IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.493 OF 2021
WITH
CIVIL APPLICATION NO.5921 OF 2019

The National Insurance Company Ltd.
A subsidiary of General Insurance Co.
of India Ltd., having one of its
Divisional Office at Station Road,
Aurangabad, through its
authorised signatory ..Appellant
(Orig. respondent no.2)

Vs.

1. Gitanjali Chakradhar Bhosale,
Age : 28 years, Occ. Household,
r/o. Isad, Tk. Gangakhed,
Dist. Parbhani

2. Shlok Chakdradhar Bhosale,
Age : years, u/g. R.No.1

3. Subhadrabai Nagorai Bhosale,
Age 64 years, Occ. and Res.
As above

4. Nagorao Keshavrao Bhosale,
Age : 66 years, Occ. Nil,
Res. As above

5. Sunil Baburao Chavan,
Age : Major, Occ. owner of vehicle,
r/o. Vidyakunj Colony, Ambajogai,
Dist.Beed

6. Amol Janardhan Gutte,
Age : major, Occ. Driver,
r/o. Ambajogai, Dist. Beed ..Respondents
(Resp Nos.1 to 4-orig. claimants; resp.no.5- orig. resp no.1; and resp.no.6.- orig. res. no.3)

Mr.A.B.Kadethankar, Advocate for appellant
Mr.S.S.Dargad, Advocate h/f. Mr.S.G.Chapalgaonkar, Advocate for respondent nos.1 to 4

CORAM : R.G. AVACHAT, J.
DATE : AUGUST 25, 2021

ORDER :-

The challenge in this appeal is to the judgment and order dated 27.12.2018 passed by learned Member, Motor Accident Claims Tribunal, Ambajogai, in Motor Accident Claim Petition No.51 of 2017. Under the impugned award, original petitioners/claimants (respondents herein) have been granted compensation of Rs.87,17,408/- (exclusive of no fault liability amount) with interest at the rate of 9 per cent per annum from the date of filing of the claim petition i.e. 25.07.2017 till realisation of the amount.

FACTS :-

2. The deceased – Chakradhar along with his brother-in-law, was proceeding on foot along Parli old Ghatnandur road. It was 6:45 p.m. of 23.04.2017. A Jeep bearing registration no.MH-16-E-0059, driven in rash and negligent manner, came from behind and knocked Chakdradhar down. He was immediately rushed to a hospital, but in vain. On 25.04.2017, the brother-in-law of the deceased lodged the FIR naming therein the driver of the jeep (MH-16-E-0059) to be responsible for the accident and death of Chakradhar.

3. The widow, parents and minor child of the deceased filed the petition for compensation. The deceased was serving as an Assistant Teacher at a monthly pay of Rs.44,674/-. He was 33 years old when breathed his last. The claimants, therefore, prayed for compensation of little over Rs.Eighty Lakhs.

The claim petition was resisted by the appellant – insurance company on the grounds of false involvement of the vehicle in the accident, want of effective and valid driving licence of the driver to drive the vehicle at the relevant time and quantum as well.

4. Heard Mr.A.B.Kadethankar, learned counsel appearing for the appellant – insurance company and Mr.S.S.Dargad, learned counsel appearing for respondent nos.1 to 4. Considered the submissions advanced by respective learned counsel. Perused the impugned award.

5. Learned counsel for the appellant – insurance company would submit that the report of the accident was lodged two days thereafter. The vehicle, which allegedly knocked the deceased down, fled soon thereafter. There is no material to indicate, how come the informant gave in the FIR, number of the jeep. The informant did not suffer any injury in the accident. Had he really seen number of the offending vehicle, he could have lodged the FIR soon after the accident giving number of the offending vehicle therein. On the question of quantum of compensation, learned counsel would submit that the same is on higher side. The statutory deductions have

not been taken into consideration. The interest has been awarded at exorbitant rate. He, therefore, urged for allowing the appeal.

