

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

First Appeal No. 567 of 2012

The Oriental Insurance Co Ltd,
Gondia : Through It's
T.P. Hub Incharge,
"Shukla Bhawan" W.H.C. Road,
Dharampeth, Nagpur.

..... Appellant

.....Vs.....

1. Shri Shivkumar s/o Patiramji Kashiwar,
Aged about 57 years, Occ: Agriculture,
2. Smt. Gangawati w/o Shivkumar Kashiwar,
Aged about 53 years, Occ: Housewife,

Both R/o.: Kosamtondi,
Tah : Arjuni/Sadak, Distt: Gondia.

3. Shri Sanjay s/o Pralhad Bawankar,
Aged about 31 years, Occ: Driver & owner,
R/o Kosamtondi, Tah: Sadak/Arjuni,
Distt : Gondia.

..... Respondents

Shri Lalit Limaye, Advocate for appellant/original respondent no.2.
Shri U. K. Bisen, Advocate for respondent nos. 1 and 2/original claimants

CORAM : M. G. GIRATKAR, J.

DATED : 24/06/2019

ORAL JUDGMENT

This appeal is against the judgment of Motor Accident Claims
Tribunal, Gondia in M.A.C.P. No. 15 of 2009 by which the claim

petition is allowed and owner and Insurance Company are directed to pay compensation of Rs.12,50,000/- to the claimants.

2. The case of the claimants in short is as under:

The son of the original claimants (respondent nos. 1 and 2) i.e. deceased Mukesh s/o Shivkumar Kashiwar, aged about 24 years was in service as Computer Teacher and also taking private tuition classes and earning Rs.9,000/- per month. On the day of the accident i.e. on 14.07.2018 at about 07.00 p.m. at night deceased was coming from Sakoli by Auto owned and driven by respondent no.3 (original respondent no.1) to his village Kosamtondi. The said auto was driven by respondent no.3 in rash and negligent manner. The said Auto turned turtle on the road. Therefore, deceased Mukesh sustained multiple injuries. He was admitted in Rural Hospital, Sakoli and thereafter, he was referred to Government Medical College, Nagpur. He died during the treatment on 17.07.2008.

3. In this appeal, respondent no.3/original respondent no.1 is the owner and driver of offending vehicle. The learned Tribunal come to the conclusion that accident took place due to rash and negligent driving of Auto driver. The said vehicle was insured by Insurance Company i.e. appellant/original respondent no.2.

4. Motor Accident Claims Tribunal, Gondia has taken into consideration Rs.9,000/- per month income and after calculating the amount, granted compensation of Rs.12,50,000/-. Hence, the present appeal.

5. Heard learned Advocate Shri Limaya for the appellant/original respondent no.2. He has restricted his argument to the quantum only. He has submitted that there is no income proof. The deceased was aged about 24 years. He was unmarried and, therefore, as per the judgment of Apex Court in the case of *Sarla Verma Vs. Delhi Transport Corporation reported in 2009 (2) TNMAC 1 (SC)*, 50% deduction is to be taken into consideration, but Tribunal has deducted only 1/3 and, therefore, prayed to modify the amount of compensation.

6. Learned Advocate Shri Bisen for respondent nos. 1 and 2/original claimants has submitted that even the half amount of Rs.9,000/- is taken into consideration, then also deceased aged about 24 years, therefore, 50% is to be added as a future prospect. Tribunal not taken future prospect while calculating quantum.

7. In the case of Sarla Verma (cited supra), Hon'ble Apex Court held that 50% is to be added as a future prospect.

8. Learned Advocate Shri Limaya has submitted that income is not strictly proved.

9. It is pertinent to note that strict proof is not necessary in proceedings before Motor Accident Claims Tribunal. It is a summary proceeding is to be decided by Motor Accident Claims Tribunal. Whenever, the summary procedure is to be followed by the Court, all evidences need not to be recorded in details. The substance of evidence is to be recorded. Intention behind the Act is to be seen that each and every person cannot prove the income and other aspect, therefore, the strict proof of income is not necessary. Even the 50% is deducted towards personal income and 50% is added as a future prospect, then also, there will not be any change in the amount of compensation. Learned Tribunal has rightly granted compensation to respondent nos. 1 and 2/original claimants. There is no merit in the appeal.

10. Accordingly, appeal is dismissed with no order as to costs.

11. The amount of compensation deposited by the appellant/original respondent no. 2 before Motor Accident Claims Tribunal, Gondia be given to respondent nos. 1 and 2/original claimants alongwith accrued interest thereon.

12. Balance amount, if any, shall be paid by the appellant/original respondent no. 2 to respondent nos. 1 and 2/original claimants within a period of two months.

JUDGE

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