

bdp

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

FIRST APPEAL NO. 1029 OF 2016

Shriram General Insurance Co. Ltd.	... Appellant
V/s.	
Shakuntala N. Jadhav and Ors.	... Respondents

Mr. Rahul Mehta i/b KMC Legal Venture for the Appellant.

Mr. Priyal G. Sarda for the Respondent Nos.1 and 3 to 5.

CORAM : R.D. DHANUKA, J.

DATE : 28th FEBRUARY, 2020.

P.C.:

. By this First Appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellant (original opponent no.2) has impugned the judgment and award dated 6th January, 2016 passed by the Additional Member, M.A.C.T., Pune in M.A.C.P. No. 61 of 2014, thereby allowing the claims made by the original claimants directing the appellant and the original opponent no.2 to pay sum of Rs.21,15,000/- jointly and severally to the claimants with interest @ 9% p.a. from the date of institution of the petition till its realization. By consent of the appellant and the respondent no.1 who is contesting party in the First Appeal, this appeal is heard finally at the stage of admission. Some of the relevant facts for the purpose of deciding this First Appeal are as under:-

2. On 6th June, 2013, at about 3:45 p.m., Namdev was driving Activa Motorcycle bearing No. MH-12-CX-6620 and was proceeding towards Khed. When he reached near Chandoli Chowk at village Chandoli on Pune-Nashik road, one truck bearing No. MH-04-BU-4762 came from

back side and gave dash to his Aactiva Motorcycle. As a result of such dash, he sustained head injury and died on the spot (hereinafter referred to as “the said deceased”). The respondent nos. 1 to 5 being his legal heirs filed Claim Application before the M.A.C.T., Pune. The claim was resisted by the appellant and also by the respondent no.2. The Tribunal framed four issues. The original claimant produced various documents before the Tribunal and also examined the respondent no.3 as one of the witness. The appellant did not examine any witness. The Tribunal passed a judgment and award, directing the appellant and the original opponent no.2 to pay compensation in the sum of Rs.21,15,000/- with interest @ 9% p.a. from the date of institution of the petition till its realization. Being aggrieved by the said judgment and award, the appellant filed this First Appeal under Section 173 of the Motor Vehicles Act, 1988.

3. Mr. Mehta, learned counsel for the appellant made two submissions for consideration of this Court. He submits that all the four claimants being major, the Tribunal could not have deducted $\frac{1}{4}^{\text{th}}$ of the amount towards expenses while computing the loss of dependency and ought to have deducted $\frac{1}{3}^{\text{rd}}$ of the amount of towards such expenses. He submits that if the said deduction would be allowed at $\frac{1}{3}^{\text{rd}}$, loss of dependency would have arrived at Rs.16,80,000/-. The next submission of the learned counsel is that the Tribunal could not have awarded more than Rs.70,000/- under conventional heads. No other submissions are urged by the learned counsel for the appellant.

4. Mr. Sarada, learned counsel for the respondent no.1 on the other hand submits that his clients have no objection if the deduction is considered as $\frac{1}{3}^{\text{rd}}$ instead of $\frac{1}{4}^{\text{th}}$ for the purpose of computing the loss of dependency. Statement is accepted. In so far as the compensation awarded under the conventional heads is concerned, the Tribunal has awarded sum of Rs.2,25,000/-. Learned counsel strongly placed reliance on the judgment of

Supreme Court in case of ***Magma General Insurance Co. Ltd. v/s. Nanu Ram @ Chuhru Ram, 2018 SCJ 2782*** in support of the submission that the said amount of Rs.2,25,000/- awarded by the Tribunal under the heads of lost of consortium, lost of love and affection and funeral expenses were in accordance with the principles of law laid down by the Supreme Court in the said Judgment and thus the said mount cannot be reduced to Rs.70,000/- as canvased by the learned counsel for the appellant.

5. Mr. Mehta, learned counsel for the appellant could not distinguish the judgment of Supreme Court in case of ***Magma General Insurance Co. Ltd.*** (supra).

6. I do not find any infirmity in the amount of compensation awarded under the conventional heads at Rs.2,25,000/-. Since, the learned counsel for the respondent no.1 had agreed to the deduction as $\frac{1}{3}^{\text{rd}}$ instead of $\frac{1}{4}^{\text{th}}$, after calculation of the deduction as $\frac{1}{3}^{\text{rd}}$, the loss of dependency amount comes to Rs.16,80,000/-. In addition to the said amount of compensation, the original claimant would be also entitled to Rs.2,25,000/- towards conventional heads totalling to Rs.19,05,000/-.

7. I therefore pass the following order :-

- (a) The original claimants are entitled to recover a sum of Rs.19,05,000/- from the appellant towards compensation with interest @ 9% p.a. from the date of institution of the claim petition till its realization, out of the amount deposited by the appellant before the M.A.C.T. Pune in M.A.C.P. No. 61 of 2014.
- (b) If there is any shortfall in depositing the decretal amount by the appellant after paying the decretal amount to the original

claimants under the said judgment and award dated 6th January, 2016 as modified by this judgment, same shall be deposited by the appellant with the M.A.C.T., Pune within two weeks from the date of such computation of the shortfall by the Tribunal.

- (c) If there is any surplus amount deposited by the appellant after paying the decretal amount to the original claimants, such surplus amount shall be refunded to the appellant.
- (d) Office is directed to transmit statutory deposit a sum of Rs.25,000/- to the M.A.C.T., Pune, expeditiously.
- (e) Judgment and award dated 6th January, 2016 passed by the Additional Member, M.A.C.T., Pune is substituted by this order.
- (f) First Appeal is disposed off in aforesaid terms. There shall be no order as to costs.
- (g) Parties as well as the M.A.C.T, Pune to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)