

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 754 OF 2019

Reliance General Insurance)
 Company Limited)
 Through its Corporate Office)
 4th Floor, Chintamani Avenue,)
 Off Western Express Highway,)
 Goregaon - East, Mumbai 400 063)

..... Appellant/
 Original Opponent no.2

VERSUS

1. Smt.Koushalya Ananta Chaudhari)
 Aged : 23 years, Occu. Housewife,)
 (Widow of the deceased))

..... Org. Applicant no.1

2. Kumari Vaishnavi Ananta Chaudhari)
 Aged : 02 years, Occu. NIL,)
 (Minor daughter of the deceased))

..... Org. Applicant no.2

3. Shri Nana Mavanji Chaudhari,)
 Aged : 55 years, Occu. NIL,)
 (Father of the deceased))

..... Org. Applicant no.3

4. Mrs.Tulsi Nana Chaudhari,)
 Aged : 49 years, Occu. NIL,)
 (Mother of the deceased))

..... Org. Applicant no.4

(Applicant no.2 being minor is applying through her next friend and natural guardian i.e. mother applicant no.1.)

All R/at Gorthan, Post Kogade,)
 Jawhar, Dist. Palghar,)
 Pin Code : 401 603)

5. Shri Nivrutti Laxman Wagh,)
 Address : Lohar Pada,)
 Tal. Mokhada, Mokhada,)
 Pin Code : 401 604)

..... Org. Opponent no.1
 Respondents

**ALONGWITH
CIVIL APPLICATION NO. 2186 OF 2019
IN
FIRST APPEAL NO. 754 OF 2019**

1. Smt.Koushalya Ananta Chaudhari)
Aged : 27 years, Occu. Housewife,)
(Widow of the deceased))

2. Kumari Vaishnavi Ananta Chaudhari)
Aged : 6 years, Occu. Student,)
(Minor daughter of the deceased))

3. Shri Nana Mavanji Chaudhari,)
Aged : 60 years, Occu. NIL,)
(Father of the deceased))

4. Mrs.Tulsi Nana Chaudhari,)
Aged : 54 years, Occu. NIL,)
(Mother of the deceased))

(Applicant no.2 is minor, therefore, representing through her mother, natural guardian, applicant no.1.)

All applicants are residing at)
Gorthan, Post Kogade, Jawhar,)
Dist. Palghar, Pin : 401 603) Applicants
(Original Applicant nos. 1 to 4)

IN THE MATTER OF

Reliance General Insurance)
Company Limited,)
Through its Manager, at their office)
at Kalpataru Prime, 1st Floor,)
Unit No.D-3, Road No.16,)
Wagle Industrial Estate, Thane)
West, PIN 400 604.) (Original Insurer/
Opponent no.2) Appellant

VERSUS

1. Smt.Koushalya Ananta Chaudhari)
Aged : 27 years, Occu. Housewife,)
(Widow of the deceased))

2. Kumari Vaishnavi Ananta Chaudhari)

Aged : 6 years, Occu. Student,)
 (Minor daughter of the deceased))

3. Shri Nana Mavanji Chaudhari,)

Aged : 60 years, Occu. NIL,)
 (Father of the deceased))

4. Mrs.Tulsi Nana Chaudhari,)

Aged : 54 years, Occu. NIL,)
 (Mother of the deceased))

(Applicant no.2 is minor, therefore, representing through her mother, natural guardian, applicant no.1.)

All applicants are residing at)
 Gorthan, Post Kogade, Jawhar,)
 Dist. Palghar, Pin : 401 603)

..... Respondent nos. 1 to 4
 (Original Applicant nos. 1 to 4)

AND

5. Shri Nivrutti Laxman Wagh,)
 Adult, Occupation Not known,)
 Residing at Lohar Pada,)
 Tal. Mokhada, Mokhada,)
 Pin Code : 401 604)

..... Respondent no.5
 (Original Opponent no.1)

Mr. Nikhil Mehta, a/w. Mr.Rahul Mehta, i/b. M/s.KMC Legal Venture for the Appellant/Applicant.