6. Learned counsel for the claimants would, on the other hand, submit that the FIR was lodged by an eye witness, who was in the company of the deceased when the accident took place. The deceased was none other than the brother-in-law of the informant. Since the deceased was rushed to the hospital in critical condition, it was but natural for the family members of the deceased to attend him first. The informant has stated in the FIR that he too was injured. The delay of little over one and half days in lodging the FIR is not fatal to the facts and circumstances of the case. On due investigation, police filed charge sheet against the jeep driver. The insurance company did not lead any evidence in proof of non involvement of the vehicle in question. On the question of quantum, learned counsel would submit that the deceased was a permanent government employee. The compensation has been awarded in view of the directions of the Apex Court in the case of

National Insurance Company Ltd. Vs. Pranay Sethi and ors., (2017)16 SCC 680. He, therefore, urged for dismissal of the appeal.

7. Considering the rival submissions, following points arise for my determination:-

(i) Whether involvement of jeep bearing registration no.MH-16-E-0059 in the accident has been proved ?

(ii) Whether the amount of compensation awarded by the Tribunal is exorbitant ?

(iii) What order ?

8. Admittedly, the deceased Chakradhar along with his brother-in-law was walking along Parli old Ghatnandur road. It was 06:45 p.m. of 23.04.2017. A jeep came from behind and knocked the deceased down. He was ultimately rushed to the hospital. He, however, passed away. On the next day of the accident, the brother-in-law of the deceased lodged the FIR, alleging the driver of the jeep (MH-16-E-0059) to be

responsible for the accident, as has been submitted by learned counsel for the claimants that the family members would first attend the deceased. It has also been stated in the FIR that the informant too, was injured. He too, was admitted to the hospital. Chakradhar died under treatment. On the informant's discharge from the hospital, he, ultimately, lodged the FIR. On due investigation, the police have charge-sheeted the driver of the jeep. It appears that the appellant – insurance company did not lead any evidence in disproof of the claim regarding involvement of the jeep (MH-16-E-0059) in the accident.

9. It is a case of an eye witness-cum-victim of the accident to have lodged the FIR within fourty eight hours thereof, when his brother-in-law passed away within twenty four hours of the accident. The informant has given in the FIR vehicle number of the offending vehicle. On due investigation, driver of the said jeep was proceeded against by filing charge sheet. Except denying involvement of the vehicle in question, none of the respondents before the Tribunal, made efforts to disprove claim of the claimants. On the basis of preponderance

of probabilities, the Tribunal rightly came to the conclusion as regards involvement of the jeep.

10. A faint attempt was made to submit that the driver of the jeep did not hold an effective and valid licence to drive the same. It appears that lateron, a valid driving licence was placed before the Tribunal.

QUANTUM:-

11. It is true that in the first blush, the Tribunal appears to have granted compensation somewhat on higher side. It has, however, been justified in granting that much compensation. The Tribunal has relied on the judgments of the Apex Court in the cases of (i) **Pranay Sethi (supra);** (ii) **Sarla Verma (Smt.) and ors. Vs. Delhi Transport Corporation and anr., (2009)6 SCC 121;** and (iii) **Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and ors., (2018) 18 SCC 130,** and quantified the amount of compensation.

12. The deceased Chakradhar was 33 years of age when he breathed his last. He was serving as Assistant Teacher. His salary certificate is on record to indicate that his monthly salary was Rs.44,674/-. Considering his age and being in permanent service, the Tribunal added 50% of his monthly wages towards future prospects. This way, his monthly income came to Rs.67,011/-. Considering the number of dependents, the Tribunal deducted 1/3rd thereof towards living expenses of the deceased. Thus, the monthly loss of dependency comes to Rs.44,674/-, which came to Rs.5,36,088/- per annum. Applying multiplier of 16 thereto, the amount of compensation on account of loss of dependency comes to Rs.85,77,408/-. A sum of Rs.30,000/- was awarded on account of funeral expenses and loss of estate. A sum of Rs.40,000/- has been awarded as loss of spousal consortium to the claimant (widow). A sum of Rs.40,000/- each has also been awarded to the parents towards loss of filial consortium. As such, the Tribunal has rightly quantified the amount of compensation. Although

interest has been awarded at the rate of 9% per annum, I do not propose to scale it down.

13. In the result, the appeal fails and the same is dismissed.

14. Amount in deposit with this Court be paid to the claimants with interest accrued thereon. The Civil Application stands disposed of.

[**R.G. AVACHAT, J.**]

KBP