# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# BENCH AT AURANGABAD

## FIRST APPEAL NO.4404 OF 2008

1. Sangita w/o. Mohan Jarange
   Age : 29 years, Occ. Household,

2. Archana d/o. Mohan Jarange,
   Age : 14 years, Occ. Education

3. Pranita d/o. Mohan Jarange,
   Age : 11 years, Occ. Education

4. Pooja d/o. Mohan Jarange,
   Age : 06 years, Occ. Education

5. Onkar s/o. Mohan Jarange,
   Age : 06 years, Occ. Education

   claimant nos.2 to 5 minors and under guardian of their mother claimant no.1 Sangita w/o. Mohan Jarange

6. Shahadeo s/o. Appa Jarange,
   Age : 56 years, Occ. Agri.

7. Kamalbai w/o. Shahadeo Jarange,
   Age : 51 years, Occ. Household,
   Both r/o. Kuslumb, Tq. Patoda, Dist. Beed ..Appellants (orig. claimants)

Vs.

1. Kalidas @ Bandu Tukaram Maske,
   Age:Major, Occ.Driver,

r/o. Deokheda, Tq. Majalgaon,
Dist. Beed

2. Shaikh Hasan s/o. Shaikh Gafar,
Age : Major, Occ. owner,
r/o. Kitti Adgaon, Tq. Majalgaon,
Dist. Beed

3. The New India Assurance Co. Ltd.
through its Branch Manager,
Branch Jalna Road, Beed ..Respondents

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Mr.Sachin Deshmukh, Advocate for appellants
Mr.K.K.Kulkarni, Advocate for respondent no.1
Mr.R.P.Dhase, Advocate for respondent no.2
Mr.A.G.Kanade, Advocate for respondent no.3

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**CORAM : R.G. AVACHAT, J.**
**DATE : SEPTEMBER 06, 2021**

**JUDGMENT :-**

This is an appeal under Section 173 of the Motor Vehicles Act. The appellants herein are original claimants in the petition, bearing Motor Accident Claim Petition No.111 of 2007, for compensation on account of death of Mohan in an accident involving motor vehicles. The Tribunal, on appreciation of the evidence in the matter, dismissed the petition, on the ground that late Mohan himself was responsible for his death.

FACTS:-

2. It so happened that on 24.05.2007 at about 10.30 a.m., deceased Mohan was proceeding on his motorbike along Beed-Ahmednagar highway. It was the deceased who was riding the motorbike. A Maruti OMNI van bearing registration No.MH-12-P-1503 was coming from opposite side. A collision between the two vehicles took place. As a result, deceased - Mohan suffered multiple injuries and died on the way to hospital.

3. Heard learned counsel appearing for the parties.

4. Mr.Sachin Deshmukh, learned counsel for the appellants-claimants, would submit that on investigation of the crime, driver of Maruti OMNI van was proceeded against by filing charge sheet. The owner and driver of Maruti OMNI van did not participate in the claim petition before the Tribunal. As such, the averments in the claim petition went unchallenged. The Tribunal ought not to have entirely relied on the site panchnama, which was drawn sometime after the accident. No

witness was examined on behalf of the respondent-insurance company. In this factual backdrop, the Tribunal erred in holding the deceased to have been clusively responsible for the accident and his death as well.

On the question of quantum, learned counsel would submit that the deceased was 32 years of age. He is survived by his widow, four minor children and parents. The deceased was an agriculturist by profession. He was a milk vendor too. The monthly income of the deceased was Rs.25,000/-. Due to untimely death of deceased - Mohan, the claimants have suffered incalculable loss. He has, therefore, urged for grant of compensation of more than Rs. Six Lakhs.

5. Mr.K.K.Kulkarni, learned counsel for respondent no.1, driver of Maruti OMNI van, would submit that the driver has been acquitted of the criminal case.

6. Mr.A.G.Kanade, learned counsel for respondent no.3 – insurance Company, would submit that the site-panchnama (Ex.37/C) speaks for itself. The deceased – Mohan, riding the

motorbike, went to the extreme wrong side of the road and dashed against oncoming Maruti OMNI van. Learned counsel read out the observations made by the Tribunal, holding the deceased to have exclusively been responsible for the accident. On the question of quantum, learned counsel would submit that there was no concrete evidence regarding income of the deceased. He, therefore, urged for taking it at Rs.2,000/- per month for grant of compensation, if any.

7. Admittedly, the accident involving Maruti OMNI van bearing registration no.MH-12-P-1503 and the motorbike bearing registration no.MH-16-W-7297 took place on 24.05.2007 on Beed-Ahmednagar road. As a result of the injuries suffered in the said accident, the motorbike rider, Mohan, passed away. On due investigation of the crime, the driver of the Maruti OMNI van was prosecuted. True, he appears to have been acquitted of the charge. It needs no mention that in a criminal case, the charge is required to be proved beyond reasonable doubt. In a civil case, rash or negligence may be proved on preponderance of probabilities.

