

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

FIRST APPEAL (STAMP) NO. 31266 OF 2016

Shriram General Insurance Company Ltd.	]	
601, 6 th Floor, B-Wing, Raunak Arcade	]	
Gokhale Road, Thane – West, Pin :- 400602.	]	
Through Legal Manager,	]	
Mr. Satpalsingh Rajput.	]	...Appellant.
		(Orig. Opponent No.3)

VERSUS

1.	Ujjwala Vikas Bharne	]	
	Age : 22 years, Occu.: Household.	]	
2.	Koyal Vikas Bharne	]	
	Age : 10 months, Occu.: Nil.	]	
3.	Malan Tatyaram Bharne	]	
	Age : 48 years, Occu.: Nil.	]	
	(Original Applicant Nos. 1 to 3)	]	
	Respondent Nos. 1 to 3	]	
	R/o. : Bharnewadi, Tal. Indapur,	]	
	District : Pune.	]	
4.	Jabbar Gani Momin	]	
	Age : 50 years, Occu.: Business	]	
	R/o. : Bagwangalli, Dr. Dargah Masjid	]	
	Indapur, Tal. Indapur, Dist. Pune.	]	...Respondents.

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Mr. Nikhil Mehta i/b KMC Legal Venture, Advocate for the Appellant.
 Mr. Tushar Sonawane i/b Mr. Prashant S. Hagare, Advocate for Respondent Nos.1 to 3.
 Mr. Rahul S. Kadam, Advocate for Respondent No.4.

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**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 14th JUNE, 2019.**

ORAL JUDGMENT :

1. Heard. With consent of the parties, appeal is heard finally at the stage of admission.
2. The Appellant / Insurance Company has assailed the judgment and award dated 11/05/2016 passed by the MACT, Baramati, Dist. Pune in MACP No. 194 of 2013. By the impugned judgment and award the Claim Tribunal has awarded compensation of Rs.18,17,000/- with interest at the rate of 9% per annum from the date of the petition till the date of payment of compensation.
3. The Respondent No.1 is the widow, the Respondent No.2 is the minor son and the Respondent No.3 is the mother of the deceased Vikas Bharne. It is the case of the Respondent Nos.1 to 3 that on 08/01/2013 said Vikas Bharne was proceeding towards village Junction by his motorcycle bearing registration No.MH-42-N-9546. When he reached at village Anthurne, a Tempo bearing registration No.MH-42-B-7421 came from the opposite direction and dashed against his motorcycle. Vikas Bharne expired as a result of the injuries sustained in the said motor vehicle accident. The Respondent Nos. 1 to 3 alleged that the accident

was caused solely due to rash and negligent driving by the driver of the said Tempo bearing registration No. MH-42-B-7421. The claimants therefore, filed petition under Section 166 of the Motor Vehicle Act against the respondent No.4 and the appellant being insurer of the offending vehicle claiming compensation of Rs. 35,00,000/- with interest from the date of the petition till final realization.

4. The Respondent No.4 insured did not contest the proceeding. The appellant/ Insurance Company admitted that the vehicle was insured as on the date of accident. The Insurance Company denied that the accident was caused due to rash and negligent driving by the driver of the Tempo and claimed that the accident was caused solely due to rash and negligent driving by the rider of the motorcycle i.e. the deceased himself. The Insurance Company therefore, claimed that it is not liable to pay any compensation to the Respondent Nos.1 to 3.

5. Upon considering the evidence adduced by the Respondent Nos.1 to 3 herein, the learned Tribunal held that the accident was caused due to rash and negligent driving by the driver of the Tempo bearing registration No. MH-42-B-7421. The Tribunal further held that the deceased was an agriculturalist and was also doing milk business. The Tribunal considered

his income as Rs.8000/- per month. The Tribunal deducted 1/3 towards personal expenses of the deceased. Applying multiplier of 17 and adding 50% towards future prospects, the Tribunal computed loss of dependency as Rs.16,32,000/-. The Tribunal also awarded compensation of Rs.1,00,000/- towards loss of consortium and Rs.25,000/- each towards love and affection and Rs.10,000/- towards funeral expenses. The Tribunal thus awarded total compensation of Rs.18,17,000/- with interest of 9 % per annum from the date of petition till the final realization. Being aggrieved by the judgment and award, the appellant/Insurance Company has filed this appeal.

6. Mr. Nikhil Mehta learned counsel for the Appellant submits that, the Respondent Nos.1 to 3 have failed to prove that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. He further submits that the Tribunal has committed manifest error in considering Rs.8000/- as the income of the deceased. He further submits that in terms of the judgment of the Hon'ble Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Ors. (2017) ACJ 2700**, the respondent Nos.1 to 3 are entitled for total compensation of Rs.70,000/- towards loss consortium, love and affection

and funeral expenses, as against Rs.1,85,000/- awarded by the Tribunal.