Ms.Rina Kundu for the Respondent nos. 1 to 4 in the First Appeal and for the Applicant in CAF/2186/2019.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 28th NOVEMBER, 2019

PRONOUNCED ON : 18th DECEMBER,2019

JUDGMENT :

By this first appeal filed under section 173 of the Motor Vehicle Act, 1988, the appellant (original appellant no.2) has impugned the judgment and award dated 8th December, 2017 passed by the M.A.C.T., Palghar in M.A.C.T. Application No.167 of 2016 allowing the part of the claims made by the respondent no.1. By consent of the appellant and the respondent nos.1 to 4 (original applicants) this First Appeal is heard finally. Some of the relevant facts for the purpose of deciding this First Appeal are as under :-

2. The respondent no.1 herein is widow, the respondent no.2 is the minor daughter and the respondent nos. 3 and 4 are the father and mother of the deceased Mr.Ananta Nana Chaudhari respectively. The respondent no.5 is the owner of the offending vehicle. It was the case of the respondent nos. 1 to 4 that on 11th October, 2015 at about 5.15 p.m. the said Mr.Ananta Nana Chaudhari (hereinafter referred to as the said deceased) was driving the motorcycle bearing no. MH-04/BL-3238 and was proceeding from Jawhar in moderate speed. At about 5.15 p.m. when he reached Jawhar Nasik Road, Kundachapada Village, at that time, a Mahendra Bolero jeep no. MH-04/EQ-9572 came in a high and excessive speed and gave dash to the motorcycle of the deceased causing serious injuries. The said deceased succumbed to the injuries. A criminal case was filed against the driver of the offending vehicle for rash and negligent driving.

3. The respondent nos. 1 to 4 being the legal heirs and representatives of the said deceased, filed an application (M.A.C.P.No.167 of 2016) before the M.A.C.T. and District Judge,

Palghar inter alia praying for compensation of Rs.25,00,000/- . The respondent no.5 did not file any written statement. The appellant filed its written statement and resisted the claim. It was contended in the written statement that there was breach of the terms and conditions of the insurance policy as the driver of the offending vehicle was not holding valid driving licence. It was also urged by the appellant in the written statement that there was contributory negligence on the part of the said deceased in driving the motorcycle.

4. The Tribunal framed five issues for determination. The respondent nos. 1 to 4 examined respondent no.1 as a witness and relied upon various documents, copy of the licence, bank statement of the said deceased etc. The appellant did not examine any witness. By a judgment and award dated 8th December, 2017 passed by the Tribunal, the Tribunal held that the respondent nos. 1 to 4 had proved that the said deceased had succumbed to the accidental injury and died due to dash of offending vehicle. It is also held by the Tribunal that the appellant herein had failed to prove that there was negligence on the part of the said deceased while driving his motorcycle. The Tribunal held that the appellant had failed to prove that there was any breach of terms and conditions of insurance policy by the respondent no.5. The Tribunal directed the appellant and the respondent no.5 to jointly and severally pay a sum of Rs.18,82,800/- inclusive of 'no fault liability' with interest at the rate of 9% per annum from the date of filing of the application till the full realization of the amount. Being aggrieved by the said judgment and award, the appellant has preferred this appeal.

5. Learned counsel for the appellant submits that the driver of the offending vehicle was not driving in a rash and negligent manner. The

said deceased was solely responsible for causing the said accident by travelling in a rash and negligent manner and thus the appellant was not liable to pay any compensation to the respondent nos. 1 to 4. The Tribunal held that there was no contributory negligence on the part of the said deceased. The said findings is not correct. The driver of the offending vehicle had committed breaches of the policy issued by the appellant. Without prejudice to the aforesaid submissions, it is submitted by the learned counsel for the appellant that the Tribunal could not have considered the monthly income of the deceased at Rs.8,000/- per month.

6. It is submitted that at the most, the Tribunal could have considered the income at Rs.6,000/- per month and on such amount, the Tribunal could have awarded the compensation at the rate of 40% towards future prospect. It is submitted that the Tribunal could have awarded a maximum sum of Rs.70,000/- towards funeral expenses, love and affection and towards loss of estate.

7. Ms.Rina Kundu, learned counsel for the respondent nos. 1 to 4 on the other hand invited my attention to various findings rendered by the Tribunal and would submit that the driver of the said offending vehicle was solely responsible for the said accident due to which the said deceased expired on the spot. The said vehicle driven by the said deceased was given a dash by the said offending vehicle causing serious injuries and thereafter the said deceased succumbed to those injuries.

