IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2534 OF 2017

M/s Shriram General Insurance Company Ltd.,
10003 E-8 RIICO Industrial Area, Sitapura,
Jaipur 302022 through it's Manager (Legal) … **Appellant**
(Orig. 2nd Respondent)

Versus

1. Smt. Sundarbai w/o Suresh Rakshase
Age 45 yrs, Occu: Household

2. Vinod s/o Suresh Rakshase
Age 17 yrs, Minor Occu: Education

3. Soni d/o Suresh Rakshase
Age: 15 years, Minor, Occu: Education

4. Rani d/o Suresh Rakshase
Age 10 years, Minor, Occu: Education,
Petitioner Nos. 2 to 4 are minors,
under guardianship of real mother i.e.
petitioner No.1

5. Gautam s/o Suresh Rakshase
Age 21 yrs, Occu: Education

6. Smt. Sushila w/o Sanjay Dakore
Age 30 years, Occu. Household,
R/o Sanghsen Nagar, Itwara, Nanded …(Orig Petitioners No. 1 to 6)

7. Gangaram s/o Pandurang Panchlinge
TATA ACE Auto (Chota Hatti) bearing
registration No.MH-26/H-4159, …(Orig. R.No.1)
R/o Fattepur, Lalwadi,
Tq & Dist. Nanded. …**Respondents**

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Mr. V. N. Upadhye, Advocate for appellant
Mr. G. D. Jain, Advocate for respondent Nos. 1 to 6

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CORAM : R. G. AVACHAT, J.

DATED : 12th AUGUST, 2021

PER COURT :-

. The appellant – Shriram General Insurance Company Limited has filed this appeal against the judgment and award dated 22.03.2017, passed by the Member, Motor Accident Claims Tribunal (M.A.C.T.), Nanded, in Motor Accident Claim Petition (M.A.C.P.) No. 405 of 2012.

2. FACTS :

It so happened that the deceased Pappu, along with his two friends was returning from village Chikala on 10.06.2012. One of them was riding the motorcycle MH-26/Y-5597. When they were passing by village Mugat on Mudkhed to Nanded road, vehicle TATA ACE Auto No. MH-26/H-4159, came from Nanded side. It was being driven in rash and negligent manner. The said vehicle knocked down the motorcyclists. As a result, Pappu died on the spot.

3. Initially, First Information Report (FIR) was lodged against an unknown vehicle. Then, TATA ACE vehicle came to be named as one responsible for the death of Pappu.

4. The mother and the siblings of the deceased, filed the petition for compensation. On appreciation of the evidence in the case, the Tribunal awarded compensation of Rs. 40,53,000/- with 7.5% interest.

5. Heard.

Shri V. N. Upadhye, learned Advocate for the appellant – Insurance Company, would submit that the FIR was lodged by the widow of the deceased against unknown vehicle. It was alleged in the FIR that the deceased was accompanied with two friends on the motorbike. No description of the offending vehicle was given in the FIR. It is only after 15 days of registration of the FIR, she gave a supplementary statement naming the TATA ACE vehicle to have been involved in the accident. In the scene of offence, panchanama dated 10.06.2012, no description of the vehicle involved, has been given. The claim petition was resisted on very many grounds. The involvement of the vehicle TATA ACE was denied. The accident took place due to exclusive negligence on the part of the motorcycle rider.

One of the claimants who was examined as a witness, had not witnessed the accident. Her evidence is therefore hearsay. TATA ACE vehicle was later on falsely implicated only with a view to earn compensation. The Tribunal, simply relied on the statement recorded under Section 161 of the Code of Criminal Procedure, which are not admissible unless corroborated. Learned Advocate would further submit that the TATA ACE vehicle was registered as a commercial vehicle. The driver thereof, therefore, ought to have licence to drive Light Motor Vehicle transport. The licence Exh-33 does not bear endorsement "transport". As such, the driver did not have valid and effective licence. The appellant - Insurance Company has therefore, no liability to pay compensation. Admittedly, there were three persons on the motorcycle. It would be a case of contributory negligence. In proportion of 50 – 50. On the question of quantum of compensation, the learned Advocate would submit that the Tribunal has made addition of 100% of the established income of the deceased towards future prospects. It is contrary to the ratio laid down by the Constitution Bench judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others – (2017) 16 SCC 680.*** The deceased was 27 years of age. Only 50% of his salary should have been considered towards future prospects. The brothers and sisters of the deceased cannot be the dependents. 1/4th of the annual income of the deceased, therefore, ought not to have been deducted towards expenditure, which the deceased would have incurred for self, had be been survive. The learned Advocate for the appellant–Insurance Company, thus, urged for interference with the impugned judgment and award.

