

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

FIRST APPEAL NO. 107 OF 2019

Reliance General Insurance Company ...Appellant
Limited Thr. Its Legal Manager Mr.
Priyank Shah

Versus

Smt. Rima Suresh Vichare & Ors. ...Respondents

Mr. Rahul Mehta i/b KMC Legal venture – Advocate for the
appellant.

Ms. Kalpana Trivedi i/b Ms. Sushma Gor – Advocate for the
respondent nos. 1 to 3.

CORAM : R. D. DHANUKA, J.

DATE : 18th DECEMBER 2019.

P.C. :

1. By First Appeal filed under Section 173 of the Motor Vehicles Act, 1988 by the Appellant (Original Insurer), the appellant impugned Judgment and Award dated 3rd April, 2017 passed by the Motor Accident Claims Tribunal, Mumbai in M.A.C.T. Application No. 377 of 2014, directing the Appellant and the respondent no. 4 to pay the compensation amount of Rs. 47,87,700/- together with simple interest thereon @ 9 % p.a. from the date of filing of the application till entire realization of the amount.

2. By consent of the appellant and respondent nos. 1 to 3,

the First Appeal is heard finally at initial stage.

3. The appellant was one of the respondent before the Tribunal. The respondent nos. 1 to 3 were the original applicants before the Tribunal. It was the case of the respondent nos. 1 to 3 that on 22nd January, 2014, Mr. Suresh Shantaram Vichare (the said deceased) was riding his motor cycle No. MH-02-BX-5651 in normal speed and by observing traffic rules. When he reached near Satyam Society on Link Road, Borivali (W), Mumbai, at that time all of a sudden the offending vehicle No. MH-04-ES-9708 came in a high speed rashly and negligently and gave dash to him from behind. As a result, the said deceased sustained serious head injuries and succumbed to those injuries on 23rd January, 2014.

4. The respondent no. 1 is widow of the said deceased. The respondent nos. 2 and 3 are daughter of the said deceased.

5. The respondent nos. 1 to 3 filed Claim Application No. 377 of 2014, before the Motor Accident Claims Tribunal, Mumbai. The respondent no. 4 did not file any written statement and remained absent through out. The appellant filed written statement and resisted the claim made by the respondent nos. 1 to 3. In order to prove the rashness and negligence of the driver of the offending vehicle, Smt. Reena Vichare, wife of the deceased entered the witness box and blamed the driver of the offending vehicle No. MH-04-ES-9708 for causing the accidental death of her husband. She was cross examined at length by the appellant. In her cross examination,

she admitted that she had not personally witnessed the accident. However, she denied that the accident occurred due to the negligence of the said deceased.

6. The respondent nos. 1 to 3 tendered various documents including certified copies of the FIR, spot panchnama, inquest panchnama etc. The respondent nos. 1 to 3 also examined, Mr Shri Uday Chavan from the Mumbai District Central Co. Op. Bank Ltd. Andheri to prove that the said deceased was working in the said bank as a Branch Manager on salary of Rs. 50,000/- per month. The said witness was cross-examined by the appellant. The Tribunal by a Judgment and award dated 3rd April, 2017, directed the appellant and the respondent no. 4 to jointly and severally pay the compensation of Rs. 47,87,700/- with interest of 9% p.a. to the respondent nos. 1 to 3.

7. Mr. Rahul Mehta, the learned counsel for the appellant invited my attention to the paragraph 11 of the impugned judgment and would submit that the Tribunal could not have considered the bonus of Rs. 56,433/- for computing the annual income of the said deceased. He submits that if the said amount of Rs. 56,433/- is deducted, then the yearly income of the said deceased would be Rs. 4,46,747/-. He submitted that the deceased was below the age of 60 years and thus was entitled to 15 % of the salary income towards future prospectus. Considering the age of the said deceased below 60 years, in accordance with the principles laid down by this Court in the case of *Rajesh Vs. Rajbir Singh reported in 2013 ACJ 1403*, he

submits that total gross yearly income would be Rs. 4,85,124/-. After deducting the $\frac{1}{4}$ th deduction as per the said judgment, i.e. Rs. 1,21,281/-, the amount will be Rs. 3,63,843/-. After applying the multiplier of 11, the compensation would be Rs. 40,02,273/-. He submits that the respondent nos. 1 to 3 would be entitled to compensation under the conventional heads amounting to Rs. 2,25,000/-. The final amount of compensation would be Rs. 42,32,273/-, in view of the principles laid down by the Apex Court, in the case of ***Sarla Verma and Others V/s Delhi Road Transport Corporation***¹.

8. The learned counsel for the respondent nos. 1 to 3, on the other hand will submit that she has no objection, if the bonus amount of Rs. 56,433/-, considered by the Tribunal is deducted while calculating the annual income of the said deceased. In addition, she submits her clients would be also entitled for compensation of Rs. 15,000/- towards funeral expenses, Rs. 2,00,000/- towards love and affection and Rs. 15000/- towards loss of estate payable to the respondent nos. 1 to 3. As per indulgent of the judgment of the Supreme Court in the the Civil Appeal No. 9581 of 2018 of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram Alias Chuhru Ram & Ors.***

9. In my view, Mr. Rahul Mehta, the learned counsel for the appellant is right in his submission that the Tribunal could not consider the bonus of Rs. 56,433/- ,while calculating the annual income of the deceased who was an employee at the

1 *2009 ACJ 1298 (SC)*

time of his death.

10. If the said amount of Rs. 56,433/- considered as bonus is deducted and 15% for future prospects is added the amount payable to the respondent nos. 1 to 3 would be Rs. 42,32,273/- inclusive of future prospects and conventional heads of compensation.

11. After considering the compensation under this head, in my view, the respondent nos. 1 to 3 are entitled Rs. 42,32,273/- with interest @ 9 % p.a. from the date of filing of application till entire realization of the amount. I, therefore, pass following order :-

ORDER

a) The respondent nos. 1 to 3 are entitled to recover a sum of Rs. 42,32,273/- from the appellant with interest of 9 % p.a. from the date of filing of the application till the entire realization of the amount.

b) The Motor Accident Claim Tribunal to permit the respondent nos. 1 to 3 to withdraw the amount awarded by this Court after adjusting the amount withdrawn if any by the respondent nos. 1 to 3.

c) If there is any shortfall in the deposit of the amount, the appellants have to deposit the said short fall amount within two weeks from the date of computation of the said amount by the M.A.C.T. If there is any surplus amount deposited by appellant, the M.A.C.T. to refund such amount to the appellant after producing the authenticated copy of this

order.

d) The respondent no. 2 has already attained the age of majority during the pendency of this appeal. The Tribunal is thus not require to invest the amount due and payable to the respondent nos. 1 to 3.

e) The judgment and award dated 3rd April 2017, passed by the Tribunal is modified and substituted in aforesaid terms.

f) The office is directed to transmit the amount of Rs. 25,000/- deposited by the applicant by way of statutory deposit amount to the M.A.C.T. expeditiously.

g) Parties as well as M.A.C.T. to act on the authenticated copy of this order.

h) The First Appeal No. 107 of 2019 is disposed off on the aforesaid terms. Pending Civil Application if any, also stands disposed off.

[R. D. DHANUKA, J.]