8. Insofar as quantification is concerned, it is submitted by the learned counsel that the said deceased was self employed and was

working as owner cum driver and was getting monthly income of Rs.10,000/-. The respondent nos. 1 to 4 have produced bank statement on record showing credit balance of Rs.1,83,511/- on 25th July, 2017 in the said bank account of the said deceased. There was credit balance of Rs.1,75,000/- in the account of the said deceased. She submits that the Tribunal could have considered atleast Rs.6,000/- per month as the monthly income of the said deceased if not Rs.8,000/- per month.

9. It is submitted by the learned counsel that the said deceased was 31 years old at the time of his accident and thus the Tribunal after considering the judgment of Supreme Court in case of ***National Insurance Company Limited vs. Pranay Sethi & Ors. (2017) 16 SCC 680*** rightly considered the amount of future prospect at 40% of his income.

10. Learned counsel submits that the Tribunal rightly considered the deduction at 1/4th of the income towards living expenses and has rightly applied multiplier of 16. She submits that the respondent no.1 being widow is entitled to Rs.40,000/- as consortium in view of the judgment of Supreme Court in case of ***National Insurance Company Limited vs. Pranay Sethi & Ors.*** (supra), Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. She submits that the respondent no.1 is also entitled to separate compensation of Rs.70,000/- each towards loss of love and affection. She submits that the respondent nos. 2, 3 and 4 each are entitled to separate compensation of Rs.50,000/- each towards loss of love and affection and care and caution. She submits that the respondent nos. 2 to 4 are also entitled to separate amount of consortium at the rate of Rs.40,000/- each. She placed reliance on the judgment of Supreme

Court in case of ***Magma General Insurance Company Ltd. vs. Nana Ram alias Chuhru Ram and others (2019) 4 Mh.L.J. 1.***

11. Mr.Mehta, learned counsel for the appellant in rejoinder submits that since there is no cross objection filed by the respondent nos. 1 to 4, the respondent nos. 1 to 4 cannot be allowed to claim additional amount of Rs.40,000/- each towards consortium based on the judgment of Supreme Court in case of ***Magma General Insurance Company Ltd.*** (supra). He submits that in any event even under the said judgment, the said respondent nos. 2, 3 and 4 cannot claim any such consortium. Learned counsel submits that according to the appellant, the respondent nos. 2, 3 and 4 would be entitled to compensation towards love and affection in the sum of Rs.50,000/- each according to the said judgment.

12. A perusal of the record indicates that the said deceased was aged about 31 years at the time of accident. It was the case of the respondent nos. 1 to 4 that the said deceased was self employed and was working as owner cum driver and was getting monthly income of Rs.10,000/-. The respondent nos. 1 to 4 only produced copy of the bank statement showing credit balance of Rs.1,83,511/- on 25th July, 2017. The accident occurred on 11th October,2015. After the accident, there was only one transaction of Rs.7,354/-. There was a credit balance of Rs.1,75,000/- in the bank account of the said deceased.

13. In my view, the Tribunal thus could have considered the monthly income as Rs.6,000/- per month and not Rs.8,000/- per month. The income per year of the said deceased could be considered thus at Rs.72,000/-. The said deceased being self employed and was below

the age of 40 years, 40% of compensation on the said sum of Rs.72,000/- towards future prospect comes to Rs. 28,800/-. One fourth of the income to be deducted towards living expenses. Multiplier of 16 is applicable. The respondent no.1 being the widow of the said deceased would be entitled to compensation of Rs.40,000/- towards consortium. The respondent nos. 2, 3 and 4 being minor daughter, father and mother respectively of the said deceased would be entitled to compensation at Rs.50,000/- towards love and affection each. The respondent nos. 1 to 4 would be also entitled to compensation towards loss to estate, funeral expenses of Rs.15,000/- and Rs.15,000/- respectively.