7. The learned counsel for the Respondent Nos.1 to 3 submits that the evidence adduced by the Respondent amply proves that the accident was caused due to rash and negligent driving by the driver of offending vehicle. He further submits that the Respondent Nos.1 to 3 have adduced cogent and conclusive evidence to prove the income of the deceased. He submits that the Tribunal has not committed any error in assessing loss of dependency. The learned counsel for the Respondent Nos.1 to 3 concedes that in view of the judgment of the Hon'ble Apex Court in the case of *Pranay Sethi (Supra)*, the Respondent Nos.1 to 3 are entitled for Rs.70,000/- towards loss of consortium, love and affection and funeral expenses.

8. I have perused the record and considering the submissions advanced by the learned counsel for the respective parties.

9. At the outset it may be mentioned that while deciding the issues of negligence in proceedings before Claims Tribunal, the Claims Tribunal is not required to scrutinize the evidence as in a Criminal case-where the rule is proof beyond reasonable doubt. In proceedings under Section 166 of

the Motor Vehicle Act, which are summary in nature, the claimants are merely required to establish the case on the touchstone of preponderance of probability.

10. In the instant case is not in dispute that the vehicle bearing registration No.MH-B-7421 was involved in the accident. The First Information Report bearing Crime No.13 of 2013 was registered with Walchandnagar Police Station against the driver for driving the said vehicle in a rash and negligent manner and thereby causing the death of Vikas Bharne. The Appellant / Insurance Company had not adduced any evidence to prove that the driver of the offending vehicle had been falsely implicated or that the accident was caused due to negligence of the deceased. Under the circumstances and considering the object of the beneficial legislation, in my considered view, the findings recorded by the Tribunal on the issue of negligence cannot be said to be manifestly illegal and hence do not warrant interference.

11. Now coming to the quantum of compensation the respondent No.1-Ujjawala Vikas Bharne, widow of deceased has deposed that her husband used to cultivate sugarcane and derive net profit of Rs.2,40,000/- per annum from the sugarcane cultivation. She has further deposed that

her husband was also doing milk business and was earning net profit of Rs.10,000/- per month.

12. The Respondent Nos.1 to 3 claimants have examined Vilas Kharat, whose evidence indicates that in the year 2009 to 2010 the deceased had supplied 157.853 tons of sugarcane to Chatrapati Sahakari Karkhana. He has deposed that during the year 2009-2012 the deceased had supplied 157.853 tons of sugarcane. Whereas in the year 2010–2011 he had supplied 64.869 tons of sugarcane and in the year 2011–2012 he had supplied 71.340 tons of sugarcane. He has produced statement showing supply of the sugarcane by the deceased during the said period.

13. The claimants have also examined another witness Dyandev Khartude who has deposed that he used to collect milk from the farmers and supply it to Sonai Dudh Sangha. He has deposed that the deceased had supplied 196 liters of milk during the period from 01/11/2012 to 5/11/2012, 200.05 liters milk during the period from 16/11/2012 to 30/11/2012, 163 liters milk during the period from 01/12/2012 to 15/12/2012, 162.05 liters milk during the period from 16/12/2012 to 31/12/2012 and 101.05 liters milk during the period from 01/01/2013 to 15/01/2013. This witness has also produced copies of bill register during

the period from 01/11/2012 to 15/01/2013.

14. The evidence of CW-2 Vilas Kharat and CW-3 Dyandev Khartude which has gone unchallenged amply proves that the deceased was engaged in sugarcane cultivation as well as milk business. The Tribunal has not committed any error in relying upon the uncontraverted evidence of these witnesses and in recording a finding that the deceased was earning total Rs.8000/- per month.

15. The annual income of the deceased works out to Rs.96,000/-. Upon deducting 1/3 towards personal expenses of the deceased and adding 50 % towards future prospect, and applying multiplier of 17, loss of dependency, works out to Rs.16,32,000/-. There is thus no apparent error in computing loss of dependency.

16. It may be necessary to mention that the Tribunal has awarded total compensation of Rs.1,85,000/- towards loss of consortium, loss of love and affection and funeral expenses. In terms of the judgment of the Hon'ble Apex Court in National Insurance Company Limited Vs. Pranay Sethi and Ors. (supra) the claimants are entitled for compensation of Rs.70,000/- under these conventional heads as against the compensation

of Rs.1,85,000/- awarded by the Tribunal. Upon deducting the excess amount of Rs.1,15,000/-, in my considered view the claimants are entitled for total compensation of Rs.17,02,000/- with interest as granted by the Tribunal.

17. Under the circumstances and in view of the discussion supra, the Appeal is partly allowed. The impugned judgment and award is modified to the extent of reducing the compensation to Rs.17.02.000/- with interest as granted by the Tribunal. The excess amount deposited by the appellant / Insurance Company along with proportionate interest accrued thereon be refunded to the Insurance Company. The claimants are at liberty to withdraw the compensation.

18. Civil Applications, if any, stands disposed of in view of the disposal of the First Appeal.

(ANUJA PRABHUDESSAI, J.)