6. Shri G. D. Jain, learned Advocate for respondent Nos. 1 to 6 would, on the other hand, submit that the claimants lost their sole bread winner. He took me through the evidence in the case to support the impugned award.

7. It is true that the FIR was lodged against unknown vehicle. The mother of the deceased, who examined herself as a witness, had not seen the accident. Based on the information given by her son, she later on named the TATA ACE vehicle as one involved in the accident. The charge-sheet was filed after due investigation of the crime. During the investigation, it was surfaced that the offending vehicle was no other than TATA ACE No. MH-26/H-4159. In the rebuttal, no evidence was led. The tribunal was therefore justified in holding the driver of the said vehicle to be responsible to the accident.

8. Admittedly, the driver of the offending vehicle hold the driving licence to drive light motor vehicle. The vehicle involved in the accident was a transport vehicle. A three Judge Bench of the Hon'ble Supreme Court in case of ***Mukund Dewangan vs. Oriental Insurance Company Limited – (2017) 14 SCC 663,*** has held thus:-

> *" "light motor vehicle" would include a transport vehicle as per the weight prescribed in S. 2(21) r/w Ss. 2(15) and 2(48). A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a roadroller, "unladen weight" of which does not exceed 7500 kg. Further, holder of a driving licence to drive class of "light motor vehicle" as provided in S. 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg. Central Vehicles Rules, 1989, Rr.8, 31 & 34 and Forms 4, 6 & 8".*

In view of the above, the challenge on the ground of invalid licence, is not sustainable.

9. The deceased was serving as a Labour with Nanded-Waghala Municipal Corporation. His pay slip for the month of May-2012 is on record vide Exh.36. He would draw the salary of Rs.12,992/- per month. The Tribunal made it a round figure to

Rs.13,000/-. It however, did not subtract the sum of Rs.200/- per month towards provident fund. The said deduction is appearing in the pay slip. As such, the monthly salary of the deceased would come to Rs.12,800/- The Tribunal erred in making 100% addition thereto towards future prospects. In view of the judgment in case of ***Pranay Sethi*** *(supra)*, it should have been 50%. Making addition of 50%, monthly income of the deceased would come to Rs.19200/- (12,800+6400). The annual income of the deceased would come to Rs.2,30,400/-. The claimant Sundarbai deposed that the deceased was the '*Karta*' of the family. All the petitioners were dependent on the income of the deceased. The deceased was doing service and maintaining all of them. This peace of evidence has gone unchallenged in her cross examination. The Tribunal was therefore justified in subtracting 1/4th of the annual income of the deceased towards his personal and leaving expenses considering the number of dependents.

10. After subtracting 1/4th from Rs.2,30,400/-, it comes to Rs.1,72,800/-. Applying the multiplier of 17, it comes to Rs.29,37,600/-. The Tribunal has granted the petitioners a sum or Rs.50,000/- on account of loss of love and affection and Rs.25,000/-

towards funeral expenses . I do not propose to interfere with the said quantum. Thus, the total amount of compensation comes to Rs.30,12,600/-.

11. For the reasons given herein above, the impugned award is modified replacing the amount of compensation of Rs.40,53,000/- with a sum of Rs.30,12,600/-.

12. The rate of interest awarded by the Tribunal to stand unaltered. Apportionment of the amount of compensation made in paragraph 3 of the impugned award is, however, modified. 50% of the entire amount of the compensation be paid to the mother of deceased and the remaining amount of compensation be apportioned amongst other claimants, equally.

13. The First Appeal is thus, partly allowed and disposed of.

14. Civil Application No. 4903 of 2021 is disposed of.

[R. G. AVACHAT, J.]

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