

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

**FIRST APPEAL NO.1423 OF 2016
WITH
CIVIL APPLICATION NO.4011 OF 2016
IN
FIRST APPEAL NO.1423 OF 2016**

Reliance General Insurance Co. Ltd. ...Appellant
Versus
Smt. Manisha Mohan Tukrul and Ors. ...Respondents

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Ms Dipika Prabhala I/b. M/s. Res Juris for the Appellant.
Mr. Sainand Chaugule for the Respondent Nos.1 to 4.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 26th AUGUST, 2019.

ORAL JUDGMENT:-

With consent, the appeal is heard finally at the stage of admission.

2. The Appellant-Insurance Company has challenged the impugned judgment and award dated 17th March, 2016 passed by the learned Member, M.A.C.T., Thane, in M.A.C.P No.765 OF 2009. By the impugned judgment and award the Claims Tribunal has awarded compensation of Rs.8,82,500/- alongwith interest @ 7% per annum from the date of filing of application till final realization.

3. The Respondent No.1 is the widow and the Respondent Nos.2-4 are the children of Shantaram Naik, who expired in a motor vehicular accident on 21/4/2018. The case of the Respondent Nos.1 to 4 was that on 20th April, 2008 at 23.30 hrs. the deceased Mohan alongwith two others was returning from Vashi to Kalamboli by a vehicle No.MH-20-AY-2, which was driven by one Chandra. It is alleged that when they reached Belapur, a Qualis Jeep came at a fast speed and took a sudden turn and dashed against the car No.MH20-AY 2. As a result of the impact, Mohan sustained serious injuries. He was shifted to the hospital but succumbed to the injuries on 21/4/2018.

4. The Claimants contend that the accident was caused solely due to rash and negligent driving by the driver of the Qualis Jeep. The said vehicle was owned by the Respondent No.5 and insured by the Appellant -Insurance Company. The Claimants stated that the deceased was 58 years of age and was employed at Ganesh Electrical Company and was earning Rs.7,500/- per month. The Claimants claimed that the deceased was the only earning member of the family. The Claimants therefore filed an application under Section 166 of the Motor Vehicle Act, 1988 and claimed total compensation of Rs.7,50,000/-.

5. The Respondent No.5 did not contest the proceedings. The Appellant-Insurance Company contested the claim mainly on the ground that the driver of the offending vehicle was not holding a valid driving license and hence it was not liable to indemnify the insured for breach of terms and conditions of the policy. The Appellant-Insurance Company also claimed that the claim of Respondent Nos.1 to 4 was exorbitant.

6. The learned Member of the Claims Tribunal upon considering the evidence adduced by the Respondent Nos.1 to 4 held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal also observed that the deceased was earning Rs.7,500/- per month. The Tribunal deducted 1/4th amount towards his personal expenses and considering the age of the deceased and applying multiplier of 18 assessed loss of dependency to Rs.6,07,500/-. The Tribunal also awarded Rs.1,00,000/- towards loss of consortium, Rs.1,50,000/- towards love and affection and Rs.25,000/- towards funeral expenses. Being aggrieved by the impugned judgment and award the Appellant has filed this appeal.

7. The learned counsel for the Appellant submits that the challenge in the appeal is only to the quantum of compensation awarded on three conventional heads i.e. loss of estate, loss of consortium and funeral expenses, which according to her should not have exceeded Rs.70,000/- in view of the judgment of the Apex Court in *National Insurance Co. Ltd. vs. Pranay Sethi and Ors. 2017 ACJ 2700*.

8. It may be mentioned that subsequent to the judgment of the Apex Court in *Pranay Sethi* (supra) the Apex Court in *Magma General Insurance Co. Ltd. Vs. Nanu Ram, 2018 SCC Online SC 1546* has observed thus :-

10.xxx

8.7.....“In legal parlance, “consortium” is a compendious term which encompasses 'spousal consortium' 'parental consortium', and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, co-operation, affection, and aid of

the other in every conjugal relation”

Parental consortium is granted to the child upon the premature death of a parent, for loss of 'parental aid, protection, affection, society, discipline, guidance and training.”

9. Considering the principles laid down by the Apex Court in ***Pranay Sethi*** as well as ***Magma*** (supra) in the instant case the Respondent No.1 being the widow would be entitled for compensation of Rs.40,000/- towards loss of spousal consortium and the Respondent Nos.2, 3 and 4 being minor children of the deceased would be entitled for compensation of Rs.40,000/- each towards loss of parental consortium. The Claimants would also be entitled for funeral expenses to the tune of Rs.15,000/- and loss of estate to the tune of Rs.15,000/-. Thus, the Respondent Nos.1 to 4 would be entitled for compensation Rs.1,90,000/- as against Rs.2,75,000/-, which was awarded by the Tribunal, as against these conventional heads. The award needs to be modified to that extent. Hence, the following order:-

- (i) The appeal is partly allowed;
- (ii) The Respondent Nos.1 to 4 are entitled for compensation to the tune of Rs.7,97,500/- as against Rs.8,82,500/- awarded by the Tribunal.
- (iii) All other directions as regards cost and interest

remains same.

- (iv) Excess amount of Rs.85,000/- deposited by the Appellant-Insurance Company alongwith proportionate interest accrued thereon be refunded to the Appellant-Insurance Company.
- (v) Statutory deposit be transferred to the M.A.C.T, Thane.
- (vi) The Appellant and the Respondents are at liberty to file application for withdrawal of the amount.

10. In view of disposal of the appeal, the civil application does not survive and hence stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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Parab

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