14. Insofar as submission of the learned counsel for the appellant that there was contributory negligence on the part of the said deceased while driving the said vehicle which caused an accident is concerned, it is not in dispute that the appellant did not examine any witness. The respondent nos. 1 to 4 had examined the respondent no.1 as witness who produced various documents including police papers, FIR which indicated that at the relevant time, the offending vehicle was proceeding towards Nashik side and the Bajaj Boxer motorcycle was proceeding from opposite side and the offending vehicle gave dash to the said motorcycle driven by the said deceased due to which the said deceased died on the spot.

15. The pillion rider Mr.Tulshiram Mokashi got injured. The spot panchanama considered by the Tribunal showed that the road on the spot was having width of about 20 ft. and the front wheel of the motorcycle and the handle was dislocated. Though the issue of contributory negligence was raised in the written statement on the part

of the deceased by the appellant, the appellant did not lead any oral evidence. The appellant also did not examine the driver of the offending vehicle. The inquest panchanama and the postmortem report mentioned the injuries sustained by the said deceased and further indicated that the said deceased died due to Gastro-intestinal perforation with traumatic asphyxia with polytrauma in vehicular accident.

16. Insofar as submission of the learned counsel for the appellant that there was breach of the terms and conditions of the insurance policy committed by the driver of the offending vehicle is concerned, the appellant did not enter the witness box to prove any such alleged breach of the terms and conditions of the insurance policy by the driver of the offending vehicle. The burden of proof was on the part of the appellant to prove the breach of any terms and conditions of the insurance policy committed by the driver of the offending vehicle. The appellant failed to discharge the burden of proof. The Tribunal thus rightly held that the mere allegations of the appellant in the written statement without any proof could not be accepted. I do not find any infirmity with any of the finding on the issue of contributory negligence and alleged breach of the terms and conditions of the insurance policy rendered by the Tribunal.

17. Insofar as the issue raised by the learned counsel for the appellant that since the respondent nos. 1 to 4 have not filed any cross objection for seeking enhancement of the claims or claims which are not considered by the Tribunal is concerned, this issue raised by the appellant has been already considered by this court in case of ***United India Insurance Company Ltd. vs. Smt.Kunti Vinod Pandey in F.A.***

(L) No.5735 of 2016 pronounced on 17th December, 2019 holding that since the first appeal is a continuation of the claim proceedings, it is the duty not only of the M.A.C.T. to award 'just compensation' but also duty of the Appellate Court. In my view, there is thus no substance in this submission of the learned counsel for the appellant.

18. I, therefore, pass the following order :-

(a) The respondent nos. 1 to 4 would be entitled to recover an amount of Rs. 13,79,600/- inclusive of 'no fault liability' from the appellant and the respondent no.5 with interest at the rate of 9% per annum jointly and severally from the date of filing of the application till full realization of the amount.

(b) The amount payable to the respondent no.2 who is a minor, shall be deposited in a fixed deposit till the date of the said minor attaining the age of majority in any nationalized bank by the M.A.C.T. with liberty to the respondent no.1 to withdraw the interest quarterly from the said amount for the maintenance of the respondent no.2.

(c) If any amount is deposited by the appellant with the concerned M.A.C.T., the respondent nos. 1 to 4 would be entitled to withdraw the said amount subject to the aforesaid direction insofar as the respondent no.2 is concerned.

(d) If the appellant has not deposited any amount till date, the appellant shall deposit the decretal amount with the M.A.C.T. Palghar within four weeks from today with interest to be computed upto the date of deposit. The Office is directed to transmit statutory deposit of Rs.25,000/- to the M.A.C.T. Palghar, expeditiously.

(e) If there is any shortfall in recovering the decretal amount by the respondent nos. 1 to 4, the appellant would deposit the amount of shortfall with the M.A.C.T. with two weeks from the date of M.A.C.T. pointing out such shortfall. The respondent nos. 1 to 4 would be at liberty to withdraw the said amount of shortfall when deposited by the appellant. The share of the minor shall be dealt with in the manner set out aforesaid.

(f) If there is any surplus amount left after payment of the decretal amount to the respondent nos. 1 to 4, the same shall be returned by the Tribunal to the appellant.

(g) First appeal is disposed of in the aforesaid terms. No order as to costs.

(h) In view of the disposal of the first appeal, civil application does not survive and is accordingly disposed of.

(i) The parties as well as the Tribunal to act on the authenticated copy of this order.

(R.D.DHANUKA, J.)