having regard to the age of deceased Ranjeet, the appropriate multiplier in the case will be of 17. Applying the said multiplier, the amount of compensation comes to Rs.9,52,000/-. In addition to the said amount, the claimants are also entitled for the compensation of Rs.70,000/- towards non-pecuniary damages i.e. funeral expenses, loss of estate and loss of consortium. The total amount of compensation thus comes to Rs.10,22,000/-. As has been held by me, deceased Ranjeet has contributed in occurrence of the alleged accident by his negligence. From the evidence on record, the negligence on part of deceased has been quantified by me to the extent of 50%. It is thus evident that the owner and insurer of Tata Sumo Jeep can be held liable to pay only 50% of the said amount to the legal heirs of deceased Ranjeet, which comes to Rs.5,11,000/-. In the facts and circumstances of the case and after having considered the evidence on record, it appears to me that this would be the just and fair compensation payable to the appellants – claimants. Hence, the following order:-

ORDER

I) The claimants are held entitled to receive compensation of Rs.5,11,000/- inclusive of no fault liability compensation jointly and severally from respondent Nos.1 and 2, with interest thereon @ 9% p.a. from the date of filing of the claim petition till its realization.

II) Award be modified accordingly.

III) Pending Civil Application stands disposed of.

IV) The Appeal stands allowed in the aforesaid terms.

(**P.R.BORA**)
JUDGE

SPT