The owner and the driver of Maruti OMNI van did not file their written statement in the petition before the Tribunal. As such, the averments in the claim petition went unchallenged. The respondent – insurance company, in its first breath, claimed ignorance about the manner in which the accident took place. It has further been averred in paragraph 11 of the written statement as under:-

> "11. ……………………………. It transpires that accident occurred in middle portion of Highway road and it is clear cut head on collision in between motorbike and Maruti OMNI van. Therefore, deceased contributes the accident and while granting compensation point of this contributory negligence is necessary to be considered whether it may not be equal, but some extent towards motorcycle driver."

8. The respondent – insurance company came with a case of it being a contributory negligence. Thus, it is surprising, as to how the Tribunal could come to the conclusion of it being a case of exclusive negligence or rashness on the part of deceased – Mohan. The impugned judgment is solely based on the scene of accident panchnama. The Investigating officer

appears to have not drawn a sketch or map of the site. The contents of the panchnama describes the situation at the situs. The same was drawn a few hours after the accident. It is a common knowledge that due to speed of vehicles involved in the accident and as a result of the impact, the vehicles leave the place whereat collision takes place. In the first part of the site plan, it has specifically been mentioned that the accident took place at the middle of the road. The respondent – insurance company does not dispute the said fact. In view of the same, the Tribunal ought not to have traveled beyond the pleadings and admitted position of the contents of the site plan. Further, the description of the site appearing in the panchnama, is necessarily the development or the effect of accident. It is reiterated that no eye witness has been examined in the case. It is, therefore, not known as to how the accident took place. From the police papers and the averments in the written statement of the respondent-insurance company, the only conclusion that could be drawn, is the case of being contributory negligence. Since the accident took place at the middle of the road, this Court is inclined to hold both the deceased Mohan and the driver of Maruti OMNI van to be equally responsible for the accident. The findings recorded by the Tribunal are, therefore, set aside.

QUANTUM:-

9. The Tribunal has not quantified the quantum of compensation. The deceased was 32 years of age. The widow of the deceased filed her evidence on affidavit reiterating the averments in the claim petition except denying her case as regards income of the deceased, there is no cross-examination. It is true, it is for the appellants/claimants to prove their claim. Since the appeal is continuation of the petition for compensation, this Court proposes to award the compensation in terms of the decisions of the Hon'ble Supreme Court, with some variations, in the cases of (i) **Sarla Verma (Smt.) and ors. Vs. Delhi Transport Corporation and anr., (2009)6 SCC 121**; (ii) **National Insurance Company Ltd. Vs. Pranay Sethi and ors., (2017)16 SCC 680**; and (iii) **Magma General Insurance Co.**

**Ltd. Vs. Nanu Ram alias Chuhru Ram and ors., (2018)18 SCC 130.**

10. For want of concrete evidence regarding income of the deceased, a sum of Rs.2,000/- per month is considered as notional income of deceased Mohan. In view of the above, the amount of compensation payable to the claimants needs to be worked out as under:-

| Particulars | | Figures in Rupees |
|---|---|---|
| Income of deceased per annum (Rs.2,000/- per month x 12 months) | | 24,000 |
| Addition of 40% towards future prospects (deceased being below 40 years of age) | + (plus) | 9,600 |
| | :- | 33,600 |
| Since the claimants were seven in number, 1/5th amount is deducted in view of **Pranay Sethi's case** (supra), towards personal and living expenses of the deceased. | - (minus) | 6,720 |
| | :- | 26,880 |
| Applying multiplier of 16, amount of compensation on account of loss of dependency (Rs.26,880 x 16) | :- | 4,30,080 |
| Addition of amount towards loss of consortium, in view of **Pranay Sethi's case** (supra) and **Magma General Insurance's case** (supra) | + (plus) | 2,80,000 |

| | | |
|---|---|---|
| Rs.40,000/- x 7 (claimants i.e. widow, four children and parents), would be - | | |
| Addition of funeral expenses and loss of estate | + (plus) | 30,000 |
| Amount of compensation | Rs. | 7,40,080/- |

11. Since this Court found it to be a case of contributory negligence in equal proportion, the appellants-claimants would be entitled to Fifty percent of the amount of compensation worked out herein above.

12. In the result, the appeal partly succeeds. The impugned judgment and order is set aside. The Claim Petition is allowed. The amount of compensation payable to the claimants shall be Rs.3,70,040/- with 6% interest thereon, from the date of the claim petition i.e. 04.08.2007, until the amount is deposited. The appeal stands disposed of accordingly.

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

KBP